

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SANKYU-ATS CONSORTIUM-B, CTA *EB* NO. 3015
Petitioner, (CTA Case No. 10495)

Present:

-versus-

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

COMMISSIONER OF INTERNAL
REVENUE,

Promulgated:

APR 04 2025

Respondent.

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RESOLUTION

On October 28, 2024, the instant *Petition for Review* was filed with the Court *En Banc*, accompanied by the following documents:

- (a) **Photocopy** of the Special Power of Attorney (SPA) executed on December 27, 2023, authorizing petitioner's Managing Officer, Miguelito E. Acobera, to represent petitioner and to execute necessary documents required for the appeal to the Court of Tax Appeals;
- (b) **Photocopy** of the Verification, and Certification of Non-Forum Shopping executed on December 27, 2023; and
- (c) **Photocopies** of the Decision dated August 6, 2024, and the Resolution dated October 3, 2024.

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In a Resolution dated December 9, 2024, the Court *En Banc* resolved to:

1. **ORDER** petitioner to submit the original or certified true copies of the following: (a) Special Power of Attorney; (b) compliant Verification and Certification of Non-Forum Shopping; (c) Decision dated August 6, 2024; and (d) Resolution dated October 3, 2024, within five (5) days from notice; and
2. **DIRECT** petitioner, in the interest of justice, to file *via* electronic mail, a Portable Document Format (PDF) copy of its *Petition for Review* dated October 28, 2024, within twenty-four (24) hours from notice, pursuant to *En Banc* (EB) Resolution No. 8-2024, otherwise, the pleading or court submission shall be deemed as not filed.

On December 11, 2024, the Court *En Banc* received via e-mail a PDF copy of petitioner's *Petition for Review*. Thereafter, on December 16, 2024, petitioner filed a *Compliance (To En Banc Resolution dated 09 December 2024)*, submitting certified true copies of the SPA, the *Verification and Certification of Non-Forum Shopping*, and the previously mentioned Decision and Resolution.

Upon reviewing the submitted documents, the Court *En Banc* observed that the *Verification and Certification of Non-Forum Shopping* was executed on **December 27, 2023**—more than ten (10) months before the filing of the *Petition for Review*. At the time of its execution, the Court in Division had not yet issued a Decision or Resolution that could serve as the basis for a *Petition for Review* before the Court *En Banc*. Notably, the Court in Division's Decision was promulgated only on **August 6, 2024**, and the Resolution on **October 3, 2024**. Consequently, a *Petition for Review* requiring verification and certification could not have existed on December 27, 2023.

The Court *En Banc* directed petitioner to submit a compliant Verification and Certification of Non-Forum Shopping.¹ However, in its Compliance, it merely resubmitted the same Verification and Certification of Non-Forum Shopping dated December 27, 2023, which states:

SANKYU-ATS CONSORTIUM-B, a corporation duly organized and existing in accordance with the laws of the

¹ *En Banc* Resolution dated 09 December 2024.

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Republic of the Philippines, with business address at 124 Bonifacio St., Lower Jasaan, Misamis Oriental, as represented by its Authorized Managing Officer, **MIGUELITO E. ACOBERA**, after having been duly sworn to in accordance with law, do hereby depose that:

1. I am the General Manager of SANKYU-ATS CONSORTIUM-B ("The Consortium"), the Petitioner of the above case of *Sankyu-ATS Consortium-B vs. Commissioner of Internal Revenue*.
2. I have been authorized to cause the filing of the Petition for Review with the Court of Tax Appeals ("CTA"), as evidenced by the Special Power of Attorney hereto attached;
3. In my capacity as Authorized General Manager and on behalf of the Petitioner Consortium, **I have caused the preparation of the foregoing Petition for Review** pursuant to the authority granted to me, and I hereby attest that the allegations therein are true and correct, based on personal knowledge or authentic documents.
4. The **Petition for Review** is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
5. The **factual allegations therein have evidentiary support, or if specifically so identified, will likewise have evidentiary support** after a reasonable opportunity for discover[y];
6. I have certified that:
 - (a) I have not commenced any other action or proceeding involving the same issues thereto with the Metropolitan Trial Court, Regional Trial Court, Supreme Court, Court of Tax Appeals or any division thereof, Court of Appeals or any division thereof and any other court or any other tribunal or agency; (*Emphasis supplied*)

The requirement regarding *verification* of a pleading is formal, not jurisdictional and the non-compliance of which does not necessarily render the pleading fatally defective.² Its purpose is to assure that the allegations in the pleading are

² *Peak Ventures Corporation. et al. v. Heirs of Villareal*, G.R. No. 184618, November 19, 2014 [Per J. Del Castillo, Second Division].

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true, and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.³

Certification, on the other hand, aims to prohibit and penalize the evils of forum shopping.⁴ Strict compliance with certification is required by the rules but allows for substantial compliance under justifiable circumstances.⁵

In *Spouses Valmonte v. Alcala*,⁶ the Supreme Court held that a variance between the dates of the Verification/Certification and the Petition does not necessarily contradict the categorical declaration made by petitioners in their affidavit that they read and understood the contents of the pleading. In that case, the Supreme Court noted that as the pleading and the verification are prepared separately, a variance in their dates is a matter that may satisfactorily be explained.⁷

However, in this case, the ten (10)-month gap between the dates of the *Petition for Review* and the *Verification and Certification of Non-Forum Shopping*, coupled with the fact that no Court in Division's Decision and Resolution existed on December 27, 2023 that could have been the basis of the petition for review, raises serious questions about the propriety and validity of the *Verification and Certification of Non-Forum Shopping*. This is especially significant given petitioner's failure to rectify the matter when given the opportunity.

Under Section 5, Rule 7⁸ of the Revised Rules of Court, failure to comply with the requirements for certification against

³ *Peak Ventures Corporation, et al. v. Heirs of Villareal*, G.R. No. 184618, November 19, 2014 [Per J. Del Castillo, Second Division], citing *Pacquing, et al. v. Coca-Cola Philippines, Inc.*, G.R. No. 157966, January 31, 2008 [Per J. Austria-Martinez, Third Division].

⁴ *Tan, et al. v. Ballena, et al.*, G.R. No. 168111, July 4, 2008 [Per J. Chico-Nazario, Third Division], citing *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 146923, April 30, 2003 [Per J. Panganiban, Third Division].

⁵ See *Peak Ventures Corporation, et al. v. Heirs of Villareal*, G.R. No. 184618, November 19, 2014 [Per J. Del Castillo, Second Division], citing *Huntington Steel Products, Inc., et al. v. National Labor Relations Commission, et al.*, G.R. No. 158311, November 17, 2004 [Per J. Quisimbing, First Division], where the Supreme Court explained that "[t]he fact that the [Rules] require strict compliance merely underscores its mandatory nature that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances."

⁶ G.R. No. 168667, July 23, 2008 [Per J. Brion, Second Division], cited in *Peak Ventures Corporation, et al. v. Heirs of Villareal*, G.R. No. 184618, November 19, 2014 [Per J. Del Castillo, Second Division]. See *Jorgenetics Swine Improvement Corporation v. Thick & Thin Agri-Products, Inc.*, G.R. Nos. 201044 & 222691, May 5, 2021 [Per J. Hernando, Third Division], *Datem, Incorporated v. Alphaland Makati Place, Inc., et al.*, G.R. Nos. 242904-05, February 10, 2021, [Per J. Zalameda, First Division], where the Supreme Court allowed the variance in the dates of the pleading and Verification/Certification, which ranged from one to 31 days, due to the attendant circumstances.

⁷ *Peak Ventures Corporation, et al. v. Heirs of Villareal*, G.R. No. 184618, November 19, 2014 [Per J. Del Castillo, Second Division], citing *Spouses Valmonte v. Alcala*, G.R. No. 168667, July 23, 2008 [Per J. Brion, Second Division].

⁸ SEC. 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action

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forum shopping shall be cause for the dismissal of the case. When read in relation to Section 7, Rule 43⁹ of the Revised Rules of Court, petitioner's failure to submit documents required to accompany the petition shall be sufficient ground for its dismissal.

In *Altres v. Empleo*,¹⁰ the Supreme Court provided guidelines on non-compliance with the requirements on, or submission of a defective, verification and certification against forum shopping, *viz.*:

- 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
- 2) **As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective.** The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
- 3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
- 4) **As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**

or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

⁹ SEC. 7. *Effect of failure to comply with requirements.* — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

¹⁰ G.R. No. 180986, December 10, 2008 [Per J. Carpio Morales, *En Banc*].

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- 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.
- 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.¹¹ (*Emphasis supplied*)

Applying these guidelines, the Court finds that the present *Petition for Review* cannot be given due course. The significant time difference between the *Petition* and the *Verification and Certification of Non-Forum Shopping* undermines their purposes of ensuring the truthfulness of allegations and preventing forum shopping.

It is repeatedly emphasized that the right to appeal is neither a natural right nor a component of due process. It is a mere statutory privilege and may be exercised only in the manner and in accordance with the law and rules.¹²

WHEREFORE, the instant *Petition for Review* is **DISMISSED** for lack of proper verification and certification against forum shopping pursuant to Section 7, in relation to Section 6, Rule 43 of the Revised Rules of Court.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice

¹¹ *Quitlig v. Quitlig*, G.R. No. 207958, August 4, 2021 [Per J. Gaerlan, Second Division], cited in *Pacheco v. Reyes*, G.R. No. 268216, February 26, 2024 [Per J. Gaerlan, Third Division].

¹² *Pacheco v. Reyes*, G.R. No. 268216, February 26, 2024 [Per J. Gaerlan, Third Division], citing *Brual v. Contreras*, G.R. No. 205451, March 7, 2022 [Per J. Hernando, Second Division].