REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE CITY OF MANILA and THE CITY TREASURER'S OFFICE, Represented by the Officer-in-Charge JAZMIN M. TALEGON, *Petitioners*,	**CTA EB No. 2112** (CTA AC No. 216)
	Present: Del Rosario, P.J., Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, JJ.
- *versus* –	
AV VALUE HOLDINGS CORPORATION, *Respondent.*	Promulgated: DEC 02 2020 1:58 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

Before the Court *En Banc* is a Petition for Review[1] filed by the City of Manila and the Manila City Treasurer's Office seeking the reversal of the Resolution dated February 4, 2019,[2] as well as the Resolution dated July 10, 2019[3] (collectively referred to as "Assailed Resolutions") of the First Division (Court in Division)[4] of this Court in CTA AC No. 216 entitled *The City of Manila and Josephine D. Daza, in her capacity as the OIC-City Treasurer v. AV Value Holdings Corporation.*

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[1] Court *En Banc's* Docket, pp.5-20.
[2] *Id.*, pp. 135-136.
[3] *Id.*, pp. 130-133.
[4] Composed of Presiding Justice Roman G. Del Rosario as Chairperson, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Catherine T. Manahan as members.

The respective dispositive portions of the Assailed Resolutions are quoted hereunder:

Resolution dated February 4, 2019:

> "**WHEREFORE**, for having been belatedly filed, the instant Petition for Review is hereby **DISMISSED**.
>
> **SO ORDERED.**"

Resolution dated July 10, 2019:

> "**WHEREFORE**, petitioners' **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

As found by the Regional Trial Court (RTC) of Manila, Branch 28, in its Decision dated November 29, 2018, the antecedent facts of the present case are as follows:[5]

> "Claiming that defendants City of Manila and its treasurer, Rizal Y. Del Rosario (**defendants**), erroneously imposed and collected local business tax (**LBT**) for the calendar year 2014 (CY2014), plaintiff filed the instant case seeking a refund of its payment in the amount of ₱11,807,977.50.
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> In support of the complaint, plaintiff contended that, in 2013, it received a dividend income worth ₱1,589,999,999.94. In CY2014, on the basis of Section 105 of the Omnibus Revenue Code of Manila (ORCM), defendants levied LBT on its dividend income in the amount of ₱11,807,977.50, computed as follows:
>
> ...

Dividend income in CY 2013	Php1,589,999,999.94

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[5] Court *En Banc's* Docket, pp. 21-26 (Citations omitted).

LBT on Dividend Income (Sec. 105, Tax on Contractors):

	(i) First Php2,000,000.00	Php	18,975.00
	(ii) Php1,587,999,999.94 x 82.5% of 1%		13,101,000.00
	Total	Php	13,119,975.00
Less:	10% Discount (on early payment)		(1,311,977.50)
Amount Due (LBT on Holding Companies for CY 2014)		Php	11,807,977.50

...

On 6 February 2001, plaintiff paid the LBT and regulatory fees for CY2014 in the amount of ₱11,822,527.50, inclusive of the LBT on dividend income for ₱11,807,977.50. On 22 June 2014, discovering the error, plaintiff wrote defendants and requested a refund. Defendant City Treasurer, on 1 October 2014, authorized and ordered the examination of its books of account to verify, assess and collect the true and correct amount of taxes, fees, and charges due plaintiff for 2009-2013.

Later, on 13 October 2014, defendant City Treasurer instead of granting the refund, demanded the payment of LBT for 2009, 2010, 2011, and 2014 in the total amount of ₱938, 110.68. Plaintiff replied in a latter (sic) of 7 November 2014, contending that its dividend income should not be taxed under Section 105 of the ORCM. It again requested for re-computation. A supplemental request was also made for the refund of ₱11,807,977.50 for CY2014. Defendants did not act on the request thus plaintiff filed the instant case.

In its complaint, plaintiff prayed that judgment be rendered in its favor and for the court to order defendants to refund ₱11,807,977.50, representing the erroneously paid LBT on dividend income for CY2014.

Defendants filed its Comment (Answer) to plaintiff's complaint. In negating plaintiff's claim[,] [t]hey essentially contended that: (**1**) the instant action is an appeal from the City Treasurer's denial of its request for refund; (**2**) in all its previous records of business permits and licenses, plaintiff is engaged as a real estate lessor th[r]ough 'AV Value Sales Corporation' until its change of name (AV Value Holdings Corp.); (**3**) plaintiff reported revenues of ₱1,589,999,999.94 hence the same should be taxed for its newly assumed business status; (**4**) plaintiff failed to secure new business permits hence it came to court with uncleaned hands and was not to deserve (sic) any refund; and (**5**) for failing to context (sic) the ₱938,110.68 Notice of Assessment hence the same has became (sic) conclusive and unapplicable (sic). *yr*

The parties were referred to the Philippine Mediation Center (PMC) for conciliation proceedings but the same failed. Thereafter, a Judicial Dispute Resolution (JDR) was held to assist the parties into having amicable settlement. Yet again, the same bogged down so the case proceeded to trial.

At the pre-trial, the parties stipulated that all the annexes to plaintiff's complaint are defendants' issuances. They are existing documents and are genuine. In the trial that followed thereafter, Mary Grace Tapia (**Tapia**), plaintiff's Accounting Head since 2014, testified that, based on the company's Articles of Incorporation, it is a holding company. The company's primary purposes for its incorporation are:

> ...
> To acquire by purchase, exchange, assignment, gift, or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic and deal in and with, and otherwise operate, manage, enjoy and dispose of, any and all properties of every kind and description and wherever situated, as and to the extent permitted by law, including, but not limited to buildings, tenements, warehouses, factories, edifices and structures and other improvement, and bonds, debentures, promissory notes, shares of capital stock, or other securities or obligations created, negotiated or issued by any corporation, association, or other entity, foreign or domestic and while the owner, holder or possessor thereof, to exercise all the rights, powers and privileges of ownership or any other interest therein, including the right to receive, collect and dispose of, any and all rentals, dividends, interests and income, derived therefrom, and the right to vote on any proprietary or other interest, on any shares of the capital stock, and upon any bonds, debentures, or other securities having voting power, so owned or held.
> ...

According to Tapia, when plaintiff applied for business permit in January 2014, it submitted a letter-request for re-assessment of taxes from being a 'lessor' to being a 'holding company' and for the issuance of additional permit as a 'holding company'. Relative thereto, it attached a certification that it earned a total dividend of ₱1,589,999,999.94. On 30 January 2014, defendant City Treasurer issued a Statement of Account for Business Taxes and Fees, which the City assessed plaintiff local fees and charges in the total amount of ₱14,550.00 and LBT on 'holding company' in the amount of

₱11,807,977.50. On 6 February 2014, plaintiff paid a total amount of ₱11,822,527.50.

Later, in June 2014, plaintiff filed with defendant City Treasurer a request for refund and submitted supporting documents. Defendant City Treasurer responded with a demand for payment of deficiency LBT for CYs 2009, 2010, 2011 and 2014 for ₱938,110.68. In November 2014, plaintiff reiterated its stand that its dividend income should not be taxed under Section 105 of the ORCM and thus requested for re-computation. It also requested for the cancellation of the Statement of Account and LBT assessments for 2009, 2010, 2011 and 2014. A supplemental letter reiterating the refund was also made. Unfortunately, defendant City Treasurer did not act on its requests.

On cross-examination, Tapia confirmed that plaintiff paid the assessment of about ₱11 Million, with discount for early payment. She explained that it paid (notwithstanding its position that it is not a contractor) to avoid penalties. As to the nature of plaintiff's business, she disclosed that it has a contract with Destiny Cable, Inc. (**Destiny**) for it to 'hold' the latter's stocks. She added that defendant fully owned all of Destiny's shares of stocks and the dividends it earned were from its shares from it (Destiny). Aside from dividends, there were no other financial payment made to plaintiff. She added that in 2015, plaintiff applied for business permit to cover the income of 2014. However, defendant City Treasurer again assessed the same LBT. It did not anymore pay since it has pending request for re-computation with the 2013 income dividend. She also stated that after plaintiff failed to secure a business permit, its office remained in Manila but did not have any active income. When asked of the stockholders of plaintiff and Destiny Cable, Inc., Tapia answered that she did not really know and she still had to verify their names. Asked as well if plaintiff can dispose Destiny, she answered in the affirmative.

After plaintiff rested its case, defendants manifested that they will no longer present any countervailing evidence. Thereafter, the parties submitted their Memoranda.

In its Memorandum, plaintiff insisted that (**1**) Section 105 of the O[RCM] does not apply to it since it is not a 'contractor' engaged in the business of selling services for a fee; (**2**) its dividend income is a passive income and not a part of its gross receipts that are subject to LBT; (**3**) under Section 131 of the Local Government Code, a 'contractor' is a natural or juridical person whose activi[t]y consists essentially of the sale of all

> kinds of services for a fee while 'gross sales receipts' include the total amount of money or its equivalent representing the contract price, compensation, or service fee, for the services performed or to be performed for another person; (**4**) not being a contractor and merely a holding company, its dividend is subject to income tax and not LBT; (**5**) plaintiff could not impose LBT on its dividend income when it is neither a bank nor a financial institution; (**6**) the assessed LBT deficiency for CYs 2009, 2010, 2011 and 2014 could not have become 'conclusive and unappealable' since defenda[n]ts failed to show proof that the same indeed became final and executory; (**7**) assuming that the assessment LBT deficiency became final, defendants could not offset the deficient LBT since they did not file any counterclaim; and, (**8**) defendants may only offset the deficiency LBT against its [claim] for refund of erroneously paid LBT for CY 2014.
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> For their part, defendants were firm on their stance that plaintiff was correctly assessed the LBT since it is a 'contractor', an investment company that actually owned the 'New World Hotel' located and doing business in the City of Manila. As contained in its corporate purpose, it is an investment company under Republic Act (RA) 8799 (or The Investment Act) and may properly be imposed with LBT as provided in the Lo[c]al Government Code (RA 7160). Contrary to plaintiff's claim, since it owns and manages the 'New Worl[d] Hotel', it then provides management services. Moreover, since it wholly owned 'New World Hotel', it also provides services for another through the said hotel. Additionally, they contended that plaintiff could not demand refund since it did not file any protest on the paid disputed tax."

In a Decision dated November 29, 2018, the RTC of Manila, Branch 28 ordered the petitioners to refund to the respondent the erroneously assessed and collected local business tax in the amount of ₱11,807,977.50, exclusive of interests.[6]

On January 14, 2019, petitioners filed a Petition for Review before this Court appealing the above RTC Decision.[7]

In the first Assailed Resolution dated February 4, 2019, the Court in Division dismissed petitioners' Petition for Review for being filed out of time. *rc*

[6] *Id.*, pp. 21-41.
[7] *Id.*, pp. 135-136.

Thus, on March 13, 2019, petitioners filed a Motion for Reconsideration which the Court in Division denied in the second Assailed Resolution dated July 10, 2019.

Within the extended period granted by the Court *En Banc*,[8] petitioners filed the present Petition for Review.

In a Resolution dated October 22, 2019,[9] the Court *En Banc* required respondent to file its Comment within ten (10) days from notice.

On November 18, 2019, respondent filed its Comment.[10]

In a Resolution dated December 10, 2019, the Court *En Banc* submitted the present Petition for Review for decision.[11]

THE ISSUES

Petitioner filed the present Petition for Review of the basis of the following grounds: [12]

1. The Court in Division committed a reversible error in dismissing the Petition despite the fact that the circumstances obtaining in this case merit the liberal interpretation of the rules as petitioners was only a day late in filing the Petition.

2. The Court in Division erred in dismissing the case and in not ruling that the assessment on respondent is proper for being classified as an investment company and therefore liable.

3. The Court in Division gravely erred in not deciding that the claim for refund of business tax amounting to ₱11,807,977.50 should be denied.

THE COURT *EN BANC*'S RULING

After thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and

[8] *Id.*, p. 4. The last day of the extended period for filing the Petition for Review (August 21, 2019) fell on a holiday.
[9] *Id.*, pp. 138-139.
[10] *Id.*, pp. 145-166.
[11] *Id.*, pp. 191-192.
[12] *Id.*, pp. 7-10.

jurisprudence on the matter, the Court *En Banc* finds that the present Petition for Review should be denied for lack of merit. There is no substantial matter much less compelling reason to disturb the findings of the Court in Division in the Assailed Resolutions.

At the outset, it is important to note that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.[13] The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[14] The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[15]

Section 11 of Republic Act (RA) No. 1125, as amended, in relevant part, provides:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - **Any party adversely affected by a decision, ruling or inaction of** the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or **the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.** A Division of the CTA shall hear the appeal: x x x" *(Emphasis supplied)*

In the present case, petitioners admit that they belatedly filed their Petition for Review before this Court. To recall, petitioners received the Decision of the RTC on December 12, 2018. Counting thirty (30) days from December 12, 2018, petitioners had until January 11, 2019 within which to

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[13] *Muñez v. Jomo*, G.R. No. 173253, October 30, 2006, 506 SCRA 306.
[14] *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010, 628 SCRA 105.
[15] *China Banking Corporation v. City Treasurer of Manila*, G.R. No. 204117, July 01, 2015, 761 SCRA 252.

file their Petition for Review before this Court. However, their Petition for Review was actually filed only on January 14, 2019. Clearly, the Petition for Review was filed out of time.

The above admission notwithstanding, petitioners are now praying for this Court to liberally apply the rules to reconsider the dismissal of their Petition in the interest of justice and fair play. They claim that due to work of equal importance, petitioners' counsel was not able to advise the process server of the actual deadline for filing.[16] Petitioners posit that such procedural lapse is not considered gross negligence.[17] Neither is it tainted with bad faith nor tantamount to abuse or misuse of court process.[18] Petitioners postulate that equity jurisdiction may be exercised when strong considerations of substantial justice are manifest.[19]

The Court *En Banc* is not convinced.

As stated earlier, perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional and as such, failure to appeal on time precludes the appellate court from acquiring jurisdiction over the case. In the present case, considering petitioners' Petition for Review was filed out of time, this Court never acquired jurisdiction thereto. Having no jurisdiction over the present case, this Court cannot perform any action therefor except to dismiss the same.[20]

The Court *En Banc* takes this opportunity to remind petitioners that the invocation of substantial justice is not a magic wand that would readily dispel the application of procedural rules. As aptly held by the Supreme Court in *Land Bank of the Philippines v. The Court of Appeals*,[21] to wit:

> "The bare invocation of 'the interest of substantial justice' line is not some magic wand that will automatically compel us to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction."

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[16] Court *En Banc*'s Docket, pp. 10-13.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015, 759 SCRA 313; *Katon v. Palanca, Jr.*, G.R. No. 151149, September 7, 2004, 481 Phil. 168.
[21] G.R. No. 221636, July 11, 2016, 796 SCRA 326.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

INHIBITED

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice