REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1967** (CTA Case No. 9108)
	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
- versus -	
THE COURT OF TAX APPEALS-SECOND DIVISION and SURIGAO MICRO CREDIT CORPORATION, Respondents.	Promulgated: JUL 22 2020 2:50pm

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a "Petition for Certiorari" under Rule 65 of the Rules of Court, seeking the reversal of the Resolutions dated July 24, 2018[1] and September 13, 2018[2] of the Court of Tax Appeals Second Division ("Second Division"), which denied Petitioner's "Petition for Relief from Judgment"[3] filed on May 30, 2018 and resultantly, precluded him from filing a motion for reconsideration on the Second Division's January 09, 2018 Decision[4] in a prior Petition for Review.

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1 Docket (CTA Case No. 9108), pp. 592-594.
2 *Id.*, pp. 621-622.
3 *Id.*, pp. 522-540.
4 *Id.*, pp. 492-515.

The dispositive portion of the Resolution dated July 24, 2018 reads:

> "**WHEREFORE**, premises considered, [Petitioner's] Petition for Relief from Judgment is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[5]

Whereas, the dispositive portion of the Resolution dated September 13, 2018 provides:

> "**WHEREFORE**, premises considered, [Petitioner's] *Motion for Reconsideration (Re: Resolution promulgated on 24 July 2018)* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[6]

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue ("CIR"), head of the Bureau of Internal Revenue ("BIR") who is vested with the powers and duties, among others, to assess and collect all national internal revenue taxes and to decide, approve and grant tax protests. He holds office at the 5th floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[7]

Private Respondent Surigao Micro Credit Corporation, on the other hand is a domestic corporation organized and existing under the laws of the Philippines. It is duly registered with the Securities and Exchange Commission ("SEC") as a lending investor with principal place of business at Roxas corner Gimena Streets, Surigao City.[8]

The Facts

Antecedents in the Court of Tax Appeals Second Division

On July 31, 2015, Private Respondent filed a "Petition for Review"[9] before the Second Division, docketed as CTA Case No. 9108 seeking the cancellation and withdrawal of the deficiency income tax (IT), value-added tax

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5 *Id.*, p. 594.
6 *Id.*, p. 622.
7 *Id.*, Decision, The Parties, p. 493.
8 *Id.*, Decision, The Parties, p. 493.
9 *Id.*, pp. 10-27.

(VAT) and documentary stamp tax (DST) assessment for taxable year 2007 issued against it, in the total amount of Php238,104.61.

After trial on the merits, the Second Division promulgated a Decision[10] on January 09, 2018 partially upholding the assessment. The dispositive portion of the said Decision reads:

> "Wherefore, premises considered, the Petition for Review is **PARTIALLY GRANTED**. The assessments issued by [Petitioner] against [Private Respondent] for taxable year 2007 covering deficiency VAT in the amount of Php74,217.19 and compromise penalties for late payment of IT and VAT in the amount of Php20,500.00 are **CANCELLED**. However, the assessment for deficiency IT is **PARTIALLY UPHELD**. Accordingly, [Private Respondent] is **ORDERED TO PAY** [Petitioner] the amount of **TWO HUNDRED FOURTEEN PESOS (Php214.00)** representing basic deficiency IT and the 25% surcharge imposed under Section 248(A)(3) of the NIRC, computed as follows:

Basic Deficiency Income Tax	[Php]171.20
Add: 25% Surcharge	42.80
Total	**[Php]214.00**

> In addition, [Private Respondent] is **ORDERED TO PAY**:
>
> (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Income Tax of Php171.20 computed from April 15, 2008 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and
>
> (b) Delinquency interest at the rate of 20% per annum on the total amount of Php214.00, and on the 20% deficiency interest which have accrued as aforestated in (a), computed from August 1, 2015, until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.
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> **SO ORDERED.**"

Records show that Petitioner received a copy of the said Decision the following day or on January 10, 2018.[11] Hence, he had fifteen (15) days or until

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[10] *Id.*, pp. 492-515.

January 25, 2018 to file a motion for reconsideration or a motion for new trial. However, no such motion was filed.

On April 04, 2018, after the lapse of the reglementary period with no appropriate motion having been filed by either party, the Second Division issued a Resolution[12] ordering the issuance of an Entry of Judgment.

On April 26, 2018, the Clerk of Court Second Division issued an Entry of Judgment[13] declaring that the January 09, 2018 Decision had already become final and executory on January 25, 2018.

Over four (4) months after receipt of the January 09, 2018 Decision or on 30 May 2018, Petitioner filed a "Petition for Relief from Judgment"[14] praying for the following:

1) the petition be given due course;

2) the Entry of Judgment dated January 25, 2018 be recalled; and

3) he be allowed to file a motion for reconsideration on the January 09, 2018 Decision.

In the petition, Petitioner cited the following circumstances to be constituting "excusable negligence" or "mistake" on his part, which excusable negligence he claimed should have been the Second Division's basis to permit the filing of a motion for reconsideration, to wit: (1) the January 09, 2018 Decision was only forwarded on January 16, 2018 to Atty. Josephine S. Doria ("Atty. Doria"), the new Special Attorney assigned in the case; (2) Atty. Doria failed to locate the case folder in her office due to her workload; (3) Atty. Doria had no prior knowledge of the case and needed the case folder to prepare the motion for reconsideration but the same was found only in April 2018; and (4) the frequent change and shifting of responsibilities within the officers and employees of the BIR's Legal Division made it difficult for Atty. Doria to prepare the motion for reconsideration within the ideal time to do so.

Unconvinced of Petitioner's claims, the Second Division on July 24. 2018 denied his "Petition for Relief from Judgment". In a brief Resolution, it held that:

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11 *Id.*, p. 491.
12 *Id.*, p. 518.
13 *Id.*, pp. 519-521.
14 *Id.*, pp. 522-540.

> "The explanations given by [Petitioner] that prevented his counsel/s in filing a timely Motion for Reconsideration against the decision of the Court, do not amount to excusable negligence that would merit relief from judgment.
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> xxx xxx xxx
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> The reasons given by [Petitioner] only prove that the counsels were negligent in handling their cases which do not justify the grant of relief from judgment."[15]

Undaunted, Petitioner filed a "Motion for Reconsideration (Re: Resolution promulgated on 24 July 2018)"[16], which the Second Division denied in the September 13, 2018 Resolution[17].

The Proceedings in the Court of Tax Appeals En Banc

On November 19, 2018, Petitioner filed the present "Petition for Certiorari"[18].

On December 14, 2018, the Court issued a Resolution[19] ordering Respondent to comment on the Petition for Review.

On February 01, 2019, Private Respondent filed its "Comment To Petitioner's Petition for Certiorari"[20] ("Comment") *via* registered mail.

On March 13, 2019, the Court issued a Resolution[21] giving the parties thirty (30) days from notice within which to submit their respective memoranda.

Petitioner and Private Respondent filed their Memorandum on April 24, 2019[22] and May 08, 2019[23], respectively.

On August 07, 2019, a Resolution[24] was issued submitting the instant case for decision.

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15 *Id.*, p. 594.
16 *Id.*, pp. 595-605.
17 *Id.*, pp. 621-622.
18 Rollo, pp. 1-18.
19 *Id.*, pp. 96-97.
20 *Id.*, pp. 98-110.
21 *Id.*, pp. 112-113.
22 *Id.*, pp. 114-131.
23 *Id.*, pp. 132-151.
24 *Id.*, pp. 153-154.

Assignment of Errors

Petitioner raises the following grounds in support of its petition:

1) The respondent court acted with grave abuse of discretion, amounting to lack or excess of jurisdiction, in ruling that the fact upon which Petitioner anchors his cause of action does not establish the existence of mistake or excusable negligence; and

2) Petitioner has a good and substantial cause of action.[25]

The Arguments of Parties

Petitioner maintains that he has a good and substantial cause to be allowed to file a motion for reconsideration on the January 09, 2018 Decision in CTA Case No. 9108. The failure of the assigned lawyer to promptly file the motion was beyond ordinary, given the workload of the lawyers in the Legal Division. Moreover, the previous handling lawyer's failure to file the motion for reconsideration was based on justifiable grounds, such as: the case docket could not be located and that there was not enough time left to file the motion when the case docket was already found in April 2018. With the absence of the case docket, it was impossible even for the new lawyer in-charge to prepare the motion for reconsideration. Petitioner also claims that the former handling lawyer, Atty. Katrina Muli ("Atty. Muli"), was likewise saddled with new cases, on top of her original caseload, brought about by resignations and transfers of other lawyers in the office.

Petitioner adds that if the Court were to find that indeed the lawyers assigned in the case have been negligent, their negligence should not bind him. The lapse was not also intentional and that there was never a similar incident in the past. He then supplicated that, owing to the presence of good and substantial cause to sustain the validity of the assessment against Petitioner, the Court should revive his right to appeal which has been lost because of the excusable negligence caused by the inadvertent mingling of the Second Division's January 09, 2018 Decision with the pleadings coming from other petitioners, lack of time of the former handling counsel to meticulously and conscientiously review and sort each and every document she is receiving daily due to the numerous cases she is handling that requires almost morning and afternoon court appearances, preparation of pleadings with overlapping deadlines, and overwhelming reassignment of cases brought about by the resignation and transfer of lawyers from respondent's Litigation Division which ordinary diligence and prudence could not have guarded against.

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[25] *Id.*, p. 8.

Citing the cases of *Heirs of Victoriana Villagracia, et al. v. Equitable Banking Corporation et al.*[26] and *Tiangco, et al. v. Landbank*[27], Petitioner points out that the Supreme Court condoned the lapses on the counsels' part as the rigid application of the rules tends to frustrate justice rather than promote substantial justice.

On the other hand, Private Respondent in its Comment assails the absence of jurisdiction on the part of the Court *En Banc* to take cognizance of Petitioner's "Petition for Certiorari" under Rule 65 of the Rules. It counters that the Court *En Banc* could not nullify the decision of any of its divisions as there is no hierarchy within a collegial court in the Rules or any law for that matter. It maintains that the Court *En Banc* is not a superior court of any of its divisions and Petitioner should have brought his petition ascribing grave abuse of discretion on the part of the Second Division before the Supreme Court.

Private Respondent also contends that assuming *ex gratia argumenti* that petitioner's present action is proper, it should still be struck down as there was no grave abuse of discretion, amounting to lack or excess of jurisdiction, on the part of the court *a quo*. Its denial of Petitioner's "Petition for Relief from Judgment" was not without legal bases. Moreover, the relief will not be granted to a party who seeks to avoid the effects of the judgment when the loss of remedy at law is due to said party's own negligence. Private Respondent insists that Atty. Doria, its counsel, was negligent in not filing the motion for reconsideration immediately even after she located the case records.

The Ruling of the Court

In assailing the Resolution issued by the Second Division on July 24, 2018, Petitioner filed this "Petition for Certiorari" under Rule 65 of the 1997 Rules of Court instead of a "Petition for Review" under Rule 45 of the same Rules. This action is procedurally flawed.

Time and again, the Supreme Court has emphasized that there is a whale of difference between a Rule 45 petition (*i.e.* Petition for Review on Certiorari) and a Rule 65 petition (*i.e.* Petition for Certiorari.) A Rule 65 petition is an original action that dwells on jurisdictional errors of whether a lower court acted without or in excess of its jurisdiction or with grave abuse of discretion. A Rule 45 petition, on the other hand, is a mode of appeal which centers on the review on the merits of a judgment, final order or award rendered by a lower court involving purely questions of law.[28]

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[26] G.R. No. 136972, March 28, 2008.
[27] G.R. No. 153998, October 06, 2010.
[28] Kepco Philippines Corporation v. Commissioner of Internal Revenue, G.R. No. 181858, November 24, 2010 *citing* Reynaldo De Castro v. Hon. Manuel B. Fernandez, Jr., G.R. No. 155041, February 14, 2007.

A petition for certiorari under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law.[29]

In this case, there is a plain, speedy and adequate remedy that is available – appeal under Rule 45. Appeal is available because the assailed Resolution dated September 13, 2018 was a final disposition as it denied Petitioner's "Petition for Relief from Judgment" and the corresponding motion for reconsideration, which seek to vacate the Entry of Judgment in CTA Case No. 9108. The Resolutions presently questioned before this Court has already disposed of the case, that is, they adjudicated definitively the rights of the parties in CTA Case No. 9108.

A resolution or order is deemed final when it completely disposes of the case and definitively adjudicates the respective rights of the parties, leaving thereafter no substantial proceeding to be had in connection with the case except the proper execution of the order.[30]

The proper remedy to obtain a reversal of a final order or resolution is appeal. Petitioner's resort to certiorari proceedings under Rule 65 is therefore erroneous, and the instant petition must be dismissed.

Assuming without conceding that this Court has jurisdiction over the current petition, We find no abuse of discretion on the part of the Second Division when it denied Petitioner's plea for relief of judgment. The failure of Atty. Muli to properly endorse her caseload to Atty. Doria, the inability of Atty. Doria to locate the records of the case, and the continuous change in work distribution within the BIR's Litigation Division are all mundane occurrences. The Second Division was correct in pointing out that the reasons Petitioner cited only proved that his counsels were actually negligent in the handling of their cases, and the degree of neglect they displayed was neither gross nor of simple inadvertence that the Court in its discretion may overlook.

WHEREFORE, premises considered, the "Petition for Certiorari" filed with the Court *En Banc* on November 19, 2018 is **DISMISSED** for lack of jurisdiction.

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[29] **Section 1.** *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[30] The People of the Philippines v. Romeo Doriquez, G.R. Nos. L-24444-45, July 29, 1968.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO – With separate Concurring Opinion
Presiding Justice

(I concur in the result)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With due respect, I concur in the result)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(With due respect, I join J. JMBV's Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

(With Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(I concur in the result)
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 the 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1967** (CTA Case No. 9108)
-versus-	Present: Del Rosario, *PJ,* Castañeda, Jr., Uy, Fabon-Victorino, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
THE COURT OF TAX APPEALS - SECOND DIVISION and SURIGAO MICRO CREDIT CORPORATION, *Respondents.*	Promulgated: JUL 22 2020

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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the dismissal of the Petition for *Certiorari* filed by the Commissioner of Internal Revenue (CIR).

I, however, wish to expound on the Court of Tax Appeals (CTA) *En Banc's* jurisdiction to issue writs of certiorari against orders or resolutions of the CTA in Divisions, under Rule 65 of the Rules of Court.

The pronouncement of the Supreme Court in *The City of Manila vs. Hon. Grecia-Cuerdo*[1] anent the CTA's jurisdiction to issue writs of certiorari cannot be any clearer, *viz.*:

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[1] G.R. No. 175723, February 4, 2014.

> "Indeed, **in order for any appellate court, to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.**
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> Xxx. This principle was affirmed in *De Jesus v. Court of Appeals*, where the Court stated that '**a court may issue a writ of certiorari in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court**.' The rulings in J.*M. Tuason and De Jesus* were reiterated in the more recent cases of *Galang, Jr. v. Geronimo* and *Bulilis v. Nuez*.
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> Furthermore, Section 6, Rule 135 of the present Rules of Court provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer.
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> **Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction.** These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process." *(Boldfacing and underscoring supplied)*

In the more recent case of *Philippine Ports Authority vs. The City of Davao, et al.*,[2] the Supreme Court reiterated the doctrine laid down in *Grecia-Cuerdo*, *viz.*:

> "In *City of Manila v. Grecia-Cuerdo*, this Court expressly recognized the **Court of Tax Appeals'** power to determine whether or not there has been grave abuse of discretion in cases falling within its **exclusive appellate jurisdiction** and its power to issue writs of *certiorari*." *(Boldfacing supplied)*

The **appellate jurisdiction** of the CTA *En Banc* is specified in Section 2, Rule 4 of the Revised Rules of the CTA (RRCTA), *viz.*:

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[2] G.R. No. 190324, June 6, 2018.

> "**SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The **Court *en banc*** shall exercise **<u>exclusive appellate jurisdiction</u>** to review by appeal the following:
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> (a) **Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over**:
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
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> (2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and
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> (3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;
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> xxx." *(Boldfacing and underscoring supplied)*

The grant of appellate jurisdiction to the CTA *En Banc* over decisions or resolutions on motions for reconsideration or new trial of the CTA in Divisions undeniably carries with it the power to issue a writ of certiorari, when necessary, in aid of such appellate jurisdiction.

Following the doctrine laid down in *Grecia-Cuerdo*, in order for the CTA *En Banc* to have a complete supervision over the acts of CTA in Divisions, the supervisory power or jurisdiction of the CTA *En Banc* to issue a writ of certiorari in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of CTA in Divisions. Truth to tell, **the authority of the CTA *En Banc* to take cognizance of petitions for certiorari questioning interlocutory orders or resolutions issued by CTA in Divisions is inherent in the exercise of its appellate jurisdiction over their decisions or resolutions on motions for reconsideration or new trial.**

I am mindful of *Commissioner of Internal Revenue vs. Court of Tax Appeals and CBK Power Company Limited*[3] where it discussed the striking difference in questioning an interlocutory order and a final order issued by the CTA in Division. It states that the CTA *En Banc* has jurisdiction over final order or judgment but not over interlocutory orders issued by the CTA in Division; and that the filing of the petition for certiorari under Rule 65 of the Rules of Court in the Supreme

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[3] G.R. Nos. 203054-55, July 29, 2015.

Court to assail the CTA in Division's interlocutory orders is proper. **Yet, there is no categorical pronouncement in *CBK* that CTA *En Banc* is bereft of jurisdiction in the event that the CIR opted to file its petition for certiorari under Rule 65 with the CTA *En Banc* instead of proceeding directly to the Supreme Court.**

A close perusal of *CBK* reveals that private respondent therein was insisting that the interlocutory order of the CTA in Division should have been appealed to the CTA *En Banc* by way of **an ordinary** appeal or by filing a Petition for Review. In short, private respondent was questioning the mode of appeal taken by the CIR in questioning the CTA in Division's interlocutory order as CIR believed that the same should have been appealed by way of a Petition for Review under Rule 43 of the Rules of Court and not through a Petition for Certiorari under Rule 65 of the Rules of Court. Pertinent part of CBK is quoted hereunder:

> "We first address the procedural issue raised by private respondent in its Comment. **Private respondent claims that petitioner chose an erroneous remedy when it filed a petition for certiorari with us since <u>the proper remedy on any adverse resolution of any division of the CTA is an appeal by way of a petition for review with the CTA *en banc*</u>**; that it is provided under Section 2 (a)(l) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) that the Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the decision or resolutions on motions for reconsideration or new trial of the Court in division in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies such as the Bureau of Internal Revenue." *(Boldfacing and underscoring supplied)*

Clearly, the certiorari jurisdiction of the CTA *En Banc* was not the issue in *CBK* as the issue was <u>whether or not an interlocutory order of a CTA in Division may be subject of an ordinary appeal to CTA *En Banc*</u>. Thus, the elucidation in *CBK* is that an interlocutory order is not appealable by ordinary appeal to CTA *En Banc*. This is precisely because <u>an interlocutory order is not a proper subject of an **ordinary appeal** but may be assailed only through the extraordinary writ of certiorari under Rule 65 of the Rules of Court</u>.

Incidentally, even if the doctrine laid down in *CBK* is construed in a way that deprives the CTA *En Banc* of certiorari jurisdiction over CTA in Division's interlocutory orders, the same doctrine - - being a decision of a division of the Supreme Court - - may not modify or reverse the categorical pronouncement of the Supreme *En Banc* in *Grecia-Cuerdo*. Section 4(3), Article VIII of the Constitution is categorical that:

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> "SECTION 4. (1) xxx.
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> (2) xxx.
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> (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc: Provided, **that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc.**" *(Boldfacing supplied)*

At any rate, as aforestated, *Grecia-Cuerdo* was reiterated in the more recent case of *Philippine Ports Authority* - - a decision rendered by the Supreme Court subsequent or later than CBK.

I am also not unaware of *Commissioner of Internal Revenue vs. Kepco Ilijan Corporation*[4] where the Supreme Court declared that the CTA *En Banc* has no certiorari jurisdiction over interlocutory orders or resolutions of CTA in Division. With due respect, however, such pronouncement is a mere *obiter dictum*, the fundamental doctrine involved in that case being <u>whether the CTA has jurisdiction over an annulment of judgment as an independent action. Said the Supreme Court</u>:

> "Prefatorily, we **first pass upon the issue of whether the CTA *En Banc* has jurisdiction to take cognizance of the <u>petition for annulment of judgment</u>** filed by petitioner.
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> Annulment of judgment, as provided for in Rule 47 of the Rules of Court, is based only on the grounds of extrinsic fraud and lack of jurisdiction. It is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case. **Annulment is a remedy in law independent of the case where the judgment sought to be annulled is rendered. It is unlike a motion for reconsideration, appeal or even a petition for relief from judgment, because annulment is not a continuation or progression of the same case, as in fact the case it seeks to annul is already final and executory**. Rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases.
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> **<u>Annulment of judgment</u> involves the exercise of original jurisdiction**, as expressly conferred on the Court of Appeals by Batas Pambansa Bilang *(BP Blg.)* 129, Section 9(2). It also implies power by a superior court over a subordinate one, as provided for in Rule 47 of the Rules of Court, wherein the appellate court may

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[4] G.R. No. 199422, June 21, 2016.

annul a decision of the regional trial court, or the latter court may annul a decision of the municipal or metropolitan trial court.

But **the law and the rules are silent when it comes to a situation similar to the case at bar, in which a court, in this case the Court of Tax Appeals, is called upon to annul its own judgment**. More specifically, in the case at bar, the CTA sitting *en banc* is being asked to annul a decision of one of its divisions. However, the laws creating the CTA and expanding its jurisdiction (RA Nos. 1125 and 9282) and the court's own rules of procedure (the Revised Rules of the CTA) do not provide for such a scenario.

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Xxx, the Revised Rules of the CTA and even the Rules of Court which apply suppletorily thereto **provide for no instance in which the *en banc* may reverse, annul or void a *final* decision of a division. Verily, the Revised Rules of the CTA provide for no instance of an annulment of judgment at all**. Xxx.

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Hence, the next query is: Did the CTA *En Banc* correctly deny the petition for annulment of judgment filed by petitioner?

As earlier discussed, the petition designated as one for annulment of judgment (following Rule 47) was legally and procedurally infirm and, thus, was soundly dismissed by the CTA *En Banc* on such ground. Also, the CTA could not have treated the petition as an appeal or a continuation of the case before the CTA First Division because the latter's decision had become final and executory and, thus, no longer subject to an appeal." *(Boldfacing and underscoring supplied)*

In other words, the Supreme Court, in *Kepco,* emphasized that **annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled is rendered**. It is unlike a motion for reconsideration or appeal because **annulment of judgment is not a continuation or progression of the case where the judgment sought to be annulled was rendered.** Interestingly, the Supreme Court, by way of *obiter dictum*, made an illustration of the collegial courts' adjudicatory relationship between the Court of Appeals *En Banc* and the Court of Appeals Division as well as between the Supreme Court *En Banc* and the Supreme Court Division, thus:

"It is the same situation among other collegial courts. To illustrate, the Supreme Court or the Court of Appeals may sit and adjudicate cases in divisions consisting of only a number of members, and such adjudication is already regarded .as the decision of the Court itself. It is provided for in the Constitution, Article VIII, Section 4(1) and BP Blg. 129, Section 4, respectively.

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> The divisions are not considered separate and distinct courts but are divisions of one and the same court; there is no hierarchy of courts within the Supreme Court and the Court of Appeals, for they each remain as one court notwithstanding that they also work in divisions. **The Supreme Court sitting *en banc* is not an appellate court *vis-a-vis* its divisions, and it exercises no appellate jurisdiction over the latter. As for the Court of Appeals *en banc,* it sits as such only for the purpose of exercising administrative, ceremonial, or other non-adjudicatory functions.**" *(Boldfacing supplied)*

At once glaring is the fact that neither the Constitution nor the law or jurisprudence grants appellate jurisdiction to the Court of Appeals *En Banc* over decisions of the Court of Appeals in Division, in the same vein that no appellate jurisdiction is granted to the Supreme Court *En Banc* over decisions of the Supreme Court in Division. **The legal and procedural scenarios are totally different in the case of the CTA *En Banc*, which, as afore-discussed, is clearly vested with appellate jurisdiction over decisions of the CTA in Division.**

In *Commissioner of Bureau of Customs and District Collector of Bataan vs. Court of Tax Appeals, First Division and MR Alpine Magnolia*, the CTA *En Banc* **unanimously** recognized its certiorari jurisdiction over interlocutory orders of the CTA in Division.[5] I maintain this position.

All told, I vote to DISMISS the Petition for *Certiorari* filed by the Commissioner of Internal Revenue.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] CTA EB No. 1811, Resolution dated July 25, 2018; CTA *En Banc* was then composed of Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. MIndaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1967** (CTA CASE NO. 9108)
	Present:
- **versus** -	**DEL ROSARIO,** ***P.J.,*** **CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** ***JJ.***
THE COURT OF TAX APPEALS, SECOND DIVISION and SURIGAO MICRO CREDIT CORPORATION, *Respondents.*	Promulgated: JUL 22 2020 2:50pm

x - x

CONCURRING and DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the decision to dismiss petitioner's present Petition for *Certiorari* reached in the *ponencia* of my esteemed colleague, Hon. Justice Ma. Belen Ringpis-Liban. However, I am constrained to register my dissent from the *ratio* relied upon for such dismissal.

The *ponencia* dismissed the present Petition for *Certiorari* under Rule 65 of the Rules of Court (**ROC**) since the "proper remedy to obtain a reversal of a final order or resolution is appeal" and that "...petitioner's resort to Rule 65 is therefore erroneous".[1]

With all due respect, my dissent is grounded on two main points, to wit:

1. **Under Rule 41 of the ROC, an order denying a petition for relief from judgment (as in CTA Case No. 9108 and assailed in this *certiorari* petition) could not be a subject of appeal under Rule 45; and,**

2. **The Court *En Banc* should dismiss that case not because the petitioner chose a wrong mode of action but because it has no jurisdiction to issue a writ of *certiorari* against its <u>own</u> division under Rule 65 of the ROC.**

The amplifications on these points are essayed below, in *seriatim*.

AN ORDER DENYING A PETITION FOR RELIEF FROM JUDGMENT IS NOT APPEALABLE HENCE AN APPEAL UNDER RULE 45 IS NOT AVAILABLE TO PETITIONER

The present petition was dismissed primarily on the premise that petitioner pursued the wrong course of action. According to the *ponencia*, an appeal under Rule 45 of the ROC was still an available relief to petitioner after his petition for relief from judgment was denied by the Court in Division. Thus, the *ponencia* states:

> ...
> In this case, there is a plain, speedy and adequate remedy that is available - appeal under Rule 45. Appeal is available because the assailed Resolution dated September 13, 2018 was a final disposition as it denied Petitioner's "Petition for Relief of Judgment" and the corresponding motion for reconsideration which [sought] to vacate the Entry of Judgment in CTA Case No. 9108...[2]
> ...

[1] Decision, page 8.
[2] Id.

With due respect, I am of the humble opinion that the theory proposed appears problematic on several fronts.

First, Rule 41 of the Rules of Court clearly and categorically provides the exact opposite. Following Rule 41, a denial of a petition for relief from judgment *cannot* be the subject of an appeal and can only be assailed *via* a petition for certiorari *via* Rule 65:

> ...
> Section 1. Subject of appeal. — **An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.**
>
> **No appeal may be taken from:**
>
> (a) An order denying a motion for new trial or reconsideration;
>
> **(b) An order denying a petition for relief or any similar motion seeking relief from judgment;**
>
> (c) An interlocutory order;
>
> (d) An order disallowing or dismissing an appeal;
>
> (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
>
> (f) An order of execution;
>
> (g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
>
> (h) An order dismissing an action without prejudice.
>
> **In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.**[3]
> ...

In Commissioner of Internal Revenue v. Court of Tax Appeals and CBK Power Company Limited[4] (CBK), the Supreme Court held that,

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[3] Emphasis supplied.

with an interlocutory order and in "**all the ... instances where the judgment or final order is not appealable**" in Rule 41, **the appropriate action to question them will be a special civil action for *certiorari* (petition for *certiorari*) under Rule 65 of the ROC.** Thus, the Supreme Court held categorically:

> ...
> ... We first address the procedural issue raised by private respondent [CBK] in its Comment. **Private respondent claims that petitioner chose an erroneous remedy when it filed a petition for *certiorari* with us [the Supreme Court] since the proper remedy on any adverse resolution of any division of the CTA is an appeal by way of a petition for review with the CTA *en banc***; that it is provided under Section 2 (a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) that the Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the decision or resolutions on motions for reconsideration or new trial of the Court in division in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies such as the Bureau of Internal Revenue.
>
> **We are not persuaded.**
>
> ...
> ... **In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.**
>
> **Hence, petitioner's filing of the instant petition for *certiorari* [before the Supreme Court] assailing the interlocutory orders issued by the CTA is in conformity with the above-quoted provision.**
>
> ...

The above Supreme Court decision went on to state -

> ...
> Given the foregoing, the petition for review to be filed with the CTA *en banc* as the mode for appealing a decision, resolution, or order of the CTA Division, under Section 18 of Republic Act No. 1125, as amended, is not a totally new remedy, unique to the CTA, with a special application or use therein. **To the contrary, the CTA merely adopts the procedure for petitions for review and appeals long established and practiced in other Philippine courts. Accordingly, doctrines, principles, rules, and precedents laid down in jurisprudence by this Court as regards petitions for**

[4] G.R. Nos. 203054-55, 29 July 2015.

> **review and appeals in courts of general jurisdiction should likewise bind the CTA, and it cannot depart therefrom.**[5]
>
> ...

With the settled rule and principle laid down in *CBK*, the position that a resolution denying a petition for relief from judgment can still be appealed from, appears to be inconsistent with the rules of procedure and jurisprudence long established and practiced in Philippine courts.

Second, if we follow the logic that a resolution denying a petition for relief from judgment is in fact an appealable final order, then where does petitioner file his appeal?

It is noted that Republic Act (**RA**) 1125, as amended by RA 9282[6], provides for the Court of Tax Appeals (**CTA**) *En Banc's* **exclusive appellate jurisdiction** over civil cases decided by it through any of its divisions. Section 18 thereof reads:

> ...
>
> SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>
> A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc.*
>
> ...

Interestingly, however, a petition for relief of judgment already presupposes that the remedy of appeal has already been lost. As held by the Supreme Court in *City of Dagupan v. Maramba*[7]:

> ...
>
> Rule 38 of the Rules of Court allows for the remedy called a petition for relief from judgment. This is an equitable remedy "allowed in

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[5] Emphasis supplied.

[6] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership.

[7] G.R. No. 174411, 02 July 2014.

exceptional cases when there is no other available or adequate remedy" that will allow for substantive justice.

...

Thus, to hold that a denial of a petition for relief from judgment can still be appealed from (despite the finality of the decision being assailed in the petition for relief from judgment) appears to be counter-intuitive. *What could be the subject of appeal if the original decision of the Court in division has long attained finality*?

To my mind, this is the precise reason why "an order denying a petition for relief from judgment" was included in Rule 41 of the ROC as one of the orders that cannot be the subject of an ordinary appeal, as the decision assailed through a petition under Rule 38 of the ROC[8] is already final. While, granting the same vacates the assailed decision's finality, its denial just reinforces the validity thereof thus, placing no new decision in its stead that could possibly be the subject of an appeal. Such is in stark contrast however, to the relief proposed in the *ponencia*.

Lastly, assuming *arguendo* that the assailed resolutions of the Court's Second Division can still be appealed from, petitioner could not have likewise directly gone up to the Supreme Court *via* Rule 45, when the CTA *En Banc*'s exclusive appellate jurisdiction over all appealable cases decided by the CTA in division is clearly provided by law.

This now leads me to what, in my opinion, should be the proper cause of dismissal for the present Petition for *Certiorari* which is this Court *En Banc*'s lack of jurisdiction.

THE COURT *EN BANC* SHOULD DISMISS THE PRESENT PETITION FOR LACK OF JURISDICTION TO ISSUE A WRIT OF *CERTIORARI*, UNDER RULE 65 OF THE RULES OF COURT, AGAINST ITS OWN DIVISION

8 **RULE 38.** Relief from Judgments, Orders, or Other Proceedings.

In arriving at its final verdict of dismissal, the *ponencia* is silent of the parties' main points of contention, that is - the jurisdiction of the Court *En Banc* over petitions for *certiorari* under Rule 65 of the ROC, as directed against the orders of its own divisions.

Both arguments for and against this Court's jurisdiction over the petition at bar are more than adequately fleshed out in the parties' pleadings and even shown in the *ponencia*'s summary of their contentions. Thus, with due respect, I am of the opinion that the Court *En Banc* should decide based on the merits of the parties' actual arguments.

As the records show, in insisting that the Court *En Banc* can take cognizance of his case and issue a writ of *certiorari* against its Second Division, petitioner cites *The City of Manila, et al. v. Hon. Grecia-Cuerdo, et al.*[9] (**Grecia-Cuerdo**) and *The Philippine American Life and General Insurance Company v. The Secretary of Finance and The Commissioner of Internal Revenue*[10] (**PALGIC**), where the Supreme Court recognized the power of the CTA to issue writs of *certiorari* pursuant to Rule 65 of the ROC. His reliance on both rulings is, however, misplaced.

In contrast, private respondent, in his arguments, directly assailed the absence of jurisdiction on the part of the Court *En Banc* to take cognizance of petitioner's petition for *certiorari* under Rule 65 of the ROC. It argued that the Court *En Banc* could not nullify the decision of any of its own divisions as there is no hierarchy within a collegial court in the Rules or any law for that matter. Private respondent consistently maintained that the Court *En Banc* is not a superior court of any of its divisions and petitioner should have brought his petition (ascribing grave abuse of discretion on the part of this same Court's Second Division) before the Supreme Court.

I find merit in private respondent's arguments.

The controversy in *Grecia-Cuerdo* stemmed from an order of the Regional Trial Court (**RTC**) of Manila, granting a writ of injunction against therein petitioner, City of Manila. When the latter's MR against

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9 G.R. No. 175723, 04 February 2014.
10 G.R. No. 210987, 24 November 2014.

the order issuing the writ was denied, the latter sought relief with the Court of Appeals (**CA**) *via* a petition for *certiorari*. Realizing that the writ was issued in a local tax case, the CA denied the petition. It held that it had no jurisdiction over the petition and that the same should have been filed with the CTA. In upholding the CA's decision, the Supreme Court reasoned thusly:

> ...
>
> Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari*. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.
>
> Consistent with the above pronouncement, this Court has held as early as the case of J.M. Tuason & Co., Inc. v. Jaramillo, et al. that "**if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of certiorari, in aid of its appellate jurisdiction.**" This principle was affirmed in De Jesus v. Court of Appeals, where the Court stated that "**a court may issue a writ of certiorari in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court.**" ...
>
> Furthermore, Section 6, Rule 135 of the present Rules of Court provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer."[11]
>
> ...

On the other hand, *PALGIC* involved the CA's lack of jurisdiction over therein petitioner's petition for review against the decision of the Secretary of Finance (**SOF**). In *PALGIC*, both the CA and Supreme Court agreed that the CTA had jurisdiction over the subject petition for review.[12] However, unlike in *Grecia-Cuerdo*, this Court's jurisdiction over petitions for *certiorari* was not the main issue in *PALGIC*. The topic was merely touched upon when the Supreme Court clarified the extent and limits of the CTA's jurisdiction.

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11 Supra at note 7; citations omitted; emphasis supplied.
12 Supra at note 8.

Thus, *Grecia-Cuerdo* confirmed the **CTA's authority to issue a writ of *certiorari* against a lower court, that is, the RTC in cases appealable to it**; while, in *PALGIC,* against the order of the SOF *via* a regular appeal. Both cases, *however,* **do not concern or even suggest that the CTA *En Banc* enjoys the same authority over its *own* divisions. Obviously, the different CTA divisions are *not* CTA's inferior courts.**

Petitioner's root of confusion is understandable. Republic Act (RA) 1125, as amended by RA 9282[13], provides for the CTA *En Banc's* exclusive *appellate* jurisdiction over civil cases decided by it through any of its divisions. Section 18 thereof reads:

> ...
> SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>
> A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc.*
> ...

At first blush, this unique appellate jurisdiction of the CTA over its divisions, when read together with the ruling in *Grecia-Cuerdo* (that a court may issue a writ of *certiorari* in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court), gives the impression that the CTA *En Banc* is also empowered to issue a writ of *certiorari* against the orders of any of its divisions. However, as will be explained below, such an interpretation is problematic.

***First*, to entertain this present petition under Rule 65 of the Rules places the Court in a very peculiar situation where it is both respondent and judge of itself; that is, in matters where its actions are alleged to be tainted with grave abuse of discretion.** Thus, to grant the relief prayed for by petitioner would be tantamount

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13 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership.

to the Court acknowledging that its actions are arbitrary and that there was oppressive exercise of power.

***Second*, the grant of this unique appellate jurisdiction to the CTA did not result in the splitting of the court into two separate entities, namely, the Court *En Banc* and the Court in its divisions.** The *sui generis* appellate jurisdiction of the Court *En Banc* merely resulted in giving the latter a special yet albeit, limited jurisdiction over cases previously settled by its divisions.

Although it may be gainsaid that the power to issue the writ of *certiorari* was not expressly given in either RA 1125 or RA 9282, the Supreme Court, in application of the principle of necessary implication, filled the gaps in the law in order to give it full force and effect. **But then again, as stated earlier, this authority is "in aid of its appellate jurisdiction to review, by appeal or writ of error, the final orders or decisions of the <u>lower court</u>".**[14] These are the clear wordings of the Supreme Court in *Grecia-Cuerdo*. **In the absence of any legal basis declaring the CTA divisions to be lower courts of the CTA, it will be erroneous to similarly apply the rule for the lower courts to the CTA divisions.**

***Third*, the CTA is a collegiate court and whether it acts by way of one of its divisions or *en banc*, it is nevertheless deemed acting as one indistinguishable body.**

In *Landbank v. Suntay*[15] (*Landbank*), the Supreme Court explained that "**the actions taken and the decisions rendered by any of the divisions are those of the Court itself, considering that the divisions are not considered separate and distinct courts but as divisions of one and the same court".**[16]

In *Commissioner of Internal Revenue v. Kepco Ilijan Corporations* (*Kepco*)[17], the Supreme Court also held that the foregoing principle is likewise applicable to other collegiate courts such as the CA. This case tackled an issue analogous to the case at bar. There, petitioner sought the reversal of the CTA *En Banc's* resolution denying the CIR's Petition

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[14] Emphasis and underscoring supplied.
[15] G.R. No. 188376, 14 December 2011.
[16] Emphasis and underscoring supplied.
[17] G.R. No. 199422, 21 June 2016.

for Annulment of Judgment of the CTA First Division's decision on the ground of lack of jurisdiction. In upholding the CTA *En Banc*'s action (dismissing the case), the Supreme Court explained in this wise:

> ...
>
> **Thus, it appears contrary to these features that a collegial court, sitting *en banc*, may be called upon to annul a decision of one of its divisions which had become final and executory, for it is tantamount to allowing a court to annul its own judgment and acknowledging that a hierarchy exists within such court.** In the process, it also betrays the principle that judgments must, at some point, attain finality. A court that can revisit its own final judgments leaves the door open to possible endless reversals or modifications which is anathema to a stable legal system.
>
> Thus, the **Revised Rules of the CTA and even the Rules of Court[,] which apply suppletorily thereto[,] provide for no instance in which the *en banc* may reverse, annul or void a final decision of a division.**[18]
>
> ...

Additionally, the Supreme Court explained the nature of a petition for annulment of judgment, to wit:

> ...
>
> Annulment of judgment involves **the exercise of original jurisdiction,** as expressly conferred on the Court of Appeals by Batas Pambansa Bilang (BP Blg.) 129, Section 9(2). **It also implies power by a superior court over a subordinate one**, as provided for in Rule 47 of the Rules of Court, wherein the appellate court may annul a decision of the regional trial court, or the latter court may annul a decision of the municipal or metropolitan trial court.[19]
>
> ...

Like a petition for annulment of judgment, a petition for review on *certiorari* (as in the case at bar) requires the exercise of a court's original jurisdiction as it is an action independent from a previous case wherein the assailed order or resolution was issued. The petition likewise calls for a higher court to correct errors of jurisdiction committed by an inferior court or body. This is the reason why the Supreme Court in *Cruz et al. v. People of the Philippines*[20] (*Cruz*)

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18 Id.; Emphasis supplied.
19 Id.; Emphasis supplied.
20 G.R. No. 224974, 03 July 2017; emphasis and underscoring supplied.

described **a petition for *certiorari* as "a remedy specifically [aimed] to keep lower courts and tribunals within the bounds of their jurisdiction.**"

Lastly, to reiterate for emphasis, the Supreme Court has made clear in the *CBK* case that "**in all the ... instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65**". Also, that petitioner therein, who brought his petition for *certiorari* under Rule 65 before the Supreme Court and *not* before the CTA *En Banc* (as the respondent there insisted), deeming the same to be in conformity with Rule 41 of the ROC.[21]

Given the above disquisitions, it is apparent that the CTA *En Banc* has no jurisdiction over the present petition. This becomes undeniable with the Supreme Court's declaration in *CBK* and when *Landbank*, *Kepco* and *Cruz* are further taken into account since, if the Court *En Banc* is not superior to any of its divisions and a petition for *certiorari* seeks the rectification of a lower court's mistake; then logic dictates that **the CTA *En Banc* has no jurisdiction to issue a writ of *certiorari* against the resolution of its own divisions.** To conclude otherwise would result in the complete disregard of the well-entrenched principle of the hierarchy of courts.

With the above, I vote for the dismissal of the petition for *certiorari*, under Rule 65 of the Rules of Court, for lack of jurisdiction.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[21] See at note 3.