REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

SUMITOMO CORPORATION – MANILA BRANCH,
Respondent.

CTA *EB* NO. 2998
(CTA Case No. 10412)

Members:

RINGPIS-LIBAN, *PJ,*
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

APR 07 2026 4:30 pm

x - x

DECISION

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

Before the Court *En Banc* is a *Petition for Review* under *Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals ("RRCTA")*, seeking nullification of the Decision, dated May 14, 2024, rendered by the Court's Second Division ("Assailed Decision"), and subsequent Resolution, dated August 15, 2024 ("Assailed Resolution"), on petitioner's Motion for Reconsideration in the case entitled *Sumitomo Corporation – Manila Branch vs. Commissioner of Internal Revenue*, docketed as CTA Case No. 10412,[1] as follows:

Decision dated May 14, 2024:

[1] *Rollo*, p. 10.

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the Formal Letter of Demand and the attached *Assessment Notices*, all dated September 27, 2017, assessing petitioner for deficiency taxes for fiscal year ended March 31, 2013 are **CANCELLED** and **WITHDRAWN**. Furthermore, the Final Decision on Disputed Assessment and the attached *Assessment Notices*, all dated October 23, 2020, assessing petitioner for deficiency income tax and VAT for fiscal year ended March 31, 2013 in the aggregate amount of **₱63,488,986.11**, inclusive of interests, are **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED.**

Resolution dated August 15, 2024:

> **WHEREFORE**, in light of the foregoing considerations, respondent's *Motion for Reconsideration (Re: Decision dated 14 May 2024)* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue ("BIR"), National Office, Diliman, Quezon City, where he may be served with summons and other legal processes.[2]

Respondent Sumitomo Corporation – Manila Branch is a corporation duly organized and existing under and by virtue of the laws of Japan and licensed to operate a branch office in the Philippines. Its principal office address is located at 35/F Philamlife Tower, 8767 Paseo de Roxa, Makati City. It is also registered with the BIR with Taxpayer Identification Number 000-145-521-00000.[3]

The Facts

The following relevant facts were culled from the Assailed Decision:

> On February 9, 2015, respondent issued Letter of Authority (LOA) No. eLA201100087022 dated February 5, 2015 (Original LOA) designating Revenue Officers (RO) Josa Gomez, Felina Guimbao, and Group Supervisor (GS) Olivia Aviles of the Large Taxpayers (LT) Regular Audit Division 1 to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax, and other miscellaneous taxes, for the fiscal year ended March 31, 2013.

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[2] Assailed Decision, p. 2.
[3] *Id.* at 1.

On September 8, 2017, petitioner received a copy of the Preliminary Assessment Notice (PAN), with Details of Discrepancies, dated September 8, 2017, finding petitioner liable for deficiency taxes in the total amount of ₱130,049,871.44, including interest, broken down as follows:

KIND OF TAX	BASIC TAX	INTEREST	AMOUNT
Income Tax (IT)	35,024,878.41	29,516,856.43	64,541,734.84
Value-added Tax (VAT)	29,624,568.19	26,280,644.33	55,905,212.52
Withholding Tax on Compensation (WTC)	1,496,802.62	1,366,050.12	2,862,852.74
Expanded Withholding Tax (EWT)	3,497,866.30	3,122,205.04	6,620,071.34
Miscellaneous Tax (MT)-Others	-	-	150,000.00
		TOTAL	**130,079,871.44**

On September 22, 2017, petitioner filed a protest letter against the PAN (Reply to PAN or PAN Protest) dated September 22, 2017.

On September 27, 2017, petitioner received a copy of the Formal Letter of Demand (FLD) with Details of Discrepancies, dated September 27, 2017, and the following Assessment Notices (FANs), also finding petitioner liable for deficiency taxes in the total amount of ₱130,049,871.44 as follows:

KIND OF TAX	ASSESSMENT NO.	BASIC TAX	INTEREST	AMOUNT
IT	IT-116-LOA-00000011-13-17-578	35,024,878.41	29,516,856.43	64,541,734.84
VAT	VT-116-LOA-00000011-13-17-579	29,624,568.19	26,280,644.33	55,905,212.52
WTC	WC-116-LOA-00000011-13-17-580	1,496,802.62	1,366,050.12	2,862,852.74
EWT	WE-116-LOA-00000011-13-17-581	3,497,866.30	3,122,205.04	6,620,071.34
MT-Others	MC-116-LOA-00000011-13-17-582	-	-	150,000.00
			TOTAL	**130,079,871.44**

On October 27, 2017, or within thirty (30) days from receipt of the FLD/FANs, petitioner filed a protest letter (Protest or Protest to FLD/FANs) and requested for a reinvestigation of the BIR's findings. [14] On December 22, 2017, petitioner filed a letter of even date, submitting additional documents in support of its Protest.

On December 17, 2019, respondent issued LOA No. eLA201700047469 dated November 28, 2019, designating RO Neriza Manuel and GS Junely Ivanhoe Fernandez to examine petitioner's books of accounts and other accounting records for the fiscal period ended March 31, 2013.

On October 27, 2020, petitioner received the Final Decision on Disputed Assessment (FDDA) with Details of Discrepancies, and the following Assessment Notices: (i) IT-116-LOA-00000355-FY3-13-19-0330, and (ii) VT-116-LOA-00000355-FY3-13-19-0331, all dated October 23, 2020, partially granting petitioner's Protest to FLD/FANs and reducing the deficiency tax assessments from ₱130,049,871.44 to ₱63,488,986.11, and only for IT and VAT as follows:

KIND OF TAX	ASSESSMENT NO.	BASIC TAX	INTEREST	AMOUNT
IT	Assessment No. IT-116-LOA-00000355-FY3-13-19-0330	6,492,941.10	7,936,686.57	14,429,627.67
VAT	Assessment No. VT-116-LOA-00000355-FY3-13-19-0331	21,643,137.00	27,416,221.44	49,059,358.44
			TOTAL	**63,488,986.11**

On May 14, 2024, the Court's Second Division promulgated the Assailed Decision, to which petitioner filed his Motion for Reconsideration ("Motion") on May 31, 2024.

Thereafter, the Assailed Resolution denying petitioner's Motion was rendered on August 15, 2024.

Petitioner then filed its Motion for Extension of Time to File Petition for Review before this Court on September 20, 2024,[4] and the case was docketed as CTA *EB* No. 2998.

In a Minute Resolution, dated September 24, 2024,[5] the Court, subject to the condition that the motion for extension was filed on time, granted petitioner a final and non-extendible period of 15 days from September 20, 2024, or until October 5, 2024, within which to file his Petition for Review.

On October 7, 2024, petitioner filed his *Petition for Review*,[6] while respondent filed its Comment (to the Petition for Review dated 23 February 2024) on February 3, 2024.[7]

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[4] *Rollo*, pp. 1 to 4.
[5] *Id.* at 9.
[6] *Id.* at 10 to 27.
[7] *Id.* at 62 to 76.

In a Minute Resolution, dated March 4, 2025,[8] this Court referred the present case to the Philippine Mediation Center – CTA ("PMC-CTA") for mediation of the parties. However, on March 24, 2025, the PMC-CTA reported that the parties decided to not have their case mediated.[9]

Thus, in a Minute Resolution, dated May 14, 2025, this case was submitted for decision.

Hence, this Decision.

<u>The Assigned Errors</u>

Petitioner raises the following errors before this Court:[10]

I.

THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT PETITIONER VIOLATED RESPONDENT['S] RIGHT TO DUE PROCESS.

II.

THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE ASSESSMENT HAS PRESCRIBED BECAUSE OF A DEFECTIVE WAIVER.

<u>Arguments of the Parties</u>

Petitioner's arguments:

Petitioner argues that respondent was accorded due process and a real opportunity to refute the audit assessment. He insists that the arguments raised by respondent in its "reply" to the PAN were not sufficient and the documents submitted was sufficient to overturn the assessment.

Further, petitioner asserts that the period to assess has not prescribed as respondent did not raise the issue on prescription and that, even assuming that the waivers were defective, the subsequent acts of respondent puts it in estoppel to question the said waivers.

[8] *Id.* at 81.
[9] *Id.* at 82.
[10] *Id.* at 13.

Respondent's arguments:

Respondent, on the other hand, asserts that its right to due process was indeed violated when petitioner failed to address the arguments in its reply to the PAN. It further raises the following additional grounds which likewise constitute a violation of its right to due process:

1.) The Formal Letter of Demand and Assessment Notices failed to indicate a definite amount of tax liabilities and clear and categorical demand for payment as required under *Section 228 of the National Internal Revenue Code, as amended*, and *Revenue Regulations No. 12-99, as amended.*

2.) The Final Decision on Disputed Assessment does not indicate a valid due date for payment.

3.) Two of the revenue officers who investigated its books of accounts were not named and authorized in the original Letter of Authority.

Lastly, respondent asserts that the Assailed Decision correctly ruled on the prescription of the assessments. Accordingly, if the pleadings or the evidence on record show that the claim is barred by prescription, the court is mandated to dismiss the claim even if prescription is not raised as a defense. Considering there is no evidence that the waivers it executed were authorized by its board of directors, the same were invalid and the assessments were already prescribed.

<u>Our Ruling</u>

The *Petition for Review* must be dismissed.

The Petition was filed out of time; hence, the Court En Banc did not acquire jurisdiction thereon

Rule 4, Section 2(a)(1) of the Revised Rules of the Court of Tax Appeals[11] ("*RRCTA*") provides that the Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies (*i.e.* the Bureau of Internal Revenue), thus:

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[11] A.M. No. 05-11-07-CTA, November 22, 2005.

> SECTION 2. *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
>
> (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;

In relation thereto, *Rule 8, Section 1 of RRCTA* provides that in cases falling under the exclusive appellate jurisdiction of the Court *En Banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

On the other hand, *Section 3(b)* of the same provides that:

> SECTION 3. *Who May Appeal; Period to File Petition.* —
>
> . . .
>
> (b) a party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

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 *En Banc* within 15 days from the date of receipt of the Court in Division's resolution on the party's timely motion for reconsideration or new trial on the decision of said Court acting in division. However, said 15-day period to file petition for review before the Court *en banc* may be extended by a period not exceeding 15 days from the expiration of the original period within which to file the petition for review.

Meanwhile, the reckoning point as to when the reglementary period to file an appeal before the Court shall begin to run shall be the date of notice of the Court's processes, decisions, and resolutions to the Office of the Solicitor General ("OSG"), as petitioner's principal counsel in cases before the CTA.

Under *Rule 9, Section 10 of the RRCTA,* the Solicitor General shall represent government officials sued in their official capacity in all cases brought to the CTA in the exercise of its appellate jurisdiction, to wit:

> SEC. 10. *Solicitor General as counsel for the People and government officials sued in their official capacity.* — The Solicitor General shall represent the People of the Philippines and *government officials sued in their official capacity* ***in all cases brought to the Court in the exercise of its appellate jurisdiction***. The former may deputize the legal officers of the Bureau of Internal Revenue in cases brought under the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, or the legal officers of the Bureau of Customs in cases brought under the Tariff and Customs Code of the Philippines or other laws enforced by the Bureau of Customs, to appear in behalf of the officials of said agencies sued in their official capacity: Provided, however, ***such duly deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General.***
> (Emphasis and italics supplied.)

The foregoing likewise provides that the Solicitor General may deputize the legal officers of the BIR in cases brought under the *National Internal Revenue Code* or other laws enforced by the BIR.

Notably, said provision under *Rule 9 of the RRCTA* governs "Procedure in Criminal Cases". However, the Court finds it applicable even here, a Civil case, as (1) it covers "*all* cases brought to the Court in the exercise of its appellate jurisdiction", such as appeals from disputed assessments rendered by the CIR; (2) it covers cases where "government officials [are] sued in their official capacity", such as protests against the CIR's decision on disputed assessments; and (3) no part of *Rule 8*, which governs "Procedure in Civil Cases", covers the deputization of bureau officials by the OSG, so *Rule 9, Section 10 of the RRCTA* may be applied suppletorily.

Relevantly, the rule includes the proviso that deputized officers "remain at all times under the direct control and supervision of the Solicitor General". Thus, being petitioner's principal counsel, the OSG's receipt of CTA's decisions and resolutions shall be controlling in terms of reckoning the reglementary period in filing an appeal before this Court.

As held in the landmark case of *National Power Corporation v. National Labor Relations Commission*[12] ("*NAPOCOR*"), promulgated as early as in 1997, a deputized counsel remains under the supervision of the OSG, as the principal counsel, and service on it of legal processes, and not that on the deputized lawyers, is decisive. This was later cited in

[12] G.R. Nos. 90933-61, May 29, 1997.

Commissioner of Customs v. Court of Tax Appeals[13] ("*Commissioner of Customs*") as follows:

> First. Petitioner was represented in the CTA by the Office of the Solicitor General which deputized lawyers in the Legal Service Division of the Bureau of Customs to serve as collaborating counsels. In accordance with this arrangement, lawyers in both offices (Bureau of Customs and the OSG) were served copies of decisions of the CTA. The lawyers at the Bureau received a copy of the decision of the CTA on May 30, 1997, while the OSG received its own on June 5, 1997. As earlier stated, the OSG filed its motion for reconsideration on June 20, 1997. Counted from this date, the motion was seasonably filed, but if the period for appealing or filing a motion for reconsideration were reckoned from the date of receipt of the decision by the lawyers of the Bureau of Customs, then the motion was filed five days late. The Court of Appeals ruled that service of the copy of the CTA decision on the lawyers of the Bureau of Customs was equivalent to service on the OSG, and, therefore, the motion for reconsideration was filed late.
>
> This is error. *In National Power Corp. v. NLRC, it was already settled that although the OSG may have deputized the lawyers in a government agency represented by it,* ***the OSG continues to be the principal counsel, and, therefore, service on it of legal processes****, and not that on the deputized lawyers,* ***is decisive****. . . .*
> (Emphasis and italics supplied.)

This was again affirmed in *Baldovino-Torres v. Torres*[14] ("*Baldovino-Torres*"):

> The Court finds no merit in the contention that the OSG filed its Motion for Reconsideration out of time in the RTC. Admittedly, the public prosecutor in charge of the case, who was deputized by the OSG to appear on its behalf, received a copy of the RTC Decision on March 20, 2017. On the other hand, the OSG received its copy only on April 4, 2017.
>
> In the case of National Power Corporation v. National Labor Relations Commission (NAPOCOR), the Court held that *the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG.* In holding so, the Court emphasized that *the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer.* As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.
>
> The NAPOCOR case was cited in the subsequent case of Commissioner of Customs v. Court of Tax Appeals, where it was reiterated that *although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel*

[13] G.R. No. 132929, March 27, 2000.
[14] G.R. No. 248675, July 20, 2022.

> *and, therefore,* ***service on it of legal processes, and not that on the deputized lawyers, is decisive.***
> (Emphasis and italics supplied.)

In this case, the Notice[15] of the Assailed Resolution shows two stamps indicating when it was received by petitioner – on August 29, 2024 by the OSG and on September 5, 2024 by the BIR NOB Litigation Division.

As heftily discussed earlier, the service of the legal processes on the OSG, as the principal counsel, and not that on the deputized lawyers, is decisive in determining when to reckon the 15-day period to appeal before the court, which in this case was on August 29, 2024. Considering that the OSG, as the principal counsel in this case, received the Assailed Resolution on August 29, 2024, petitioner had until September 13, 2024 to file a petition for review or a motion to extend the period to file the same before this Court.

However, the Motion for Extension of Time to File Petition for Review ("Motion for Extension") was filed only on September 20, 2024.[16] While the same was granted by this Court on September 24, 2024,[17] it was *subject to the condition that the motion for extension is filed on time.* Given that the Motion for Extension was filed out of time, this Court consequently failed to acquire jurisdiction over the present Petition.

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.[18] 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.[19]

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

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

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[15] Docket (CTA Case No. 10412) – Vol. IV, p. 2416.
[16] *Rollo*, pp. 1 to 4.
[17] Minute Resolution dated September 24, 2024, *id.* at 9.
[18] *Rodriguez y Cabangon v. People*, G.R. No. 257933 (Notice), March 14, 2022.
[19] *Latogan v. People*, G.R. No. 238298, January 22, 2020.

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

Marian Ivy F. Reyes-Fajardo
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