REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2580** (CTA Case No. 10450)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES,** *JJ.*
THE COURT OF TAX APPEALS – SECOND DIVISION AND NIPPON EXPRESS PHILIPPINES CORPORATION, *Respondents.*	Promulgated: JAN 26 2024 4:18 pm

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RESOLUTION

REYES-FAJARDO, *J.*:

In the Decision dated August 29, 2023,[1] Associate Justices Marian Ivy F. Reyes-Fajardo, Jean Marie A. Bacorro-Villena,[2] Lanee S. Cui-David,[3] and Corazon G. Ferrer-Flores[4] voted to dismiss CTA EB No. 2580, because the Court of Tax Appeals (CTA) *En Banc* lacks jurisdiction over a Petition for Certiorari under Rule 65 of the Rules

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1 *Rollo,* pp. 178-186.
2 Separate Concurring Opinion.
3 Separate Concurring Opinion.
4 Joined the Separate Concurring Opinion of Associate Justice Lanee S. Cui-David.

of Court, as amended, challenging an interlocutory order of the CTA in Division. On the other hand, Presiding Justice Roman G. Del Rosario wrote a Dissenting Opinion. Joining in said Dissenting Opinion were Associate Justices Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, and Maria Rowena Modesto-San Pedro. Considering that the majority vote was not obtained, the Petition for Certiorari,[5] posted on February 2, 2022, by petitioner is dismissed, pursuant to Section 3,[6] Rule 2 of the Revised Rules of the Court of Tax Appeals.

In his Motion for Reconsideration (Re: Decision promulgated on 29 August 2023),[7] petitioner maintains that the CTA *En Banc* possesses jurisdiction over a special civil action for certiorari under Rule 65 of the Rules of Court, as amended, assailing the interlocutory orders issued by the CTA in Division.

Via Comment and Opposition (to the Motion for Reconsideration dated 15 September 2023),[8] private respondent counters that the CTA *En Banc* lacks jurisdiction over interlocutory orders issued by the CTA in Division. The Petition for Certiorari challenges the resolution of the CTA in Division, allowing it to present evidence *ex parte* for petitioner's failure to file a hard copy of his answer. As it did not dispose of the case on the merits, it is an interlocutory order, over which the CTA *En Banc* lacks jurisdiction.

The Motion is denied.

Again, the Resolutions dated July 21, 2021 and November 17, 2021, issued by the CTA in Division, subject of the challenge of petitioner's Petition for Certiorari here are interlocutory orders because these resolutions, *i.e.,* private respondent was allowed to present evidence *ex parte,* for petitioner's failure to file a hard copy of

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5 The Petition for Certiorari filed by the Commissioner of Internal Revenue under Rule 65 of the Rules of Court, as amended, is an original action, and *not* a mode of appeal. See *Paa v. The Hon. Court of Appeals, et al.,* G.R. No. 126560, December 4, 1997.

6 Section 3. *Court en banc; quorum and voting.* — The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc.* The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc.* The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division ... **Where the necessary majority vote cannot be had, the petition shall be dismissed**; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied. (Boldfacing supplied)

7 *Rollo,* pp. 210-224.

8 *Id.* at pp. 233-238.

his answer, did not address the merits of CTA Case No. 10450; precisely, the CTA *En Banc* has no jurisdiction over the subject matter of this case.

In addition, *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division), et al.*[9] categorically pronounced that "... the proper remedy against an interlocutory order issued by the CTA in Division is a *Petition for Certiorari* before [the Supreme] Court..." This underpins the conclusion that jurisdiction over a special civil action for certiorari, impugning the interlocutory order issued by the CTA in Division lies with the Supreme Court, and *not* with the CTA *En Banc*.

WHEREFORE, petitioner's Motion for Reconsideration (Re: Decision promulgated on 29 August 2023) is **DENIED**, for lack of merit.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

With due respect, I reiterate my Dissenting Opinion.
ROMAN G. DEL ROSARIO
Presiding Justice

With due respect, I join the Dissenting Opinion of PJ Del Rosario.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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9 G.R. No. 210501, March 15, 2021.

With due respect, I maintain my vote to join PJ Del Rosario's Dissenting Opinion.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

With due respect, I maintain my position, joining PJ Del Rosario's Dissenting Opinion.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice