REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

MARC G. CUYCO and KEVIN G. CUYCO, *Petitioner,*	**CTA *EB* CRIM NO. 156** *(Criminal Case No. M-MKT-21-03286-CR)* For: Violation of Section 266, in relation to Section 253, of the National Internal Revenue Code, as amended
	Members:
- *versus* -	**RINGPIS-LIBAN,** *PJ.*, **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
PEOPLE OF THE PHILIPPINES, *Respondent.*	Promulgated: JAN 08 2026 2:47pm

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DECISION

***MODESTO-SAN PEDRO, J.*:**

This is an Appeal, by way of *Petition for Review* ("*Petition*"), pursuant to *Rule 43 of the Rules of Civil Procedure*, in relation to *Section 7 of Republic Act ("RA") No. 1125, as amended by RA No. 9282*, ("*the CTA Law*"), of the Resolution dated May 24, 2024 ("Assailed Resolution"),[1] denying the Motion for Reconsideration, and the Decision of Branch 57 of the Regional Trial Court ("RTC") of Makati City promulgated on February 19, 2024 ("Assailed

[1] *Rollo*, p. 239.

Decision"),[2] in Criminal Case No. M-MKT-21-03286-CR, entitled *People of the Philippines v. Marc G. Cuyco and Kevin G. Cuyco*, which denied their appeal and affirmed the Decision of the Branch 62 of the Metropolitan Trial Court ("MeTC") of Makati City promulgated on February 20, 2023, wherein accused-petitioners were convicted for violation of *Section 266*, in relation to *Section 253*, of the *National Internal Revenue Code, as amended ("the Tax Code").*[3]

The Facts

Accused-petitioners Marc G. Cuyco ("Marc") and Kevin G. Cuyco ("Kevin"), in their capacities as President/Chairman and Treasurer/Chief Financial Officer, respectively, of Suplitek Equipment, Incorporated ("Suplitek") were charged of violation of *Section 266, in relation to Section 253, of the Tax Code* when Suplitek allegedly willfuly, unlawfully, and feloniously failed and refused to appear and produce its books of accounts and other accounting records despite receipt of *subpoena duces tecum* ("SDT") for examination by the Bureau of Internal Revenue ("BIR").

The following relevant facts were culled from the Assailed Decision.

Ava Alora R. Celestino, BIR Revenue Officer, ("RO Celestino") was authorized through Letter of Authority ("LOA") No. 201600034115,[4] dated September 25, 2019, to examine Suplitek's books of accounts and other accounting records for the taxable year 2018. Pursuant to said authority, she served the First Notice for Presentation of Records[5] ("First Notice") to Suplitek on October 30, 2019 requiring the submission of the Suplitek's documents.

Suplitek, through accused-petitioner Marc, submitted certain records/documents pursuant to the LOA on November 5, 2019.[6]

Finding that Suplitek had not substantially presented the required documents for examination, a Second and Final Notice for Presentation of Records[7] ("Final Notice") was issued and served to it on November 15, 2019. Thereafter, Suplitek, through accused-petitioner Kevin, submitted additional documents on February 11, 2020.[8]

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[2] *Id.* at 212 to 226.
[3] Nature of the Case, Petition for Review, *id.* at 2.
[4] *Id.* at 59.
[5] *Id.* at 60.
[6] Transmittal Letter dated November 4, 2019, *id.* at 61.
[7] *Id.* at 62.
[8] Transmittal Letter dated February 11, 2020, *id.* at 63.

Both First and Final Notices were served to and received by Suplitek through Cristina B. Ramos ("Ramos"), as its bookkeeper. Ramos had been receiving BIR notices and communicating with RO Celestino on behalf of Suplitek with respect to the latter's examination of its books and records. She was also the Corporate Secretary of Suplitek, based on its General Information Sheet for 2018.

On March 4, 2021, the BIR issued SDT No. RR8B-RDO-53A-2021-000135[9] to accused-petitioners, commanding them to appear before and submit the originals of enlisted documents of Suplitek for taxable year 2018 to the Chief of Legal Division of BIR RR8B-South NCR on March 26, 2021 at 2:00pm. The SDT was served by RO Celestino to and received by Suplitek through Ramos on March 16, 2021[10] because the accused-petitioners were not present at that time in Suplitek's registered address at B-1 L-1 Vista Riva Real Street, Padre Diego Cera Ave., Pulang Lupa Uno, Las Piñas City.

Accused-petitioners did not attend the hearing for the SDT on March 26, 2021, and no submission of records was made.

Thus, for failure to appear and comply with the SDT, the BIR filed a Letter Recommendation dated May 26, 2021[11] against accused-petitioners, with Sworn Affidavit,[12] with the Office of the City Prosecutor of Makati City, for the investigation and prosecution of accused-petitioners for violation of *Section 266, in relation to Section 253, of the Tax Code.*

The Information[13] against accused-petitioners was then filed with the MeTC on September 21, 2021, which, upon finding probable cause, issued a warrant of arrest.[14] Both accused-petitioners were later released after posting bail.[15]

The accused-petitioners pleaded not guilty on the offense charged against them. Pre-trial and trial then ensued. After due hearing, the MeTC promulgated its Decision on February 22, 2023,[16] convicting accused-petitioners of violation of *Section 266, in relation to Section 253, of the Tax Code.* Accused-petitioners then filed a Notice of Appeal,[17] which was given due course by the MeTC.[18] Only accused-petitioners filed their memorandum,

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[9] *Id.* at 64.
[10] *Id.* at 65.
[11] *Id.* at 66 to 67.
[12] *Id.* at 68 to 69.
[13] *Id.* at 80 to 82.
[14] *Id.* at 83.
[15] *Id.* at 84 to 85.
[16] *Id.* at 86 to 89.
[17] *Id.* at 89 to 91.
[18] *Id.* at 92.

On February 19, 2024, the RTC promulgated the Assailed Decision affirming the MeTC's conviction of accused-petitioners. In particular, the RTC upheld MeTC's ruling that accused-petitioners were duly summoned as they were properly served with the SDT in accordance with *Revenue Memorandum Order No. ("RMO") No. 10-2013, as amended by RMO No. 8-2014*, and that accused-petitioners indeed neglected to comply with the SDT.

Petitioners filed a Motion for Reconsideration to the Assailed Decision, which was denied in the Assailed Resolution dated May 24, 2024, a copy of which was allegedly received by accused-petitioners on June 13, 2024.

Accused-petitioners then filed their *Petition for Review* before this Court on July 15, 2024,[19] and in a Minute Resolution dated January 17, 2025, the present *Petition* was submitted for decision, *sans* respondent's comment.[20]

Hence, this Decision.

The Assigned Errors

Accused-petitioners raise the following errors for resolution of this Court:

A.

THE REGIONAL TRIAL COURT OF MAKATI CITY GRAVELY ERRED IN AFFIRMING THE DECISION OF THE METROPOLITAN TRIAL COURT OF MAKATI CITY, AS THERE WAS LACK OF PERSONAL SERVICE OF THE *SUBPOENA DUCES TECUM* TO ACCUSED-[PETITIONERS] AND THE FAILURE OF THE REVENUE OFFICER TO FAITHFULLY AND STRICTLY COMPLY WITH THE REQUIREMENTS OF SUSBTITUTED SERVICE, THEREBY INFRINGING THEIR RIGHT TO DUE PROCESS.

B.

THE REGIONAL TRIAL COURT OF MAKATI CITY GRAVELY ERRED IN AFFIRMING THE DECISION OF THE METROPOLITAN TRIAL COURT OF MAKATI CITY, AS THE PROSECUTION FAILED TO ESTABLISH ALL ELEMENTS OF THE CRIME CHARGED AND THERE WAS A SERIOUS DOUBT AS TO THE INTENT OF ACCUSED-[PETITIONERS] TO PERPETRATE OR WILLFULNESS TO COMMIT THE ALLEGED OFFENSE.

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[19] *Id.* at 1 to 53.
[20] CTA *En Banc* Records Verification dated November 5, 2024, *id.* at 244.

C.

THE REGIONAL TRIAL COURT OF MAKATI CITY GRAVELY ERRED IN AFFIRMING THE DECISION OF THE METROPOLITAN TRIAL COURT OF MAKATI CITY, AS THE PROSECUTION WAS NOT ABLE TO DISCHARGE THE *ONUS PROBANDI* OF ESTABLISHING THE GUILT BEYOND REASONABLE DOUBT OF ACCUSED-[PETITIONERS], THEREBY VIOLATING THEIR RIGHT TO PRESUMPTION OF INNOCENCE.[21]

Arguments of the Accused-Petitioners

Accused-petitioners argue that the prosecution failed to establish all the elements for conviction under *Section 266 of the Tax Code*. In particular, accused-petitioners assert that they were not duly summoned as the SDT was improperly served to them in accordance with *RMO No. 10-2013, as amended by RMO No. 8-2014*.

Section 266 of the Tax Code penalizes failure to obey summons with fine and imprisonment, as follows:

> SEC. 266. *Failure to Obey Summons*. - *Any person* who, *being duly summoned* to appear to testify, or *to appear and produce books of accounts, records, memoranda or other papers*, or to furnish information as required under the pertinent provisions of this Code, *neglects to appear or to produce such books of accounts, records, memoranda or other papers*, or to furnish such information, shall, upon conviction, be punished by a fine of not less than Five thousand pesos (P5,000) but not more than ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than two (2) years.
> (Italics, Ours.)

Thus, in order to convict accused-petitioners of the foregoing violation, the prosecution must prove beyond reasonable doubt that they were duly summoned to appear and produce the specified documents, and that despite being duly summoned, they neglected to appear and produce the same.

Accused-petitioners argue that they were not duly summoned as they were not properly served with the SDT, relying on *RMO No. 10-2013, as amended by RMO No. 8-2014*, which provides for the guidelines for service of SDTs, to wit:

> 3.13 *The SDT shall be served through personal service* by delivering personally a copy of the SDT *to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence*.

[21] Assignment of Errors, Petition for Review, *id.* at 15 to 16.

a. *In case personal service is not practicable, the SDT shall be served by substituted service* or by mail.

b. *Substituted service can be resorted to when the party is not present at the registered or known address* under the following circumstances:

i. *The SDT may be left at the party's registered address, with his clerk or with a person having charge thereof.*

ii. *If the known address is a place where business activities of the party are conducted, the SDT may be left with his clerk or with a person having charge thereof.*

iii. If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

iv. If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The SDT shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the SDT, as well as the names, official position and signatures of the witnesses.

v. Should the party be found at his registered or known address or any other place but refuse to receive the SDT, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The SDT shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the SDT, as well as the names, official position and signatures of the witnesses.

vi. "Disinterested witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

c. Service by mail is done by sending a copy of the SDT by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the SDT may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The SDT should first be served to the taxpayer's registered address before the same is served to the taxpayer's known address, or simultaneously to the taxpayer's registered address and known address.

3.14 The server shall accomplish the bottom portion of the SDT. *He shall also make a written report under oath before a Notary Public* or any person authorized to administer oath under Section 14 of the NIRC, as amended, *setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information.* The registry receipt

> issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.
> (Italics, Ours.)

Based on the foregoing, accused-petitioners argue that RO Celestino immediately served the SDT to Ramos simply because they were not present at the principal address of Suplitek during her visit. There was no effort on the part of RO Celestino to ask and determine their location and whereabouts at that time, nor to reach them, require them to see her, and meet them to perform personal service.

Further, given that the SDT is addressed to the accused-petitioners, they argue that Ramos is not authorized to receive it on their behalf as her authority to receive documents extends only to Suplitek.

Neither did RO Celestino execute an affidavit of any effort or attempt to effect personal service of the SDT prior to resorting to substituted service.

Lastly, even assuming that they were duly summoned, accused-petitioners assert that the prosecution failed to prove their negligence in complying with the SDT. Accused-petitioners claim that they attempted to submit the required documents but it was the BIR who refused to receive the same

For failure of the prosecution to discharge its *onus probandi* in establishing their guilt beyond reasonable doubt, the accused-petitioners insist that they should not have been convicted of the crime charged.

Our Ruling

The *Petition for Review* must be dismissed.

The Court has no jurisdiction in this case as the Petition for Review was filed out of time

Section 7(b)(2)(b) of the CTA Law empowers the Court of Tax Appeals ("CTA") to exercise exclusive appellate jurisdiction in criminal offenses over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

Meanwhile, *Section 11 of the CTA Law* prescribes the period as to when a matter within its jurisdiction must be brought before it and whether a matter should be acted upon by the CTA Division or *En Banc*, to wit:

> 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: *Provided*, however, That *with respect to decisions or rulings of* the Central Board of Assessment Appeals and *the Regional Trial Court in the exercise of its appellate jurisdiction, appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA*, which shall hear the case *en banc*.
>
> All other cases involving rulings, orders or decisions filed with the CTA as provided for in Section 7 shall be raffled to its Divisions. A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration of new trial before the same Division of the CTA within fifteens (15) days from notice thereof: *Provided*, however, *That in criminal cases, the general rule applicable in regular Courts on matters of prosecution and appeal shall likewise apply.*
> (Italics, Ours.)

The foregoing provisions are echoed in *Rule 4, Section 2(h) of the Revised Rules of the Court of Tax Appeals ("RRCTA")*, which provides that the *Court en banc* shall exercise exclusive appellate jurisdiction to review by appeal the decisions, resolutions or orders of the Regional Trial Courts in the exercise of their *appellate jurisdiction* over criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs

Meanwhile, *Rule 9, Section 9(c) of RRCTA* prescribes that an appeal to the Court in criminal cases decided by the Regional Trial Courts in the exercise of their *appellate jurisdiction* shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within *15 days* from receipt of a copy of the decision or final order appealed from. The Court *en banc* shall act on the appeal.

As such, in order for this Court to acquire jurisdiction in the instant case, the petition for review by the aggrieved party must be filed before the Court within 15 days from the date of receipt of the decision or ruling of the RTC in criminal cases resolved by them in the exercise of their appellate jurisdiction.

While *Rule 9, Section 9(c) of RRCTA* does not authorize any extension of period to file a petition for review, the same may nevertheless be allowed in suppletory reference to *Rule 43, Section 4 of the 1997 Rules of Civil Procedure*.[22]

In this case, accused-petitioners allegedly received the RTC's Assailed Resolution on June 13, 2024, giving them until June 28, 2024 to file a petition for review before this Court.

However, accused-petitioners filed their *Petition for Review* on July 15, 2024, which is 17 days beyond the 15-day prescriptive period provided by the Rules without moving for an extension of period to file the same. The *Petition* was consequently filed out of time, divesting this Court of jurisdiction herein.

Further, the alleged date of receipt of the Assailed Resolution on June 13, 2024 is not supported by evidence or documents on record. Accused-petitioners failed to show proof of the actual date of receipt of the Assailed Resolution. The submitted certified true copy thereof does not indicate any date of receipt by accused-petitioners. As such, even assuming that the *Petition* was timely filed on its face, the Court has no way of verifying the same *sans* any proof of actual date of receipt of the Assailed Resolution which shall serve as the reckon point of counting the reglementary period to file the *Petition*. As such, the *Petition* is dismissible.

Meanwhile, accused-petitioners anchor the timeliness of filing their *Petition for Review* on *Section 11 of the CTA Law*, which provides a 30-day period to appeal by way of petition for review with the CTA following the procedures laid down under *Rule 43 of the 1997 Rules of Civil Procedure*. They argue that the former prevails over the latter, considering that it is a statutory provision enacted by the Legislature.

Accused-petitioners are mistaken.

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[22] SECTION 4. *Period of Appeal*. — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo. Only one (1) motion for reconsideration shall be allowed. *Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review.* No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Italics, Ours)

Indeed, *Section 11 of the CTA Law* provides for a 30-day period to file appeal an appeal before the CTA on cases within its jurisdiction. However, the same *Section 11* specifically provided a qualifying clause "that *in criminal cases*, the *general rule applicable in regular Courts on matters of* prosecution and *appeal* shall likewise apply."

Rule 122, Section 6 of the Revised Rules of Criminal Procedure provides that *an appeal must be taken within 15 days from promulgation of the judgment or from notice of the final order appealed from.* This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run.

The period to file an appeal based on the foregoing was thus adopted in *Rule 9, Section 9 of RRCTA*, which uniformly provides for a 15-day period to appeal all criminal cases within the jurisdiction of the CTA, thus:

> SECTION 9. *Appeal; Period to Appeal.* —
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> (a) An appeal to the Court in criminal cases decided by a Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal pursuant to Sections 3(a) and 6, Rule 122 of the Rules of Court within *fifteen days* from receipt of a copy of the decision or final order with the court which rendered the final judgment or order appealed from and by serving a copy upon the adverse party. The Court in Division shall act on the appeal.
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> (b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within *fifteen days* from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days.
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> (c) An appeal to the Court in criminal cases decided by the Regional Trial Courts in the exercise of their appellate jurisdiction shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within *fifteen days* from receipt of a copy of the decision or final order appealed from. The Court *en banc* shall act on the appeal.
> (Italics, Ours.)

Clearly, then, *the CTA Law* and implementing rules provide a uniform 15-day period to file appeal on criminal cases within the jurisdiction of the CTA, as opposed to the 30-day period to appeal which are intended only for civil cases.

Thus, for failure to file a petition for review or a motion for extension of time to file the same within 15 days from the alleged receipt of the Assailed Resolution on June 13, 2024, or until June 28, 2024, accused-petitioners have now lost their right to appeal the Assailed Decision and Resolution.

It is settled that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege and may be exercised only in the matter and in accordance with the provisions of law. A party who seeks to avail of the right must, therefore, comply with the requirements of the rules, failing which the right to appeal is invariably lost.[23] Further, the Court is well aware of the judicial mandate that rules prescribing the time which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business.[24]

With the procedural lapse committed by accused-petitioners, the outright dismissal of instant *Petition* is thus warranted.

ACCORDINGLY, the instant *Petition for Review* is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[23] *Rodriguez y Cabangon v. People*, G.R. No. 257933 (Notice), March 14, 2022.
[24] *Latogan v. People*, G.R. No. 238298, January 22, 2020.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice