REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

REITOH COLD STORAGE INC., WE LEAD GROUP HOLDINGS, INC., ELENCE MARINE AND INDUSTRIAL CORPORATION, MBPS CABLING CORPORATION, GARUDA CONSTRUCTION CORPORATION, BCP DERMATOLOGICAL CORPORATION, AUDIO VIDEO SOLUTIONS CORPORATION, DUNAMIS IMPORT-EXPORT PHILS. INC., ALEN V DRAGON CORPORATION, MEDEV MEDICAL DEVICES CORPORATION, CHRYSALIS CONSTRUCTION AND TRADING CORPORATION, PAPISSS INC., ICON REEFER CORPORATION, JRT CONSTRUCTION AND TRADING CORPORATION, DATALINK SOLUTIONS TECHNOLOGY AND CONSULTANCY INC., ABBE TECHNOLOGY SOLUTIONS INC., EXEQUIEL BALANLAY ADORA, KEN N RIE TRANSPORT INC., R2B2 REALTY & DEVELOPMENT CORPORATION, G2K CORPORATION, MAXX ENERGIE VENTURES CORP., and

CTA CASE NO. 10420

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

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POWERSOURCE PHILIPPINES, INC.,
Petitioners,

- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 19 2023
1:10 p.m.

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DECISION

CUI-DAVID, J.:

Before the Court is a Petition for Review[1] filed by petitioners by way of Mandamus[2] under Rule 65 of the Revised Rules of Court, as amended, praying that the Court "mandate respondent to issue the Certificate of Tax Delinquencies/Tax Liabilities (CTD) and Acceptance Payment Form (APF) in favor of petitioners so that they may be deemed to have fully complied with all the conditions set forth in the Tax Amnesty Act, including the payment of their amnesty tax, their tax delinquency may be considered settled, and the tax amnesty granted becomes final and irrevocable."

THE PARTIES

Petitioner Exequiel Balanlay Adora is a sole proprietor with office address at 3F Room 303-305 Caroline Building, Brgy. 178 Kiko Camarin, Caloocan City.[3] He is represented by Maureen Braza,[4] with office address at Unit 203 STG Corporate Centre Building, No. 76 Timog Avenue, Quezon City.[5]

The other petitioners are domestic corporations with the following addresses and authorized representatives:

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[1] Division Docket (Docket) – Vol. I, pp. 12-620, with annexes.
[2] *Id.*, Petition for Review, par. 4, p. 13.
[3] *Id.*, p. 16.
[4] *Id.*, Annex P-17, Special Power of Attorney, pp. 80-81.
[5] *Id.*, p. 16 and p. 80.

	Taxpayer	**Address**	**Authorized Representative**
1	Reitoh Cold Storage Inc.	Km 30 National Highway, Amante Street, Bo. Poblacion, San Pedro, Laguna	Maureen Braza[6]
2	We Lead Group Holdings Inc.	Unit 2102 Robinsons Galleria Corporate Center Ortigas Avenue, Edsa cor. Quezon City	Maureen Braza[7]
3	Elence Marine and Industrial Corporation	Bldg. 9 Unit 315 Urban Deca Homes Vitas Street, Tondo, Manila	Maureen Braza[8]
4	MBPS Cabling Corporation	2156-D P. Florentino Street, Sampaloc, Manila	Maureen Braza[9]
5	Garuda Construction Corporation	8760 Santol Street, San Antonio Village, Makati City	Maureen Braza[10]
6	BCP Dermatological Corporation	Dela Paz Building, 1570 Dapitan Street, Zone 047, Brgy. 481 Sampaloc, Manila	Maureen Braza[11]
7	Audio-Video Solutions Corporation	Unit 3301 Atlanta Center, 31 Annapolis St., Greenhills, San Juan City	Gina Mandigma[12]
8	Dunamis Import-Export Philippines Incorporated	Room 202 Esna Bldg., No. 30 Timog Avenue, Brgy. Laging Handa, Quezon City	Maureen Braza[13]
9	Alen V. Dragon Corporation	51 Maharlika Hi-Way Sta. Anastacia, Sto Tomas, Batangas	Maureen Braza[14]
10	Medev Medical Devices Corporation	Red Flower MJ46 Compound, Sta. Ana Drive Sun Valley, Parañaque	Maureen Braza[15]
11	Chrysalis Construction and Trading Corporation	2404 Tenorio Street, San Andres Bukid, Manila	Maureen Braza[16]
12	Papisss Inc.	Villa Mariquita Subdivision, Lumbangan, Nasugbu, Batangas	Maureen Braza[17]

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[6] *Id.*, Annex P-1, Board Resolution, p. 49.
[7] *Id.*, Annex P-2, Secretary's Certificate, pp. 50-51.
[8] *Id.*, Annex P-3, Secretary's Certificate, pp. 52-53.
[9] *Id.*, Annex P-4, Secretary's Certificate, pp. 54-55.
[10] *Id.*, Annex P-5, Secretary's Certificate, pp. 56-57.
[11] *Id.*, Annex P-6, Secretary's Certificate, pp. 58-59.
[12] *Id.*, Annex P-7, Secretary's Certificate, pp. 60-61.
[13] *Id.*, Annex P-8, Secretary's Certificate, pp. 62-63.
[14] *Id.*, Annex P-9, Secretary's Certificate, pp. 64-65.
[15] *Id.*, Annex P-10, Secretary's Certificate, pp. 66-67.
[16] *Id.*, Annex P-11, Secretary's Certificate, pp. 68-69.
[17] *Id.*, Annex P-12, Secretary's Certificate, pp. 70-71.

	Taxpayer	**Address**	**Authorized Representative**
13	Icon Reefer Corporation	Unit 3QC, ODC International Plaza, 219 Salcedo Street, Legaspi Village, Makati City (formerly 11/F Vernida IV Bldg., 128 Alfaro Street, Salcedo Village, Makati City)	Gina Mandigma[18]
14	JRT Const. and Trading Corporation	082 Sta. Cruz Street, Ilawod Poblacion, Bato, Catanduanes	Gina Mandigma[19]
15	DATALINK Solutions Technology and Consultancy Inc.	Sticra Signal Village, Katuparan, Taguig City c/o Philippine Korea Technological Center, Taguig City	Maureen Braza[20]
16	ABBE Technology Solutions Inc.	UG-29 Cityland Pioneer Condominium, 128 Pioneer Street, Highway Hills, Mandaluyong City	Maureen Braza[21]
17	KEN N RIE Transport, Inc.	Brgy. San Pioquinto, Malvar, Batangas	Maureen Braza[22]
18	R2B2 Realty & Development Corporation	Penthouse, R&L Center, 1695 Baler Street, Makati City	Maureen Braza[23]
19	G2K Corporation	Unit 3301 Atlanta Center, 31 Annapolis Street, Greenhills, San Juan City	Gina Mandigma[24]
20	Maxx Energie Ventures Corporation	Unit 3301 Atlanta Center, 31 Annapolis Street, Greenhills, San Juan City	Gina Mandigma[25]
21	Powersource Philippines, Inc.	10F The Athenaeum Bldg., 160 L.P. Leviste Street, Salcedo Village, Makati City	Maureen Braza[26]

Respondent Bureau of Internal Revenue (BIR) is the government agency charged with, among other powers and duties, the collection of all national internal revenue taxes. It has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the 1997

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[18] *Id.*, Annex P-13, Secretary's Certificate, pp. 72-73.
[19] *Id.*, Annex P-14, Secretary's Certificate, pp. 74-75.
[20] *Id.*, Annex P-15, Secretary's Certificate, pp. 76-77.
[21] *Id.*, Annex P-16, Secretary's Certificate, pp. 78-79.
[22] *Id.*, Annex P-18, Secretary's Certificate, pp. 82-83.
[23] *Id.*, Annex P-19, Secretary's Certificate, pp. 84-85.
[24] *Id.*, Annex P-20, Secretary's Certificate, pp. 86-87.
[25] *Id.*, Annex P-21, Secretary's Certificate, pp. 88-89.
[26] *Id.*, Annex P-22, Secretary's Certificate, pp. 90-92.

National Internal Revenue Code (NIRC), as amended (Tax Code), and other laws administered by it, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

On February 14, 2019, Republic Act (RA) No. 11213 or the Tax Amnesty Act (TAA), was approved and became effective on April 24, 2019. It covered all unpaid internal revenue taxes for the taxable year 2017 and prior years concerning (1) estate tax and (2) tax on delinquencies.

On April 24, 2019, Revenue Regulations (RR) No. 4-2019[27] came into effect to implement the TAA and provide guidelines on the processing of tax amnesty applications on tax delinquencies.

Petitioners received from respondent the following notices:

	Taxpayer	**BIR Notices Issued**	**Issuing BIR Office**	**Issuing BIR Officer**
1	Reitoh Cold Storage Inc.	Notice for Informal Conference dated March 13, 2019[28]	Revenue District Office (RDO) No. 57-Biñan City, Laguna	Revenue District Officer Antonino L. Ilagan
2	We Lead Group Holdings Inc.	Formal Letter of Demand and Assessment Notice dated October 25, 2019[29]	Revenue Region (RR) No. 7A-Quezon City	OIC-Regional Director Albino M. Galanza
3	Elence Marine and Industrial Corporation	Notice for Informal Conference (undated)[30]	RDO No. 29-Tondo/San Nicolas, Manila	Revenue District Officer Teresita Y. Lumayag
4	MBPS Cabling Corporation	Notice for Informal Conference dated January 7, 2020[31]	RDO No. 32-Quiapo, Sampaloc, San Miguel, Sta. Mesa, Manila	Revenue District Officer Jose G. Luna
5	Garuda Construction Corporation	Preliminary Assessment Notice dated July 2, 2018[32]	RDO No. 49-North Makati	Regional Director Glen A. Geraldino

[27] Implementing Rules and Regulations (IRR) of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act", Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies.
[28] Docket – Vol. I, Petition for Review, Annex P-23, pp. 93-94.
[29] *Id.*, Annex P-24, pp. 95-101.
[30] *Id.*, Annex P-25, p. 102.
[31] *Id.*, Annex P-26, pp. 103-108.
[32] *Id.*, Annex P-27, pp. 109-114.

	Taxpayer	BIR Notices Issued	Issuing BIR Office	Issuing BIR Officer
6	BCP Dermatological Corporation	Notice for Informal Conference dated December 26, 2019[33]	RDO No. 32-Quiapo, Sampaloc, San Miguel, Sta. Mesa, Manila	Revenue District Officer Jose G. Luna
7	Audio-Video Solutions Corporation	Formal Letter of Demand dated January 10, 2019[34]	Revenue Region (RR) No. 7-Quezon City	Assistant Regional Director Albino M. Galanza
8	Dunamis Import-Export Philippines Incorporated	Notice for Informal Conference dated March 9, 2020[35]	RDO No. 39-South, Quezon City	Revenue District Officer Arnulfo A. Galapia
9	Alen V. Dragon Corporation	Formal Letter of Demand dated October 2, 2019[36]	Revenue Region (RR) No. 9A-CaBaMiRo	Regional Director Gerry O. Dumayas
10	Medev Medical Devices Corporation	Notice for Informal Conference dated May 31, 2019[37]	RDO No. 52-Parañaque City	Revenue District Officer Antonio J. Mangubat, Jr.
11	Chrysalis Construction and Trading Corporation	Notice for Informal Conference dated July 19, 2018[38]	RDO No. 34-Paco-Pandacan-Sta. Ana-San Andres, Manila	Revenue District Officer Atty. Helen D. Vista
12	Papisss Inc.	Notice for Informal Conference dated May 24, 2019[39]	RDO No. 58-West, Batangas	Revenue District Officer Atty. Elmer F. Carolino
13	Icon Reefer Corporation	Formal Letter of Demand dated November 28, 2019[40]	RR No. 8A-Makati	Regional Director Maridur V. Rosario
14	JRT Const. and Trading Corporation	Notice for Informal Conference dated September 23, 2019[41]	RDO No. 69-Virac, Catanduanes	Revenue District Officer Princini B. Parco
15	DATALINK Solutions Technology and Consultancy Inc.	None[42]		
16	ABBE Technology Solutions Inc.	Notice for Informal Conference dated	RDO No. 41-Mandaluyong City	Revenue District Officer Atty.

[33] *Id.*, Annex P-28, pp. 115-119.
[34] *Id.*, Annex P-29, pp. 120-128.
[35] *Id.*, Annex P-30, pp. 129-132.
[36] *Id.*, Annex P-31, pp. 133-135.
[37] *Id.*, Annex P-32, pp. 136-137.
[38] *Id.*, Annex P-33, pp. 138-140.
[39] *Id.*, Annex P-34, pp. 141-142.
[40] *Id.*, Annex P-35, pp. 143-144.
[41] *Id.*, Annex P-36, pp. 145-147.
[42] JRT Const. and Trading Corporation did not receive any notice from the BIR but filed a Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E received by the BIR on February 12, 2020 with "late filing/late payment penalties computed" annotation, *id.*, Annex P-37, pp. 148-159.

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	Taxpayer	BIR Notices Issued	Issuing BIR Office	Issuing BIR Officer
		October 11, 2019[43]		Deogracias T. Villar, Jr.
17	Exequiel Balanlay Adora	Request for Lease Contract re: Penalty Assessment (undated)[44]	RDO No. 27-Caloocan City	Revenue Officer Jolina Suwalawan
18	KEN N RIE Transport, Inc.	None[45]		
19	R2B2 Realty & Development Corporation	Letter dated January 16, 2020 re: request for computation of penalty for unpaid fringe benefits taxes[46]	RDO No. 49-North Makati	Revenue District Officer Frederico Q. Pilarca
20	G2K Corporation	Final Decision on Disputed Assessment dated March 25, 2020[47]	RR No. 7B-East NCR	Regional Director Romulo Aguila, Jr.
21	Maxx Energie Ventures Corporation	Formal Letter of Demand dated January 12, 2016[48]	RR 7-Quezon City	
22	Powersource Philippines, Inc.	Notice for Informal Conference dated May 18, 2020[49]	RDO No. 47-East Makati	Revenue District Officer Renato L. Ruiz

To avail of the benefits of the TAA, petitioners accomplished their Tax Amnesty Returns on Delinquencies (TAR or BIR Form 2118-DA), APFs (BIR Form 0621-DA), and bank deposit slips.[50]

Petitioners followed up with respondent regarding the issuance of their respective CTDs and duly endorsed APFs.

Respondent acted upon petitioners' requests in the following manner:

[43] *Id.*, Annex P-38, pp. 160-162.
[44] *Id.*, Annex P-39, pp. 163-166.
[45] KEN N RIE Transport, Inc. did not receive any notice from the BIR but filed a Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) or BIR Form No. 1601-E received by the BIR on February 21, 2020 with "late filing" stamp, *id.*, Annex P-40, pp. 167-177.
[46] *Id.*, Annex P-41, p. 178.
[47] *Id.*, Annex P-42, pp. 179-180.
[48] *Id.*, Annex P-43, pp. 181-182. Without signature page attached.
[49] *Id.*, Annex P-44, pp. 183-185.
[50] *Id.*, Annexes P-145 to 209, pp. 498-585.

Taxpayer	**BIR Action**	**Issuing BIR Office**	**Issuing BIR Officer**	**Taxpayer's Receipt Date**
Reitoh Cold Storage Inc.	Denial Letters dated August 9, 2019[51] and September 17, 2019: [52] assessment is not yet considered delinquent	RDO No. 57-West Laguna (Biñan)	Revenue District Officer Atty. Timm B. Renomeron	August 9, 2019[53] September 7, 2019[54]
We Lead Group Holdings Inc.	Denial Letters dated December 27, 2019,[55] and February 13, 2020: [56] not qualified pursuant to Revenue Memorandum Circular (RMC) No. 57-2019, Q1.	RR No. 7A-Quezon City	Regional Director Albino M. Galanza	December 27, 2019[58] February 13, 2020[59]
	Denial Letter dated February 3, 2020: [57] not yet a delinquent account	RDO No. 40-Cubao	Revenue District Officer Corazon R. Balinas	
Elence Marine and Industrial Corporation	None			
MBPS Cabling Corporation	Denial Letters dated July 28, 2020, [60] September 22, 2020 [61] and October 16, 2020: [62] not considered a delinquent account; no records of tax delinquency/deficiency/liability; and not a case of "withholding tax liabilities arising from failure to remit taxes withheld"	RR No. 6-Manila	Regional Director Atty. Jethro M. Sabariaga	July 28, 2020[63] September 22, 2020[64]

[51] *Id.*, Annex P-210A, pp. 587-588.
[52] *Id.*, Annex P-210, p. 586.
[53] Par. 18, Petition for Review, Docket – Vol. I, p. 34, *vis-à-vis* par. 6, Memorandum for Petitioners, Docket – Vol. II, p. 795.
[54] *Id.*
[55] Petition for Review, Annex P-211, Docket – Vol. I, p. 589.
[56] *Id.*, Annex P-212, pp. 590-591.
[57] *Id.*, Annex P-212A, p. 592.
[58] Par. 18, Petition for Review, Docket – Vol. I, p. 34, *vis-à-vis* par. 6, Memorandum for Petitioners, Docket – Vol. II, p. 795.
[59] *Id.*
[60] *Id.*, Annex P-213, pp. 593-595; Annex P-214A, pp. 597-599.
[61] *Id.*, Annex P-214, p. 596.
[62] *Id.*, Annex P-214B, p. 600.
[63] Par. 18, Petition for Review, Docket – Vol. I, p. 34, *vis-à-vis* par. 6, Memorandum for Petitioners, Docket – Vol. II, p. 796.
[64] Par. 18, Petition for Review, Docket – Vol. I, p. 35, *vis-à-vis* par. 6, Memorandum for Petitioners, Docket – Vol. II, p. 796.

Taxpayer	BIR Action	Issuing BIR Office	Issuing BIR Officer	Taxpayer's Receipt Date
Garuda Construction Corporation	Denial Letter dated September 30, 2020: [65] "subject taxes" not covered by the TAA	RDO No. 49-North Makati City	Revenue District Officer Frederico Q. Pilarca	September 30, 2020[66]
BCP Dermatological Corporation	Denial Letter dated August 3, 2020: [67] subject withholding taxes not covered by the TAA	RR No. 6-Manila		August 3, 2020[68]
Audio-Video Solutions Corporation	None			
Dunamis Import-Export Philippines Incorporated	Letter dated October 12, 2020: [69] request for APF-Signature and demand to sign/follow up on tax amnesty request for approval are forwarded to Legal Division of RR No. 7A-Quezon City	RDO No. 39-South, Quezon City	Revenue District Officer Arnulfo A. Galapia	October 12, 2020[70]
Alen V. Dragon Corporation	None			
Medev Medical Devices Corporation	Denial Letter dated December 5, 2019:[71] subject EWT not covered by the TAA	RR No. 8B-South NCR		December 5, 2019[72]
Chrysalis Construction and Trading Corporation	Denial Letters dated October 7, 2019 [73] and October 18, 2019: [74] assessment has not yet attained finality since it was able to file timely protest/request for reinvestigation	RR No. 6-Manila	Regional Director Atty. Jethro M. Sabariaga	October 23, 2019[76]

[65] *Id.*, Annex P-215, p. 603.
[66] Par. 18, Petition for Review, Docket – Vol. I, p. 35, *vis-à-vis* par. 6, Memorandum for Petitioners, Docket – Vol. II, p. 796.
[67] *Id.*, Annex P-216, pp. 604-605, with missing pages and signature page.
[68] Par. 18, Petition for Review, Docket – Vol. I, p. 35, *vis-à-vis* par. 6, Memorandum for Petitioners, Docket – Vol. II, p. 796.
[69] *Id.*, Annex P-217, p. 606.
[70] Par. 18, Petition for Review, Docket – Vol. I, p. 35, *vis-à-vis* par. 6, Memorandum for Petitioners, Docket – Vol. II, p. 796.
[71] *Id.*, Annex P-218, pp. 607-608, with missing signature page.
[72] Par. 18, Petition for Review, Docket – Vol. I, p. 35, *vis-à-vis* par. 6, Memorandum for Petitioners, Docket – Vol. II, p. 796.
[73] *Id.*, Annex P-219A, pp. 610-612; *id.*, Annex P-219C, p. 616.
[74] *Id.*, Annex P-219B, pp. 613-615.
[76] Par. 18, Petition for Review, Docket – Vol. I, p. 36, *vis-à-vis* par. 6, Memorandum for Petitioners, Docket – Vol. II, p. 796.

Taxpayer	**BIR Action**	**Issuing BIR Office**	**Issuing BIR Officer**	**Taxpayer's Receipt Date**
	Letter dated October 22, 2019:[75] not qualified to avail of the TAA	RDO No. 34-Paco-Pandacan-Sta. Ana-San Andres	OIC-Revenue District Officer Caroline M. Takata	
Papisss Inc.	None			
Icon Reefer Corporation	None			
JRT Const. and Trading Corporation	None			
DATALINK Solutions Technology and Consultancy Inc.	None			
ABBE Technology Solutions Inc.	Letter dated January 21, 2020:[77] forwarded to the CIR for appropriate action	RR No. 7B-East NCR	Chief, Collection Division Ceferina M. Ong	January 31, 2020[78]
Exequiel Balanlay Adora	Denial Letter dated December 11, 2019:[79] penalties arising from the non-filing of returns/open cases, self-assessed taxes and electronic Filing and Payment cases are not included in the TAA[80]	RR No. 5-Caloocan City		December 11, 2020[81]
KEN N RIE Transport, Inc.	None			
R2B2 Realty & Development Corporation	Denial Letters dated June 2, 2020:[82] failed to provide an entitlement for the issuance of Notice of Issuance of Authority to Cancel Assessment (NIATCA) under Section 6 of RR No. 4-2019, in relation to III (1)E of RMO No. 33-2018; endorsed to the	RR No. 8A-Makati	OIC-Chief, Collection Division Benilda M. Nicosia	July 1, 2020[84]

[75] *Id.*, Annex P-219, p. 609.
[77] *Id.*, Annex P-220, p. 617.
[78] Par. 18, Petition for Review, Docket – Vol. I, p. 36, *vis-à-vis* par. 6, Memorandum for Petitioners, Docket – Vol. II, p. 796.
[79] *Id.*, Annex P-221, p. 618, with missing pages and signature page.
[80] Petition for Review, no. 17, p. 36.
[81] Par. 18, Petition for Review, Docket – Vol. I, p. 36, *vis-à-vis* par. 6, Memorandum for Petitioners, Docket – Vol. II, p. 797.
[82] Petition for Review, Annex P-222A, p. 620.
[84] Par. 18, Petition for Review, Docket – Vol. I, p. 37, *vis-à-vis* par. 6, Memorandum for Petitioners, Docket – Vol. II, p. 797.

Taxpayer	BIR Action	Issuing BIR Office	Issuing BIR Officer	Taxpayer's Receipt Date
	Legal Division for appropriate action Letter dated July 1, 2020: [83] stop-filer cases are not considered delinquent account	 RDO No. 49-North Makati	 Revenue District Officer Federico Q. Pilarca	
G2K Corporation	None			
Maxx Energie Ventures Corporation	None			
Powersource Philippines, Inc.	None			

On December 14, 2020, petitioners filed a Petition for Review dated December 8, 2020.

On December 21, 2020, the Court issued Summons[85] ordering respondent to submit an Answer within thirty (30) days from service. On January 5, 2021, respondent received the Summons.

In the *Motion for Extension of Time to File Answer*[86] and *Final Motion for Extension of Time to File Answer*,[87] respondent requested an additional period of thirty (30) days from February 4, 2021, or until March 6, 2021, and thereafter, a further extension of fifteen (15) days from March 6, 2021, or until March 21, 2021, to file an Answer. The Court granted both Motions in its Orders dated February 8, 2021,[88] and March 18, 2021,[89] respectively.

On May 19, 2021, the Court received respondent's Answer[90] filed *via* registered mail on March 19, 2021, with the following special and affirmative defenses:

[83] *Id.*, Annex P-222, p. 619.
[85] Docket – Vol. II, pp. 621-622.
[86] Docket – Vol. II, pp. 625-630.
[87] Docket – Vol. II, pp. 632-636.
[88] Docket – Vol. II, p. 631.
[89] Docket – Vol. II, p. 638.
[90] Docket – Vol. II, pp. 639-655.

a. The Court has no jurisdiction over the instant petition;

b. A collateral attack on presumably valid administrative issuance is not allowed; and

c. The approval of the application for tax amnesty should be in accordance with RA No. 11213; thus, mandamus is not tenable.

On May 20, 2021, the Court issued a Notice of Pre-Trial Conference[91] and set the case for pre-trial on June 14, 2021. In compliance with the Court's order, respondent filed a Pre-Trial Brief[92] on June 8, 2021, while petitioners filed a *Motion to Admit Petitioners' Pre-Trial Brief*[93] with the attached Pre-Trial Brief[94] on June 14, 2021.

On May 24, 2021, the Court received petitioners' *Motion 1. To Declare Respondent in Default 2. For Judgment on the Pleadings*[95] filed through registered mail on April 20, 2021, to which respondent posted a *Comment/Opposition*[96] on May 25, 2021, and received by the Court on May 26, 2021.

On June 14, 2021, the Court issued a Resolution[97] denying petitioners' *Motion 1. To Declare Respondent in Default 2. For Judgment on the Pleadings* for lack of merit and noted petitioners' counsel's change of address.

During the pre-trial conference, the Court granted petitioners' *Motion to Admit Petitioners' Pre-Trial Brief* with the attached Pre-Trial Brief in the interest of justice. It referred the case to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for mediation on July 7, 2021.[98]

On July 7, 2021, petitioners filed a *Manifestation*[99] stating that there is no need to proceed with the mediation proceedings considering that the issues, in this case, are purely a question of law. On even date, the Court received the PMC-CTA's "Back to Court" report[100] since petitioners refused mediation.

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[91] Docket – Vol. II, pp. 657-660.
[92] Docket - Vol. II, pp. 696-700.
[93] Docket - Vol. II, pp. 707-709.
[94] Docket – Vol. II, pp. 710-734.
[95] Docket – Vol. II, pp. 661-665.
[96] Docket – Vol. II, pp. 670-694, with annexes.
[97] Docket – Vol. II, pp. 702-706.
[98] Docket – Vol. II, Minutes of the Hearing, p. 735; Order dated June 14, 2021, p. 736; Resolution dated June 17, 2021, p. 739.
[99] Docket – Vol. II, pp. 740-742.
[100] Docket – Vol. II, p. 743.

On July 28, 2021, the Court issued a Resolution[101] noting petitioners' Manifestation and set the pre-trial conference on September 29, 2021. Still, it was cancelled and reset to January 17, 2022, given the physical closure of the Court under Supreme Court Administrative Circular No. 56-2021.[102] The pre-trial set on January 17, 2022, was again cancelled and reset to March 9, 2022, due to the court's physical closure brought about by rising COVID-19 cases.[103]

On February 21, 2022, petitioners filed a *Motion to Submit Memorandum*[104] praying that the Court directs the parties to file their respective memoranda alleging that the only issue, in this case, involves a question of law.

On March 1, 2022, the Court promulgated a Resolution[105] ordering respondent to file a comment/opposition within five (5) days from receipt. On March 8, 2022, respondent filed a Comment[106] interposing no objection to petitioners' *Motion to Submit Memorandum.*

In its Resolution[107] dated March 25, 2022, the Court granted petitioners' *Motion to Submit Memorandum* and ordered the parties to submit their respective memoranda within fifteen (15) days from receipt.

Respondent's *Memorandum*[108] was filed on April 11, 2022, while the *Memorandum for Petitioners*[109] was filed on April 18, 2022.

In the Resolution dated April 26, 2022,[110] the Court submitted the present case for decision.

Hence, this Decision.

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[101] Docket – Vol. II, pp. 749-750.
[102] Docket – Vol. II, Notice of Resetting dated October 15, 2021, pp. 751-752.
[103] Docket – Vol. II, Notice of Resetting dated February 9, 2022, pp. 753-754. Memorandum Circular No. 10-2022.
[104] Docket – Vol. II, p. 755 to 757.
[105] Docket – Vol. II, p. 760 to 761.
[106] Docket – Vol. II, p. 764 to 766.
[107] Docket – Vol. II, p. 768 to 772.
[108] Docket – Vol. II, pp. 773 to 789.
[109] Docket – Vol. II, pp. 793 to 816.
[110] Docket – Vol. II, p. 817.

ISSUES

Petitioners put forth the following issues[111] for the Court's resolution, to wit:

I
Whether or not a Petition for Certiorari under the Rules of Court, Rule 65, Section 1 filed with the Court of Tax Appeals is the correct remedy.

II
Whether or not respondent has the ministerial duty to issue a Certificate of Tax Delinquency and Acceptance Payment Form in favor of petitioners for taxable year 2017 and prior years even if the assessment notices or similar documents are issued after the effectivity of the implementing rules and regulations.

III
Whether or not petitioners are entitled to avail themselves of the benefits of the Tax Amnesty Law, even if respondent refused to sign their Certificate of Tax Delinquency and Acceptance Payment Form, as it is respondent's ministerial duty to issue a Notice of Issuance of Authority to Cancel Assessment (NIATCA) in petitioners' favor after they filed their TARs and APFs as well as paid the amnesty taxes.

IV
Whether or not petitioners have no other plain, speedy and adequate remedy in the ordinary course of law.

The issues may be summed up into whether or not respondent BIR may be compelled by *mandamus* to issue in favor of petitioners the Certificates of Tax Delinquencies/Tax Liabilities and Acceptance Payment Forms under RA No. 11213 or the Tax Amnesty Act.

Petitioners' arguments:

Petitioners argue that it is the ministerial duty of the BIR to issue a CTD and APF in their favor for the taxable year (TY) 2017 and prior years, even if the assessment notices or similar documents are issued after the effectivity of the implementing rules and regulations (IRR). Petitioners claim that they are entitled to avail of the benefits of the TAA, even if respondent refuses to issue the CTDs and sign the APFs, as it is

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[111] Grounds, Petition for Review, Docket – Vol. I, p. 37, *vis-à-vis* Statement of the Issues, Memorandum for Petitioners, Docket – Vol. II, p. 797-798.

respondent's ministerial duty to issue a Notice of Issuance of Authority to Cancel Assessment (NIATCA) in petitioners' favor after they filed their TARs and APFs and paid their amnesty taxes.

However, in their Memorandum, petitioners allege for the first time that a petition for certiorari under Rule 65 of the Revised Rules of Court is the correct remedy. According to petitioners, the denial of the requests for the issuance of the NIATCA in their favor after they filed their TARs and APFs and paid the amnesty taxes is a decision of the Commissioner of Internal Revenue (CIR) arising under the NIRC and its related laws; hence, the Court of Tax Appeals (CTA) is the proper court for the filing of a Petition for Review, pursuant to A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals (RRCTA), specifically, Section 3, Rule 4 thereof.

Further, petitioners cite the case of *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*,[112] wherein the Supreme Court held that the CTA's jurisdiction is not limited to cases that involve decisions of the CIR on matters involving assessments or refunds but also covers other cases arising from the NIRC[113] "where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."[114]

Petitioners assert that the CTA's judicial power to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondent is enshrined in the Constitution, as enunciated in *Department of Transportation v. Philippine Petroleum Sea Transport Association, et al.*[115] Further, "(a) petition for certiorari is proper where the impugned dispositions, as in this case, are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction."[116]

Petitioners maintain that they can apply for tax amnesty under Section 17(d) of the TAA. Petitioners explain that the previous tax amnesty law (RA No. 9480) excluded tax cases that were already the subject of final and executory judgments by the courts and withholding tax agents with respect to their

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[112] G.R. No. 169225, November 17, 2010, cited in *CIR v. Philippine Aluminum Wheels Inc.*, CTA *EB* No. 994 (CTA Case No. 7817), May 19, 2014.
[113] *WPP Marketing Communications, Inc. v. CIR*, CTA Case No. 9704, June 5, 2020.
[114] *Id.*
[115] G.R. No. 230107, July 24, 2018.
[116] *Rural Bank of Calinog (Iloilo), Inc. v. CA*, G.R. No. 146519, August 8, 2005.

withholding tax liabilities; during the deliberation of the TAA, the legislators included these tax liabilities.

Petitioners claim that Section 19 of the TAA provides that the taxpayer who wishes to avail of the Tax Amnesty on Delinquencies shall file a sworn Tax Amnesty on Delinquencies Return with a Certification of Delinquency and pay the amnesty tax, after which the respondent shall issue the APF. Section 5(A) of RR No. 4-2019, or the IRR of the TAA also provides that the taxpayer who wishes to avail of the Tax Amnesty on Delinquencies shall file a TAR, an APF and CTD issued by respondent. Hence, petitioners argue that respondent is mandated and obligated to issue their respective CTDs and APFs to allow them to complete the other requirements of the TAA and eventually avail themselves of its benefits.

Petitioners insist that there is nothing more left but for respondent to issue the CTDs and APFs to those who have already complied with the provisions of the TAA, as held in the case of *CS Garment, Inc. v. Commissioner of Internal Revenue.*[117] However, respondent ignored or denied their request for the issuance of the CTDs and APFs on the ground that under RR No. 4-2019, the coverage of the TAA is only for tax delinquencies with assessment notices or similar documents issued on or before the effectivity date of RR No. 4-2019. In effect, petitioners posit that respondent imposed additional conditions for availing of the tax amnesty when it issued RMC No. 57-2019.[118] Petitioners also state that the TAA does not impose a cut-off date of April 24, 2019 or the condition that the assessment notices have become final and executory on or before April 24, 2019, which RMC No. 57-2019 does.

Petitioners aver that the law cannot be amended by a mere regulation since an administrative agency may not enlarge, alter or restrict the provisions of the statute being administered,[119] even on the pretext of clarifying specific issues by imposing other conditions not found in the law itself. Such restrictions or conditions, according to petitioners, should be declared null and void and should not prevent petitioners from exercising what is their legal right. In relation thereto, petitioners cited the cases of *Commissioner of Internal Revenue v. Philippine*

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[117] G.R. No. 182399, March 12, 2014.
[118] Clarifies Certain Issues on Tax Amnesty on Delinquencies under Revenue Regulations No. 4-2019 which Implemented Title IV of Republic Act No. 11213 or the Tax Amnesty Act, May 22, 2019.
[119] *Pilipinas Kao Inc. v. Court of Appeals*, G.R. No. 105014, December 18, 2001.

Aluminum Wheels, Inc [120] and *CS Garment, Inc. v. Commissioner of Internal Revenue.*[121]

Petitioners further submit that it is clear from Section 20 of the TAA that respondent shall issue the NIATCA to petitioners availing of the Tax Amnesty on Delinquencies within fifteen (15) calendar days from submission of the APF and the TAR.

Petitioners opine that they have no other plain, speedy, and adequate remedy in the ordinary course of law. Petitioners state that they only have until December 31, 2020 to avail themselves of the TAA under RR No. 15-2020 and RMC No. 61-2020.

In their Memorandum, petitioners state that they may lose the right to avail of Tax Amnesty on Delinquencies unless they can seek a judicial determination by way of *certiorari* as to whether respondent's actions constitute grave abuse of discretion amounting to lack or excess of jurisdiction.

Respondent's arguments:

Respondent contends that the Court has no jurisdiction over the instant petition, praying that the alleged decision denying the application for tax amnesty be reversed. Respondent points out that the same is among its discretionary powers which the Court cannot properly pass upon.

Respondent counters that RMC No. 57-2019 was issued in accordance with its rule-making power or quasi-legislative power; it is a circular issued under its power to interpret, clarify, or explain tax laws and to decide tax cases under Section 4 of the NIRC. RMC No. 57-2019 provides the reckoning date of the finality of tax assessment or delinquent accounts for purposes of availing tax amnesty in accordance with RA No. 11213. Respondent adds that with RMC No. 57-2019 issued in the exercise of respondent's quasi-legislative function, the regular courts and not this Court has jurisdiction to render the said RMC null and void. In support, respondent cites *Smart Communication, Inc. (SMART) and Pilipino Telephone Corporation (PILTEL) v. National Telecommunication Commission (NTC),*[122] *1-UTAK, et al. v. Bureau of Internal Revenue and Joel L. Tan-*

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[120] G.R. No. 216161, August 9, 2017.
[121] *Id.*
[122] G.R. No. 151908, August 12, 2003.

Torres,[123] and *British American Tobacco v. Commissioner of Internal Revenue*.[124]

Respondent further argues that the nullification of a provision of RMC No. 57-2019 that petitioners pray for is a collateral attack on a presumably valid administrative issuance, which is not allowed. Correspondingly, respondent mentioned the cases of *Dasmariñas Water District v. Monterey Foods Corporation*,[125] *Tan v. Bausch & Lomb, Inc.*,[126] and *San Miguel Brewery v. Magno*[127] as the basis thereof.

Respondent asserts that Section 19 of the TAA[128] provides explicitly the reckoning date when and where to file and pay the application for tax amnesty. Respondent insists that the TAA requires that the tax liability should be final and executory or delinquent at the time of its effectivity. Thus, since its implementing rules and regulations or RR No. 4-2019 took effect on April 24, 2019, the same should be the reckoning date of the finality or delinquency of the tax liability sought to be applied for amnesty.

More, respondent argues that based on the records, the tax assessments against petitioners are not yet delinquent or have not yet attained finality as of April 24, 2019; thus, they are not qualified to avail of the tax amnesty in accordance with the law.

According to respondent, petitioners failed to allege that there is a compelling legal duty on its part to approve the application for tax amnesty without a proper legal basis; hence, the petition is dismissible.

Respondent concludes that the petition failed to allege that it gravely abused its power when it denied the application for tax amnesty due to lack of legal basis. Citing *Carabeo v. Court of Appeals et al.*,[129] the abuse of discretion must be so patent

[123] CTA Case No. 8101, July 21, 2010, citing *Smart Communications, Inc. et. al., v. NTC*, G.R. No. 151908, August 12, 2003; *Globe and ISLACOM v. Court of Appeals and NTC*, G.R. No. 152063, August 12, 2003.
[124] G.R. No. 163583, August 20, 2008.
[125] G.R. No. 175550, September 17, 2008.
[126] G.R. No. 148420, December 15, 2005, 478 SCRA 115, 123-124, citing *Olsen and Co. v. Aldanese*, G.R. No. L-18740, April 28, 1922.
[127] G.R. No. L-21879, September 29, 1967.
[128] SEC. 19. *Availment of the Tax Amnesty on Delinquencies; When and Where to File and Pay.* - Any person, natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall, within one (1) year from the effectivity of the Implementing Rules and Regulations of this Act, file with the appropriate office of the Bureau of Internal Revenue, which has jurisdiction over the residence or principal place of business of the taxpayer, a sworn Tax Amnesty on Delinquencies Return accompanied by a Certification of Delinquency. The payment of the amnesty tax shall be made at the time the Return is filed. (*Emphasis added*)
[129] G.R. Nos. 178000 and 178003, December 4, 2009.

and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the task enjoined or to act at all in contemplation of law. What has been bestowed to the CIR by law is not only the power to approve tax amnesty but also the discretion when or when not to exercise it.

THE RULING OF THE COURT

The CTA has jurisdiction over petitions for certiorari, prohibition, and/or mandamus under Rule 65 of the Revised Rules of Court.

We shall first discuss the basis of the CTA's *certiorari* power under Rule 65 of the Revised Rules of Court.

It is settled that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action.[130] The averments in the complaint and the character of the relief sought are the ones to be consulted.[131]

In other words, what determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint, and the character of the relief sought.[132] The designation or caption is not controlling more than the allegations in the complaint.[133]

While this petition is captioned as "Petition for Review," an examination of petitioners' allegations, arguments, and relief sought reveals that it is a Petition for *Mandamus*, to wit:

> 4. This Petition for Review is filed by way of *Mandamus* under Rule 65 of the Rules of Court seeking to command Respondent to issue a Certificate of Tax Delinquency/Tax Liabilities (CTD), and Acceptance Payment Form (APF) protect the rights of the Petitioners pursuant to Republic Act No. 11213 or the Tax Amnesty Act, Section 17(d).
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[130] *Padlan v. Dinglasan*, G.R. No. 180321, March 20, 2013.
[131] *Id.*
[132] *Villena v. Payoyo*, G.R. No. 163021, April 27, 2007.
[133] *Hernudd v. Lofgren*, G.R. No. 140337, September 27, 2007.

19. Petitioners were prevented from availing of the benefits of the Tax Amnesty Law. Despite filing with the Respondent's appropriate office which has jurisdiction over the residence or principal place of business of the taxpayer, a sworn Tax Amnesty on Delinquencies Return accompanied by a Certification of Delinquency (CTD), as well as the Acceptance Payment Form (APF), Respondent refused and continues to refuse to issue Petitioners' respective CTD and APF: ...

PRAYER

WHEREFORE ... It is respectfully prayed of this Honorable Court to *mandate* respondent to issue the CTD and APF in favor of petitioners in order that they may be deemed to have fully complied with all the conditions set forth in the Tax Amnesty Law, including the payment of their amnesty tax, their tax delinquency may be considered settled, and the tax amnesty granted becomes final and irrevocable.

The Supreme Court ruled that the caption of the pleading should not be the governing factor, but rather the allegations in it should determine the nature of the action, because even without the prayer for a specific remedy, the courts may nevertheless grant the proper relief as may be warranted by the facts alleged in the complaint and the evidence introduced.[134]

Here, petitioners alleged in their Memorandum that a Petition for *Certiorari* under Rule 65 is the correct remedy[135] but maintain the same prayer for *mandamus*[136] as reflected in their Petition for Review.[137]

Given the foregoing, the Court treats the instant Petition for Review as a Petition for *Mandamus.*

Besides, in the Resolution dated March 25, 2022, the Court has already resolved that this Petition for Review is a Petition for *Mandamus,* and it has the authority to issue auxiliary writs of *certiorari, mandamus,* and *prohibition* as ruled in the case of *The City of Manila, et al. v. Hon. Grecia-Cuerdo, et al.* (*Grecia-Cuerdo*):[138]

[134] *Evangelista v. Santiago*, G.R. No. 157447, April 29, 2005, citing *Chacon Enterprises v. Court of Appeals*, G.R. No. L-46418, September 29, 1983.
[135] Docket – Vol. II, par. 4, p. 798; pars. 9-11; pp. 801-802.
[136] *Id.*, pp. 815-816. For easy reference, petitioners' prayer in its Memorandum reads: "WHEREFORE, with Petitioner's availment of the tax amnesties on delinquencies pursuant to Republic Act No. 11213, otherwise known as the Tax Amnesty Act, it is respectfully prayed of this Honorable Court to mandate Respondent to issue the CTD and APF in favor of Petitioners in order that they may be deemed to have fully complied with all the conditions set forth in the , including the payment of their amnesty tax, their tax delinquency may be considered settled, and the tax amnesty granted becomes final and irrevocable."
[137] Docket – Vol. I, p. 47.
[138] G.R. No. 175723, February 4, 2014.

> ... [While] there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that **judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law** and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.
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> 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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> 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. (*Emphasis supplied*)

Although what is involved in *Grecia-Cuerdo* is a petition for *certiorari*, the Supreme Court clarified that under Section 6, Rule 135[139] of the Rules of Court, the Court's authority extends to the issuance of *all writs and processes* essential for the exercise of its powers in cases within its appellate jurisdiction.

Echoing its pronouncement in *Grecia-Cuerdo*, the Supreme Court, in the case of *Banco de Oro, et al. v. Republic of the Philippines, et al.*,[140] declared in no uncertain terms that petitions for *certiorari* against the acts and omissions of quasi-judicial agencies, *i.e.*, CIR, should be filed with the CTA, *viz.*:

[139] SEC. 6. *Means to carry jurisdiction into effect.* — 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; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules.
[140] G.R. No. 198756, August 16, 2016.

> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, **appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue**, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems **must be brought *exclusively* to the Court of Tax Appeals.**
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> ...within the judicial system, the law intends **the Court of Tax Appeals** to **have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.**[141] (*Emphasis supplied*)

Given the foregoing, this Court has jurisdiction over petitions for certiorari, prohibition and/or mandamus against the acts and omissions of the BIR.

We shall now determine the timeliness of the Petition.

Petitioners failed to file this Petition on time.

Section 4, Rule 65 of the Rules of Court provides that:

> SEC. 4. *When and where petition filed.* — **The petition shall be filed not later than sixty (60) days from notice of the judgment, order, or resolution.** In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. (*Emphasis supplied*)

In the case of *Oasis Park Hotel v. Leslee G. Navaluna, et al. (Oasis Park)*, [142] the Supreme Court emphasized that to establish the sixty (60) day timeline for the filing of the petition, the *date of receipt* of the assailed judgment, final order, or resolution *must* be stated in the petition; otherwise, the petition for certiorari must be dismissed, *viz.*:

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[141] The Supreme Court "[applied] by analogy the ruling *In National Water Resources Board v. A. L. Ang Network, Inc.*, 632 Phil. 22, 28-29 (2010) [Per J. Carpio Morales, First Division], which states that '[s]ince the appellate court has exclusive appellate jurisdiction over quasi-judicial agencies under Rule 43 of the Rules of Court, petitions for writs of *certiorari*, prohibition or *mandamus* against the acts and omissions of quasi-judicial agencies, like petitioner, should be filed with it.'

[142] G.R. No. 197191, November 21, 2016.

The Court, in *Vinuya v. Romulo,* expounded on the importance of stating the **material dates** in a petition for *certiorari:*

> As the rule indicates, **the 60-day period starts to run from the date petitioner receives the assailed judgment, final order or resolution,** or the denial of the motion for reconsideration or new trial timely filed, whether such motion is required or not. To establish the timeliness of the petition for *certiorari,* the date of receipt of the assailed judgment, final order or resolution or the denial of the motion for reconsideration or new trial must be stated in the petition; otherwise, **the petition for *certiorari* must be dismissed.** The importance of the dates cannot be understated, for such dates determine the timeliness of the filing of the petition for *certiorari.* As the Court has emphasized in *Tambong v. R. Jorge Development Corporation:*
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> There are three essential dates that must be stated in a petition for *certiorari* brought under Rule 65. *First,* the date when notice of the judgment or final order or resolution was received; *second,* when a motion for new trial or reconsideration was filed; and *third,* when notice of the denial thereof was received. **Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal of the petition. Substantial compliance will not suffice in a matter involving strict observance with the Rules.** .... *(Emphasis supplied)*

Indeed, failure to state the material dates in a petition for *mandamus* or *certiorari* is sufficient ground for the dismissal of the Petition under Section 3, Rule 46 of the Rules of Court,[143] in relation to Rule 65 thereof.[144]

Here, petitioners filed the Petition for Review, which We treat as a Petition for *Mandamus,* on December 14, 2020, without any statement of material dates. Thus, the Court is unable to determine whether it was filed within the 60-day reglementary period.

Upon perusal of petitioners' evidence, the Court finds that the dates indicated under the heading "date of receipt of BIR response" are dates of respondent's denial letters, not the actual receipt. The date of petitioner Exequiel Balanlay Adora's denial letter was erroneously stated in the Petition and Memorandum

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[143] SEC. 3. *Contents and filing of petition; effect of noncompliance with requirements.* — ...
In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received. ...
The failure of the petitioner to comply any of the requirements shall be sufficient ground for the dismissal of the petition. (*Emphasis supplied*)
[144] *Wenceslao, et al. v. Makati Development Corporation.* G.R. No. 230696, August 30, 2017.

as *December 11, 2020,* when it should be *December 11, 2019.* Moreover, only eleven (11) petitioners received denial letters, while the others did not receive any response from respondent.[145]

Petitioners denial letters were dated between August 9, 2019 and October 12, 2020. If the Court counts the 60-day period from the date of the latest denial letter,[146] petitioners had until *December 11, 2020,* to file a Petition for *Mandamus* or *Certiorari.* However, the Petition was filed only on *December 14, 2020*; thus, not one of petitioners has timely filed the Petition.

Accordingly, the dismissal of the instant Petition for being time-barred is proper.

However, even if the Petition has been timely filed, it must still be dismissed for being *moot and academic.*

The instant petition has been rendered moot and academic by the expiration of the period for the availment of Tax Amnesty on Delinquencies.

Section 19 of the TAA provides the period for availing of the tax amnesty on delinquencies, *viz*:

> SEC. 19. *Availment of the Tax Amnesty on Delinquencies; When and Where to File and Pay.* - Any person, natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall, **within one (1) year from the effectivity of the Implementing Rules and Regulations of this Act**, file with the appropriate office of the Bureau of Internal Revenue, ..., a sworn Tax Amnesty on Delinquencies Return **accompanied by a Certification of Delinquency**. The payment of the amnesty tax shall be made at the time the Return is filed. (*Emphasis supplied*)

On April 5, 2019, RR No. 4-2019 [147] was issued to implement the provisions of the TAA. It states that all persons with internal revenue tax liabilities for the taxable year 2017

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[145] Petition for Review, par. 18, Docket – Vol. I, pp. 34-37; Memorandum for Petitioners, par. 6, Docket – Vol. II, pp. 795-797.
[146] *Id.*
[147] Implementing Rules and Regulations (IRR) of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act", Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies.

and prior years may avail of the Tax Amnesty on Delinquencies within one (1) year from its effectivity.[148]

On March 16, 2020, RR No. 5-2020 was issued amending RR No. 4-2019. It explicitly provides that the period for the availment of the Tax Amnesty on Delinquencies is until *April 23, 2020.*

Thereafter, RMC No. 33-2020 dated March 24, 2020[149] was issued, moving the deadline for the availment from April 23, 2020 to *May 23, 2020.*

On April 7, 2020, RMC No. 38-2020[150] was issued, extending the deadline from May 23, 2020 to *June 8, 2020.*

Meanwhile, on April 29, 2020, RR No. 11-2020[151] was issued, extending the availment period of the Tax Amnesty on Delinquencies from April 23, 2020 to *June 22, 2020.*[152]

On June 9, 2020 and June 19, 2020, respectively, RMC No. 61-2020[153] and RR No. 15-2020[154] were issued, further extending the availment period from June 22, 2020 to *December 31, 2020.*[155]

Lastly, on December 17, 2020, RR No. 32-2020[156] was issued, extending the availment period until *June 30, 2021.*[157] No further extension of the deadline was issued thereafter.

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[148] SEC. 3. Coverage. — All persons, whether natural or juridical, with internal revenue tax liabilities covering taxable year 2017 and prior years, may avail of Tax Amnesty on Delinquencies within one (1) year from the effectivity of these Regulations, ...

[149] Extends Deadline on Availment of Tax Amnesty on Delinquencies Under Revenue Regulations (RR) No. 4-2019 as Amended by RR No. 5-2020.

[150] Further Extension of Deadline on Availment of Tax Amnesty on Delinquencies under Revenue Regulations (RR) No. 4-2019 as Amended by RR No. 5-2020 in Relation with Revenue Memorandum Circular (RMC) No. 33-2020 dated March 24, 2020.

[151] Amends Section 2 of Revenue Regulations No. 10-2020 Relative to the Extension of Statutory Deadlines and Timelines for the Filing and Submission of any Document and the Payment of Taxes Pursuant to Section 4 (z) of Republic Act No. 11469, Otherwise Known as "Bayanihan to Heal as One Act," April 29, 2020.

[152] *Id.*, Section 2, line 34.

[153] Further Extension of Deadline on Availment of Tax Amnesty on Delinquencies under Revenue Regulations (RR) No. 4-2019 as Amended by RR No. 5-2020 in Relation with Revenue Memorandum Circular (RMC) No. 33-2020 dated March 24, 2020, RMC No. 38-2020 dated April 7, 2020 and RR No. 11-2020 dated April 29, 2020.

[154] Further Amendments to Revenue Regulations No. 4-2019, as Amended, on Tax Amnesty on Delinquencies, June 19, 2020.

[155] *Id.*, SEC. 2. *Amendment to Section 3.* — Section 3 of RR No. 4-2019, as amended, is hereby further amended to read as follows:
"SECTION 3. COVERAGE. — Any person, ... may avail of Tax Amnesty on Delinquencies within one (1) year from the effectivity of these Regulations <u>or until December 31, 2020, ... However, the said date may be extended if the circumstances warrant an extension such as in case of country-wide economic or health reasons</u>." (*Underscoring on the original*)

[156] Further Amendments to Revenue Regulations No. 4-2019, as Amended, on Tax Amnesty on Delinquencies, December 17, 2020.

[157] *Id.*, SEC. 2. *Amendment to Section 3.* — Section 3 of RR No. 4-2019, as amended, is hereby further amended to read as follows:

Hence, when petitioners filed the Petition on December 14, 2020, the effectivity of the extended Tax Amnesty on Delinquencies was about to end on December 31, 2020.

In *Express Telecommunications Co., Inc., v. AZ Communications, Inc. (Express Telecommunications)*, [158] the Supreme Court explained when a case becomes moot, *viz.*:

> **A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use.** In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced. (*Emphasis supplied*)

In this case, the supervening issuance of RR No. 32-2020 finally extended the deadline for the availment of the Tax Amnesty on Delinquencies until *June 30, 2021*, and the subsequent expiration of the period has *mooted* the present case. Only Congress, in exercising its legislative powers, can extend or fix the effectivity date of the law. As the Supreme Court held, "[i]f the law is too narrow in scope, it is for the Legislature rather than the courts to expand it."[159]

It must be stressed that even if the Court disregards the belated filing of the Petition and grants petitioners' prayer, such would be of no practical use since the availment period of the Tax Amnesty on Delinquencies has already expired.

As held in *Express Telecommunications,* no actual substantial relief can be granted to petitioners as the judgment will serve no useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.

Apart from being *moot and academic*, the Petition also *lacks merit.*

"SECTION 3. COVERAGE. All persons, ... , may avail of Tax Amnesty on Delinquencies within one (1) year from the effectivity of these Regulations <u>or until June 30, 2021</u>, under any of the instances listed below. However, the said date may be extended if the circumstances warrant an extension such as in case of country-wide economic or health reason/s." (*Emphasis on the original*)

[158] G.R. No. 196902, July 13, 2020.

[159] *Lacson v. Roque*, G.R. No. L-6225, 92 Phil. 456, 464, January 10, 1953, citing *Cornejo v. Naval*, G.R. No. L-33648, 54 Phil. 809, 814, July 30, 1930.

<u>Petitioners failed to satisfy the essential requisites of a Petition for Mandamus.</u>

Petitioners pray that the Court *mandate* respondent to issue the subject CTDs and duly endorsed APFs in their favor to avail of the Tax Amnesty on Delinquencies under RA No. 11213.

Section 3, Rule 65 of the Revised Rules of Court provides:

> SEC. 3. *Petition for mandamus.* - **When any** tribunal, corporation, board, ***officer,*** **or** ***person*** **unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office**, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, **and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent**, immediately or at some other time to be specified by the court, **to do the act required to be done to protect the rights of the petitioner**, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
>
> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (*Emphases supplied*)

Accordingly, before a writ of mandamus may be issued, the following requisites must concur: (1) petitioner must show a clear legal right to the act demanded; (2) respondent must have the duty to perform the act because the same is mandated by law; (3) respondent unlawfully neglects the performance of the duty enjoined by law; (4) the act to be performed is ministerial, not discretionary; and (5) there is no other plain, speedy, and adequate remedy in the ordinary course of law.[160]

The Petition in this case is utterly devoid of merit. As discussed hereunder, the remedy of mandamus is improper.

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[160] *Philippine Statistics Authority (Formerly National Statistics Office) and Philippine Statistics Authority-Legazpi City v. Ferolino*, G.R. No. 238021, June 14, 2021; *Malingin v. Sandagan, et al.*, G.R. No. 240056, October 12, 2020; *Datu Malingin (Lemuel Talingting Y Simborio), et al., v. PO3 Sandagan, et al.*, G.R. No. 240056, October 12, 2020.

First: Petitioners should have proved a clear legal right to the issuance of the CTDs and duly endorsed APFs.

Petitioners insist that they have a legal right to be issued their respective CTDs and APFs because they are eligible to apply for tax amnesty under Section 17 (d)[161] of the TAA, *viz.*:

> SEC. 17. *Coverage.* - There is hereby authorized and granted a tax amnesty herein called the Tax Amnesty on Delinquencies, which shall cover all national internal revenue taxes such as, but not limited to, income tax, withholding tax, capital gains tax, donor's tax, value-added tax, other percentage taxes, excise tax and documentary stamp tax collected by the Bureau of Internal Revenue, including value-added tax and excise taxes collected by the Bureau of Customs for taxable year 2017 and prior years.
>
> For purposes of this Act, the Tax Amnesty on Delinquencies may be availed of in the following instances:
>
> (a) Delinquencies and assessments, which have become final and executory ...;
>
> ... ...
>
> (d) **Withholding tax agents who withheld taxes but failed to remit the same to the Bureau of Internal Revenue**. (*Emphasis supplied*)

Section 3 of RR No. 4-2019,[162] which implements the above provision of the TAA, states:

> SEC. 3. *Coverage.* — All persons, whether natural or juridical, with internal revenue tax liabilities covering Tax Code, as amended, may avail of Tax Amnesty on Delinquencies **within one (1) year from the effectivity of these Regulations**,[163] under any of the following instances:
>
> A. **Delinquent Accounts** as of the effectivity of these Regulations, including the following:
>
> 1. Delinquent Accounts with application for compromise settlement ...;

[161] Item 4, Statement of the Facts, Memorandum for Petitioners.
[162] SUBJECT: Implementing Rules and Regulations of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act," Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies, Revenue Regulations No. 04-19, April 5, 2019.
[163] RR No. 4-2019 was published on April 9, 2019, and took effect on April 24, 2019.

> 2. **Delinquent Withholding Tax liabilities arising from non-withholding of tax**; and
>
> ... ...
>
> D. **Withholding tax liabilities** of withholding agents **arising from their failure to remit withheld taxes**. (*Emphasis supplied*)

Further, Section 19 of the TAA provides the period for availing of the tax amnesty, *viz*:

> SEC. 19. *Availment of the Tax Amnesty on Delinquencies; When and Where to File and Pay.* - Any person, natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall, **within one (1) year from the effectivity of the Implementing Rules and Regulations of this Act**, file with the appropriate office of the Bureau of Internal Revenue, ..., a sworn Tax Amnesty on Delinquencies Return **accompanied by a Certification of Delinquency**. The payment of the amnesty tax shall be made at the time the Return is filed. (*Emphasis supplied*)

Whereas RMC No. 57-2019 clarifies the reckoning date, and defines who is qualified to avail of the tax amnesty, *viz.*:

> **Q1. Who are qualified to avail of the Tax Amnesty on Delinquencies?**
>
> **A1**. All persons, whether natural or juridical, with *delinquent* internal revenue tax liabilities covering taxable year 2017 and prior years, **on or before April 24, 2019**, may avail of Tax Amnesty on Delinquencies **within one year from the effectivity of *RR No. 4-2019*,** under any of the following instances:
>
> **A. Delinquent accounts:**
>
> 1. Delinquent Accounts, whether without or with application for compromise settlement, ...;
>
> 2. **Delinquent withholding tax liabilities** arising from non-withholding of tax; and
>
> ... ...
>
> **D. Withholding tax liabilities** of withholding agents arising from their failure to remit withheld taxes. (Section 3, RR No. 4-2019) *(Emphasis supplied).*

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Here, respondent argues that the law[164] demands that the tax liability be final and executory or delinquent at the time of its effectivity. Thus, since the IRR[165] took effect on April 24, 2019, the same should be the reckoning date of the finality or delinquency of the tax liability sought to be applied for amnesty.

Respondent further argues that the tax assessments against petitioners were not yet delinquent or have not yet attained finality as of April 24, 2019. Thus, they are not qualified to avail of the tax amnesty.

We agree with respondent.

To reiterate, petitioners anchor their entitlement to apply for a tax amnesty on Section 17 (d)[166] of the TAA relative to the tax liabilities of withholding tax agents who withheld taxes but failed to remit the same to the BIR.

Based on Section 17(d) of the TAA, as implemented by Section 3 of RR No. 4-2019, and clarified under Q1/A1 of RMC No. 57-2019, there are two (2) instances when the TAA may be availed of in case of withholding tax liabilities for the taxable year 2017 and prior years, to wit:

(1) *Delinquent* withholding tax liabilities arising from the *failure to withhold taxes* or *non-withholding of taxes*;[167] and

(2) Withholding tax liabilities arising from the *failure to remit withheld taxes* to the BIR.[168]

RMC No. 57-2019 explains that the *delinquent* withholding tax liabilities arising from the <u>failure to withhold</u> must be delinquent on or before *April 24, 2019.*[169] A *delinquent* account pertains to a tax due from a taxpayer arising from the audit of the BIR, which had been issued *Assessment Notices* that have become final and executory.[170]

[164] Referring to RA No. 11213 or the Tax Amnesty Act.
[165] Referring to RR No. 4-2019 that became effective on April 24, 2019.
[166] Item 4, Statement of the Facts, Memorandum for Petitioners.
[167] Q1/A1(A)(2), RMC No. 57-2019.
[168] Q1/A1(D), RMC No. 57-2019.
[169] Q1/A1, RMC No. 57-2019.
[170] Section 2 (A) of RR No. 4-2019 defines a *delinquent* account to mean as follows: ...
A. Delinquent Account - shall pertain to a tax due from a taxpayer arising from the audit of the Bureau of Internal Revenue (BIR) <u>which had been issued Assessment Notices that have become final and executory</u> due to the following instances:
1. Failure to pay the tax due on the prescribed due date provided in the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) and for which no valid Protest, whether a request for reconsideration or reinvestigation, has been filed within thirty (30) days from receipt thereof; ...
B. **Assessment Notice** – ...This term includes Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) and Final Decision on Disputed Assessment (FDDA).

However, the requirement that tax liabilities must be *delinquent* does not apply to withholding tax liabilities arising from the failure to remit withheld taxes which may be the subject of Tax Amnesty on Delinquencies at any stage/time of investigation as long as the amount is properly determined by the BIR.[171] Further, Tax Amnesty on Delinquencies can be availed of even if no *Assessment Notice* has become final and executory on or before *April 24, 2019*, if the tax liabilities pertain to unremitted tax withheld by withholding agents.[172]

A judicious review and study of petitioners' evidence submitted together with the instant Petition reveal that petitioners' deficiency withholding taxes were due to failure to withhold taxes or *non-withholding of taxes.*[173] Contrary to the averments in the Petition, none of the petitioners appear to be liable for failure to remit or *non-remittance* of withheld taxes.[174] To qualify for tax amnesty, petitioners withholding tax liabilities must be *delinquent* or have attained finality as of April 24, 2019. More importantly, petitioners must have been issued a Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) or Final Decision on Disputed Assessment (FDDA) that has become final and executory as of April 24, 2019.[175]

Here, out of twenty-two (22) petitioners, only six (6) have attached to the Petition a copy of the FAN/FLD or FDDA; eleven (11) claimed to have received only Notices of Informal Conference (NIC);[176] two (2) received letters from respondent in response to their request for penalty assessment or computation; two (2) did not receive any communication from respondent; and one (1) received a Preliminary Assessment Notice (PAN).[177]

The six (6) petitioners with Assessment Notices attached to the Petition are:

Petitioners	Notice Received	Date
We Lead Group Holdings, Inc.	FLD/FAN	October 25, 2019
Audio-Video Solutions Corporation	FLD	January 10, 2019

[171] Q7/A7, *id.*
[172] Q9/A9(2); Q8 A8, RMC No. 57-2019.
[173] Section 3 (A)(2) of RR No. 4-2019 and clarified under Q1/A1 A(2) of RMC No. 57-2019.
[174] Section 17 (d) of the TAA and Section 3 (D) of RR No. 4-2019.
[175] Section 2 (A), RR No. 4-2019.
[176] RMC No. 57-2019:
Q8/A8. The tax liabilities as informed during the informal conference are not yet considered delinquent and cannot be the subject of tax amnesty on delinquencies except when the tax liability pertains to unremitted withheld taxes.
[177] Par. 15, Petition for Review, Docket – Vol. 1, pp. 20-22.

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Alen V. Dragon Corp.	FLD	October 2, 2019
Icon Reefer Corp.	FLD	November 28, 2019
G2K Corp.	FDDA	March 25, 2020
Maxx Energie Ventures Corporation	FLD	January 12, 2016

Only petitioners Audio-Video Solutions Corporation and Maxx Energie Ventures Corporation have been issued FLDs before April 24, 2019. However, they failed to prove that the FLDs were unprotested and that their tax liabilities have become *delinquent* as of April 24, 2019. Neither did they provide proof that their protest to the FLDs, if any, had been withdrawn on or before April 24, 2019.[178]

Similarly, the tax liabilities of the other twenty (20) petitioners are not yet *delinquent*. The documents they attached to the Petition confirm that there is no final and executory assessment against any one of them as of April 24, 2019, that can qualify them for the tax amnesty.

Indeed, records reveal that respondent denied the issuance of the CTDs and the endorsement of the APFs because petitioners' tax liabilities have yet to become delinquent;[179] they were self-assessed tax liabilities for TYs 2018 and 2019, hence, not covered by the TAA;[180] they were not qualified under RMC No. 57-2019, particularly in Q26 and A26;[181] they were open stop-filer cases, hence, not covered under RR No. 4-2019; [182]

[178] RMC No. 57-2019:
Q22. Will the tax liabilities covered by a FAN which was timely protested yet withdrawn on or before April 24, 2019 be considered delinquent account qualified for tax amnesty?
A22. If the protest was withdrawn on or before April 24, 2019, the tax liabilities shall be considered delinquent from the date of lapse of the period to protest, as if there is no protest filed. The taxpayer shall be qualified to avail of the tax amnesty on delinquencies provided the delinquent accounts pertain to taxable year 2017 and prior years and the period to protest lapsed on or before April 24, 2019.
[179] Docket – Vol. I, pp. 586-588; pp. 593-600; pp. 604-605; pp. 607-608; p. 609; pp. 610-612; pp. 613-615; p. 616; p. 618; p. 619.
[180] *Id.*, pp. 590-592.
[181] Docket – Vol. I, pp. 594-595; pp. 598-599.
RMC No. 57-2019:
Q26. Under RR 4-2019, Preliminary Assessment Notice (PAN)/Notice for Informal Conference (NIC) or equivalent document is sufficient document of the taxpayer to support the tax liabilities pertaining to unremitted tax withheld. What are those equivalent document being referred to?
A26. Equivalent document can be any of the following, provided the same was issued on or before April 24, 2019, and the taxable period involved are 2017 and prior years:

a. Letter to the withholding agent demanding remittance of the amount not remitted based on the withholding tax returns filed;
b. Letter to the withholding agent demanding the remittance of tax withheld based on the Commission on Audit (COA) reports, for those subject to COA audit;
c. Preliminary Collection Letter demanding the payment of tax withheld declared per returns filed

[182] RMC No. 57-2019:
Q14. Are open stop-filer cases included in the amnesty?
A14. No, these are not covered under RR No. 4-2019.

they were only at the informal conference stage;[183] among others.

Presented below are the BIR notices or communications to petitioners and respondent's action to their request for CTD release and APF endorsement, *viz.*:

Petitioner	**BIR Action**
Reitoh Cold Storage Inc. **BIR Notice Received -** NIC dated March 13, 2019	Denial Letter dated August 9, 2019:[184] The deficiency expanded withholding tax was assessed due to failure to withhold. Assessment is not yet considered a delinquent account. Denial Letter dated September 17, 2019:[185] The assessment on deficiency withholding tax was due to non-withholding and not due to non-remittance. Hence, the assessment <u>has yet to become delinquent</u>. Further, only a NIC dated March 13, 2019, was issued and received by Reitoh.
We Lead Group Holdings Inc. **BIR Notice Received -** FLD and Assessment Notice dated October 25, 2019	Denial Letter dated December 27, 2019:[186] Not qualified to avail of the Tax Amnesty Program (RA No. 11213). Previous letters were sent informing We Lead that it may settle its tax liability through compromise settlement or abatement of penalties in accordance with the provisions of RR No. 30-2002. Denial Letter dated February 13, 2020:[187] Under RMC No. 57-2019, We Lead has unpaid self-assessed tax returns filed through EFPS for the taxable <u>years 2018 and 2019</u>. It is required to pay the total basic tax due, and penalties shall be imposed as stated in the NIRC of 1997. Denial Letter dated February 3, 2020:[188] Pursuant to Section 2A.1 of RR No. 4-2019, its delinquency tax for 2016 is not a delinquent account because it still has <u>a valid protest</u>. Even if no valid protest was submitted by it, the effectivity of RR No. 4-2019 was April 24, 2019. There is no delinquent account as of April 24, 2019, because the Formal Letter of Demand was issued only on October 25, 2019.
Elence Marine and Industrial Corporation **BIR Notice Received -**	None

[183] RMC No. 57-2019:
Q8. If the taxpayer is amenable to the deficiency tax resulting from the audit conducted pertaining to taxable year 2017 and prior years, as presented during the informal conference, can the tax liabilities be settled through availment of tax amnesty on delinquencies?
A8. The tax liabilities as informed during the informal conference are <u>not</u> yet considered delinquent and cannot be the subject of tax amnesty on delinquencies except when the tax liability pertains to unremitted withheld taxes.
[184] Annex P-210A, Petition for Review, Docket – Vol. I, pp. 587-588.
[185] Annex P-210, *id.*, p. 586.
[186] Annex P-211, *id.*, p. 589
[187] *Id.*, Annex P-212, pp. 590-591.
[188] *Id.*, Annex P-212A, p. 592.

Petitioner	BIR Action
Undated NIC	
MBPS Cabling Corporation **BIR Notice Received -** NIC dated January 7, 2020	Denial Letter dated July 28, 2020:[189] The assessment for EWT resulted from MBPS Cabling Corp.'s failure to withhold taxes on the payment of services, food, commissions, and professional fees. This is not a case of "withholding tax liabilities arising from failure to remit taxes withheld," as provided in Section 3(D) of RR No. 4-2019. Likewise, records of the Collection Division revealed that MBPS Cabling Corp. has no records of tax delinquency/deficiency/liability account. At the same time, verification with the Legal Division showed no criminal case for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the Tax Code, as amended, is pending against MBPS Cabling Corp., nor any final and executory judgment rendered by the courts against it. Denial Letters dated September 22, 2020[190] and October 16, 2020:[191] Absence of delinquent account, pending case, final and executory judgment, and equivalent document in case of unremitted tax withheld, as required under RR No. 4-2019.
Garuda Construction Corporation **BIR Notice Received -** PAN dated July 2, 2018	Denial Letter dated September 30, 2020:[192] There is no valid application and compliance for Tax Amnesty as subject taxes are not covered by the RA No. 11213.
BCP Dermatological Corporation **BIR Notice Received –** NIC dated December 26, 2019	Denial Letter dated August 3, 2020:[193] Subject withholding taxes are not covered by the TAA.
Audio-Video Solutions Corporation **BIR Notice Received –** FLD dated January 10, 2019	None
Dunamis Import-Export Philippines Incorporated **BIR Notice Received –** NIC dated March 9, 2020	Letter dated October 12, 2020:[194] Request for APF-Signature and demand to sign/follow up on tax amnesty request are forwarded to Legal Division of RR No. 7A-Quezon City

[189] *Id.*, Annex P-213, pp. 593-595; Annex P-214A, pp. 597-599.
[190] *Id.*, Annex P-214, p. 596.
[191] *Id.*, Annex P-214B, p. 600.
[192] *Id.*, Annex P-215, p. 603.
[193] *Id.*, Annex P-216, pp. 604-605, with missing pages and signature page.
[194] *Id.*, Annex P-217, p. 606.

Petitioner	**BIR Action**
Alen V. Dragon Corporation **BIR Notice Received –** FLD dated October 2, 2019	None
Medev Medical Devices Corporation **BIR Notice Received –** NIC dated May 31, 2019	Denial Letter dated December 5, 2019:[195] Medev's case is not a delinquent account that would fall under Section 17 (A) of RA No. 11213, nor is it covered by Section 17 (D) of the same law and reproduced under Section 3 (D) of RR No. 4-2019. Tax Amnesty can be availed only by those: (1) with delinquent internal revenue tax liabilities covering TY 2017 and prior years; and (2) the related assessment notices have become final and executory on or before 24 April 2019. In this case, there was no assessment notice yet that has become final and executory. As of June 7, 2019, the case is still under an Informal Conference. Further, the EWT liabilities arises from non-withholding of interest expense of Medev; thus, there is failure to withhold taxes on the said expense, and not failure to remit withheld taxes.
Chrysalis Construction and Trading Corporation **BIR Notice Received –** NIC dated July 19, 2018	Denial Letters dated October 7, 2019,[196] October 18, 2019[197] and October 22, 2019:[198] The subject assessment for taxable year 2016 issued against Chrysalis has not yet attained finality since the taxpayer was able to file timely protest/request for reinvestigation. Moreover, the said FAN was issued only after the effectivity of RR No. 4-2019. Finally, verification with the records of the Legal Division would show that there is no pending criminal case filed against Chrysalis/its responsible officers for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the Tax Code, as amended, nor any final and executory judgment rendered by the courts against the taxpayer.
Papisss Inc. **BIR Notice Received –** NIC dated May 24, 2019	None
Icon Reefer Corporation **BIR Notice Received –** FLD dated November 28, 2019	None
JRT Const. and Trading Corporation	None

[195] *Id.*, Annex P-218, pp. 607-608, with missing signature page.
[196] *Id.*, Annex P-219A, pp. 610-612; *id.*, Annex P-219C, p. 616.
[197] *Id.*, Annex P-219B, pp. 613-615.
[198] *Id.*, Annex P-219, p. 609.

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Petitioner	BIR Action
BIR Notice Received – NIC dated September 23, 2019	
DATALINK Solutions Technology and Consultancy Inc. **BIR Notice Received –** None	None
ABBE Technology Solutions Inc. **BIR Notice Received –** NIC dated October 11, 2019	Letter dated January 21, 2020:[199] Forwarded to the CIR for appropriate action.
Exequiel Balanlay Adora **BIR Notice Received –** Request for Lease Contract re: Penalty Assessment (undated)	Denial Letter dated December 11, 2019:[200] Penalties arising from the non-filing of returns/open cases, self-assessed taxes and electronic Filing and Payment cases are not included in the TAA[201]
KEN N RIE Transport, Inc. **BIR Notice Received –** None	None
R2B2 Realty & Development Corporation **BIR Notice Received –** Letter dated January 16, 2020 re: request for computation of penalty for unpaid fringe benefits taxes	Denial Letters dated June 2, 2020:[202] R2B2 failed to provide entitlement for the issuance of Notice of Issuance of Authority to Cancel Assessment (NIATCA) pursuant to Section 6 of RR No. 4-2019, in relation to III (1)E of RMO No. 33-2018; endorsed to the Legal Division for appropriate action Letter dated July 1, 2020:[203] Stop-filer cases are not covered under RR No. 4-2019 as they are not considered "delinquent accounts" for purposes of the implementation of RA No. 11213.
G2K Corporation **BIR Notice Received –** FDDA dated March 25, 2020	None
Maxx Energie Ventures Corporation **BIR Notice Received –**	None

[199] *Id.*, Annex P-220, p. 617.
[200] *Id.*, Annex P-221, p. 618, with missing pages and signature page.
[201] Petition for Review, no. 17, p. 36.
[202] Petition for Review, Annex P-222A, p. 620.
[203] *Id.*, Annex P-222, p. 619.

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Petitioner	**BIR Action**
FLD dated January 12, 2016	
Powersource Philippines, Inc. **BIR Notice Received –** NIC dated May 18, 2020	None

Clearly, petitioners have no legal right to the issuance of the CTDs and the endorsement of the APFs.

Second: Respondent has the duty to perform the act because the same is mandated by law.

Third: Petitioners failed to prove that respondent neglected to perform any ministerial duty.

Fourth: The issuance of CTDs, APFs, and NIATCAs is a discretionary function of respondent, not a ministerial one.

Petitioners claim that they are entitled to avail of the benefits of the TAA as respondent has the ministerial duty to issue in their favor the CTDs, APFs, and NIATCAs after they filed their TAR and APF, albeit without the required endorsement and paid the amnesty tax.

The Court disagrees.

A writ of mandamus cannot be availed of against an official or government agency whose duty requires the exercise of discretion or judgment.[204] A writ of mandamus will not issue either to compel officials to do something which is not their duty to do or which it is their duty not to do or <u>to give to the applicant anything to which he or she is *not* entitled by law</u>.[205]

Respondent's authority under the TAA includes determining who is qualified to avail of the tax amnesty under

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[204] *First Class Cadet Aldrin Jeff P. Cudia v. The Superintendent of the Philippine Military Academy*, G.R. No. 211362, February 24, 2015.
[205] *Uy Kiao Eng v. Nixon Lee*, G.R. No. 176831, January 15, 2010.

the TAA, which is a *discretionary* function and not merely a ministerial one.

A determination that requires a review of evidentiary matters and an application of the law and administrative guidelines is considered a *discretionary*, quasi-judicial function, demanding an exercise of independent judgment on the part of certain public officers.[206] Having ascertained from the factual circumstances of the case that petitioners' tax liabilities are not covered under the TAA and its implementing regulations, respondent cannot be compelled to introduce exceptions to the coverage of the TAA nor disregard its provisions.

Noteworthy is the case of *CIR v. Transfield Philippines, Inc.,*[207] wherein the Supreme Court explained the nature of a tax amnesty:

> A tax amnesty operates as a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It is an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. **A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty is akin to a tax exemption; thus, it must be construed strictly against the taxpayer and liberally in favor of the taxing authority.** *(Emphasis and underscoring supplied)*

Respondent is guided by the provisions of the TAA, its IRR as found in RR No. 4-2019 and RMC No. 57-2019, and other related issuances about tax amnesty in exercising its discretion and finally denying petitioners' request for the release of the CTDs and endorsed APFs.

Section 5(C) of RR No. 4-2019 provides the step-by-step procedures that taxpayers, like petitioners, must undertake in availing of the TAA, *viz.:*

> C. **PROCEDURES** – The taxpayer-applicant shall:
>
> Step 1. Secure the **Certificate of Delinquencies/Tax Liabilities** from the concerned BIR Office as specified below:

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[206] See *Lihaylihay v. The Treasurer of the Philippines Roberto C. Tan, et al.*, G.R. No. 192223, July 23, 2018.
[207] G.R. No. 211449, January 16, 2019.

> Step 2. Present the **duly accomplished TAR made under oath** and APF, together with the other required documents, to the concerned RDO/LTD/LTCED **for endorsement of the APF** and pay the tax amnesty amount with the AABs or RCOs, whichever is applicable, by presenting the RDO/LTD/LTCED-endorsed or approved APF:
>
> Step 3. Submit/file immediately to the RDO/LTD/LTCED where the taxpayer is registered, in triplicate copies, the **duly accomplished TAR, made under oath, together with the complete documentary requirements** and **proof of payment**, which in no case shall be beyond the one (1) year availment period. The taxpayer/applicant shall be furnished with a copy, stamped as received, of said TAR and APF.
>
> Availment of Tax Amnesty on Delinquencies shall be considered fully complied with **upon completion of the above enumerated steps within the one (1) year availment period**. *(Emphasis supplied)*

On the other hand, RMO No. 23-2019 outlines the basis for issuing the required CTD to the taxpayer.[208]

From the foregoing, a CTD showing taxpayers' tax delinquencies/liabilities based on the records[209] must *first* be secured from the concerned BIR office having custody or jurisdiction over the taxpayer. A CTD is issued upon determination and verification that the taxpayer's liabilities are delinquent and covered under the TAA. Only upon the issuance of a CTD may a taxpayer be assessed the tax liabilities as indicated above.[210]

The taxpayer shall then accomplish a sworn TAR and APF and present them, with the CTD, to the concerned RDO/LTD/LTCED for *endorsement*. The RDO/LTD/LTCED shall endorse the APF upon receipt of the CTD and sworn TAR, which shall then be presented for payment by the taxpayer with the applicable AABs or RCOs. The sworn TAR, endorsed APF, CTD, and proof of payment shall be submitted to the concerned RDO/LTD/LTCED for receiving.[211]

Here, petitioners avoided the first step in availing of the TAA. They failed to secure their respective CTDs and the duly endorsed APFs before paying the tax amnesty amount.

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[208] Policies, Guidelines and Procedures in the Processing of Applications for Tax Amnesty on Delinquencies Pursuant to Republic Act (RA) No. 11213 Otherwise Known as the "Tax Amnesty Act," May 8, 2019.
[209] Annex "C" of RR 4-2019; Annex "A" of RMO 23-2019.
[210] Part II, Items 1 and 2, RMO No. 23-2019.
[211] Part II, Items 3 to 6, RMO No. 23-2019.

Hence, contrary to petitioners' claim, they failed to comply with the TAA requirements and to qualify for the tax amnesty.

Given the exacting provisions of the TAA, the application for tax amnesty is not a readily demandable entitlement. Respondent acted pursuant to law and existing regulations when it denied petitioners' requests for CTDs, duly endorsed APFs, NIATCAs, and applications for tax amnesty. Absent proof that the rules and regulations are issued beyond respondent's authority or there is a conflict between the TAA and its IRR, respondent's duty has been deemed fulfilled.[212]

In the absence of a clear legal right on the part of petitioners and the corresponding ministerial duties required by law on respondent that they neglected to perform, a writ of mandamus, being an extraordinary remedy that requires a showing of extraordinary facts,[213] cannot be issued.

Fifth: Petitioners have other plain, speedy, and adequate remedies in the ordinary course of law.

Settled is the rule that the special civil action for certiorari, prohibition, or mandamus under Rule 65 of the Revised Rules of Court is available to an aggrieved party only when "there is no plain, speedy, and adequate remedy in the ordinary course of law." Otherwise, the petition will not prosper even if the alleged ground is grave abuse of discretion.[214]

The thrust of the requisite on exhaustion of administrative remedies is that the courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.[215] To this end, administrative agencies are afforded a chance to correct any previous error committed in their forum. Furthermore, reasons of law, comity, and convenience prevent the courts from entertaining cases proper for determination by administrative agencies.[216]

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[212] See *People v. Jolliffe*, G.R. No. L-9553, May 13, 1959.
[213] *Bordomeo, et al. v. Court of Appeals, et al.*, G.R. No. 161596, February 20, 2013; See *Lamb v. W.H. Phipps*, G.R. No. L-7806, July 12, 1912; *Garcia v. Sweeney*, G.R. No. 1693, February 5, 1904.
[214] *Bethel Realty and Development Corp. v. Housing and Land Use Regulatory Board, et al.*, G.R. No. 184482, July 4, 2012.
[215] *Ejera v. Merto, et al.*, G.R. No. 163109, January 22, 2014, citing *Universal Robina Corp. (Corn Division) v. Laguna Lake Development Authority*, G.R. No. 191427, May 30, 2011.
[216] *Gonzales v. Court of Appeals*, G.R. No. 106028, May 9, 2001.

In this case, petitioners should have exhausted all other available remedies. A motion or request for reconsideration is a plain, speedy, and adequate remedy in the ordinary course of law. An appeal to the Revenue Regional Director or the CIR is also an available remedy. Records show that the assailed letters were signed and sent to petitioners by the Revenue Officer,[217] RDOs, Assistant Regional Director,[218] and Regional Directors. Recourse to the Regional Director and the CIR, who have the authority to review the actions of their subordinates, is similarly available in this case.

Another remedy, as suggested in the letter dated December 27, 2019[219] to petitioner We Lead Group Holdings, Inc., signed by Regional Director Albino M. Galanza of RR7A-Quezon City, is compromise settlement or abatement of penalties under RR No. 30-2002.

In the case of *Lopez v. the City of Manila*,[220] the Supreme Court ruled that where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts, not only to allow the administrative agency to decide the matter by itself correctly but also to prevent unnecessary and premature recourse to courts.

Failure to exhaust administrative remedies provided by law, by weight of established jurisprudence, is fatal to one's cause of action.

Lest we forget, the law intends to allow the administrative agency to rectify the errors it may have lapsed into before resorting to the courts of justice can be had.

The procedural shortcut taken by petitioners finds no justification either in law or jurisprudence, and it is fatal to their Petition.

Accordingly, since petitioners have other plain, speedy, and adequate remedies in the ordinary course of law, the instant Petition for *Mandamus* is an incorrect remedy.

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[217] In the case of petitioner Exequiel Balanlay Adora, Docket – Vol. I, p. 163.
[218] In the case of petitioner Audio-Video Solutions Corporation, *id.*, pp. 120-125.
[219] *Id.*, p. 589.
[220] G.R. No. 127139, February 19, 1999.

Petitioners likewise failed to satisfy the essential requisites of a Petition for Certiorari.

Section 1, Rule 65 of the Revised Rules of Court, provides that:

> Section 1. *Petition for certiorari.* - When any tribunal, board or officer exercising judicial or quasi-judicial functions **has acted without or in excess of 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.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (la) (*Emphasis supplied*)

In essence, for a petition for *certiorari* to prosper, the following *essential* requisites[221] must concur:

1. The writ is directed against a tribunal, a board, or any officer exercising *judicial or quasi-judicial* functions;

2. Such tribunal, board, or officer has acted *without or in excess of jurisdiction, or with grave abuse of discretion* amounting to lack or excess of jurisdiction; and

3. There is *no appeal or any plain, speedy, and adequate remedy* in the ordinary course of law.

First: The issuance of the letters denying petitioners' requests for CTDs, APFs, or NIATCAs (denial letters) is <u>not</u> a judicial or quasi-judicial act of the respondent.

[221] *Alfredo Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, citing *Landbank of the Philippines v. Court of Appeals*, 456 Phil. 755; *Sanchez v. Court of Appeals*, 345 Phil. 155.

As part of the Executive Department of the government, the BIR is vested with powers to assess and collect taxes. To some extent, it also exercises quasi-judicial and subordinate legislative functions.

Respondent's quasi-judicial function is clear under Section 4 of the NIRC of 1997, as amended, to wit:

> Sec. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power **to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.**
>
> The power **to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner**, subject to the exclusive appellate jurisdiction of the **Court of Tax Appeals**. (*Emphasis supplied*)

Quasi-judicial or administrative adjudicatory power vests upon the administrative agency the authority to adjudicate the rights of persons before it. It involves the power to hear and determine questions of fact and, after such determination, to decide in accordance with the standards laid down by law issues that arise in the enforcement and administration thereof. In the performance of quasi-judicial and, of course, judicial acts, there must be a law that gives rise to some specific rights of persons or property from which the adverse claims are rooted, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the right of the contending parties.[222]

In the instant case, petitioners assert that the denial of their requests for the issuance of NIATCA after they filed their TARs and APFs and paid the amnesty taxes is a *decision of the CIR* arising under the NIRC and its related laws.[223]

The Court disagrees.

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[222] *The Department of Trade and Industry, et al., v. Danilo B. Enriquez*, G.R. No. 225301, June 02, 2020.
[223] Memorandum for Petitioners, paragraph 5, Docket – Vol. II, p. 798.

As indicated above, the denial letters did not come from the CIR, and they are not *decisions of the CIR* arising under the NIRC and its related laws. Thus, contrary to petitioners' claim, the denial of their requests for CTDs, APFs, and/or NIATCAs is neither a decision nor a quasi-judicial act of the CIR.

Second: Respondent did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when the subject denial letters were issued.

A Petition for *Certiorari* under Rule 65 is intended for the correction of errors of jurisdiction only or <u>grave abuse of discretion amounting to lack or excess of jurisdiction</u>.[224]

To successfully bring to court a Petition for *Certiorari*, petitioners must be able to allege in the pleading that respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of the questioned decision, resolution, or order. What constitutes *"grave abuse of discretion"* was discussed by the Supreme Court in the case of *Tan v. Spouses Antazo*,[225] to wit:

> ... it is well-settled that a petition for *certiorari* against a court which has jurisdiction over a case **<u>will prosper only</u> if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent <u>issuing the impugned order</u>**. Mere abuse of discretion is not enough; **it must be grave. <u>The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility</u>**. (*Emphasis and underscoring supplied*)

"Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; simply put, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or a virtual refusal

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[224] *People of the Philippines v. Court of Appeals*, G.R. No. 142051, 468 Phil. 1, 10, February 24, 2004.
[225] G.R. No. 187208, February 23, 2011.

either to perform the duty enjoined or to act at all in contemplation of law.[226]

The Revenue Officer, RDOs, Assistant Regional Director, and Regional Directors merely responded to petitioners' various requests when they signed and issued the subject denial letters.

A careful review of the letters shows that they are not the "judgment, order or resolution" that may be assailed and raised before this Court under Rule 65. They are regular communication or correspondence issued by BIR officials in reply to a taxpayer's request, as they must act promptly on letters and requests received from taxpayers.[227]

Moreover, petitioners did not allege the specific acts or omissions constituting grave abuse of discretion on the part of respondent BIR and the concerned officials in the issuance of the assailed letters. Petitioners merely state:[228]

> 10. The judicial power to determine whether or not there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Respondent reposed in the CTA is enshrined in the Constitution ...
>
> 11. Thus, "(a) petition for certiorari is proper where the impugned dispositions, as in this case, are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Nonetheless, even if there is such an allegation in the Petition, the Court concludes that no grave abuse of discretion amounting to lack or excess of jurisdiction can be attributed to respondent in holding that petitioners are not covered by the TAA and in issuing the denial letters.

As to the third requisite, We already ruled that petitioners have other plain, speedy, and adequate remedies in the ordinary course of law. Hence, We need to refrain from belaboring the same requisite again.

Clearly, a Petition for Certiorari is not a proper remedy.

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[226] *Cuison v. Court of Appeals*, 351 Phil. 1089, 1102 (1998); *Lalican v. Hon. Vergara*, 342 Phil. 485, 495 (1997); *Pure Foods Corp. v. National Labor Relations Commission*, G.R. No. 78591, March 21, 1989, 171 SCRA 415, 426; *Palma v. Q & S Inc.*, 123 Phil. 958, 960 (1966).
[227] Section 5, Republic Act No. 6713, February 20, 1989, "Code of Conduct and Ethical Standards for Public Officials and Employees."
[228] Memorandum for Petitioners, pars. 10 and 11, Docket – Vol. II, pp. 801-802.

<u>The Petition is marred with procedural or formal infirmities.</u>

At this juncture, it is also well to add that the Court noted *procedural or formal* infirmities in filing the Petition for *Mandamus or Certiorari* under Rule 65.

The assailed denial letters attached to the Petition are all photocopies.

The assailed denial letters attached to the Petition pertaining to eleven (11) petitioners are neither duplicate originals nor certified true copies, in violation of Section 1, Rule 65,[229] in relation to Section 3, Rule 46.[230]

The Petition lacks the proper Verification and Certification of Forum Shopping.

Petitioners failed to attach the original or certified true copies of their respective Secretary's Certificate, Board Resolution, and/or Special Power of Attorney.

While the Petition contains a sworn Verification and Certification of Non-Forum Shopping executed by Ms. Maureen Braza and Ms. Gina Mandigma, the alleged authorized representatives of petitioners, the proof of their authority to sign the Verification and Certification, *i.e.*, Special Power of

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[229] SEC. 1. Petition for *Certiorari*.— ...
The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.
[230] Section 3, Rule 46 provides:
SEC. 3. Contents and filing of petition; effect of noncompliance with requirements. —
... ...
...[The petition] shall be ...accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. ...
... ...
The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the <u>dismissal of the petition</u>. (*Emphasis supplied*)

Attorney,[231] Board Resolution,[232] and Secretary's Certificate,[233] are mere *photocopies.*

This casts doubt as to the validity of the representatives' authority to file this petition on behalf of petitioners.

In *Shipside Incorporated v. Court of Appeals, et al.*,[234] the Supreme Court stated specific rules regarding verification and certification against forum shopping, to wit:

> ..., the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition. Section 5, Rule 45 of the 1997 Rules of Civil Procedure provides that **the failure of the petitioner to submit the required documents that should accompany the petition, including the certification against forum shopping, shall be sufficient ground for the dismissal thereof. The same rule applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation.** (*Emphasis supplied*)

From the foregoing, when the certification against forum shopping is not accompanied by proof that the signatory thereof is authorized to file the petition on behalf of the corporation, the same is sufficient ground for the dismissal of the action.

Petitioners failed to join as respondents the officers who signed and issued the assailed denial letters.

Section 5, Rule 65 of the Revised Rules of Court reads:

> SEC. 5. *Respondents and costs in certain cases.* – **When the petition filed relates to the acts or omissions of a** judge, court, **quasi-judicial agency**, tribunal, corporation, board, ***officer* or *person*, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the *person* or *persons interested* in sustaining the proceedings in the court**; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings,

[231] *Supra*, note 4.
[232] *Supra*, note 6.
[233] *Supra*, notes 7-26.
[234] G.R. No. 143377, February 20, 2001.

> and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents. (*Emphasis supplied*)

From the foregoing, when the petition relates to the acts or omissions of a quasi-judicial agency, petitioners shall join, as private respondent or respondents with such public respondent or respondents, the *person* or *persons interested* in sustaining the proceedings in the court.

Petitioners merely impleaded the agency, the BIR, and not the responsible officials who issued and signed the assailed denial letters and whose alleged acts or omissions have caused petitioners to file this Petition.

In sum, there is an abundance of procedural and substantive reasons which are fatal to petitioners' case. The Supreme Court, in many instances, has exercised leniency in applying the rules to dismiss the petition based on mere technicalities. However, petitioners' numerous violations of the rules only show their conscious disregard for the procedure.

Nonetheless, even if the Court ignores petitioners' non-compliance with the above essential and formal requisites of the Petition for *Mandamus* or *Certiorari* under Rule 65 of the Revised Rules of Procedure, the Petition still fails for having been filed out-of-time and for being moot and academic.

WHEREFORE, finding the instant *Petition* to be without merit, aside from being time-barred and moot, the same is **DISMISSED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Second Division Acting Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice