REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

MACARIO LIM GAW, JR., *Petitioner,*	**CTA EB Crim Case No. 026** (CTA Crim. Case No. O-206 & O-207 and CTA Case No. 8503)
-versus-	Present: DEL ROSARIO, *P.J.,* CASTAÑEDA JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 22 2014

x- 11:25 a.m. - x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review filed pursuant to Section 4(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals and Rule 43 of the Rules of Court, seeking the reversal of the Resolutions of the First Division of this Court promulgated on 1 March 2013 and 24 June 2013, the first of which granted the respondent's Motion to Dismiss dated 22 January 2013 predicated on the petitioner's non-compliance with the jurisdictional and mandatory requirement of payment of docket fees, and the second of which denied the petitioner's Motion for Reconsideration.

THE PARTIES

Petitioner is an individual taxpayer, with address at 73 Castrillo St., Corinthian Gardens, Quezon City, and is the accused in Criminal Cases Nos. O-206 and O-207 and the petitioner in CTA Case No. 8503. He has been served with notices and processes through his counsel, Tan Acut Lopez & Pison, at the 23rd Floor, Philippine Stock Exchange Centre East Tower, Exchange Road, Ortigas Center, Pasig City.

Respondent is the duly-appointed Commissioner of Internal Revenue, which office is currently held by Kim Jacinto-Henares. She is vested with authority to, *inter alia*, make assessments as provided by law. Her principal office is at the 5th Floor, Bureau of Internal Revenue Bldg., Agham Road, Diliman, Quezon City. She is the respondent in CTA Case No. 8503.

THE FACTUAL AND PROCEDURAL ANTECEDENTS

In November 2007, petitioner acquired six (6) parcels of land in Parañaque City for a total amount of ₱1,957,422,000.00 from various vendors. From April to June 2008, he purchased four (4) more parcels of land, also in Parañaque City, for ₱2,161,761,500.00.

To finance the foregoing purchases, petitioner allegedly took put loans from Banco de Oro in the total amount of ₱4,753,059,560.00. This loan was taken under the ₱5.0-billion Short Term Loan Facility, a collateral-free window that finances working capital requirements with maturity dates ranging from nine (9) to sixty (60) days, as indicated in the promissory notes.

On 03 April 2008, petitioner entered into an Agreement to Sell with Aruze Corporation. The Agreement indicated that petitioner was then consolidating legal and beneficial title to twenty-three (23) parcels of land with an aggregate area of 30.5 hectares, all in Parañaque City, which was to be the site of the proposed Bagong Nayong Pilipino Manila Bay International City ("PAGCOR City," for brevity). At the fifth amendment of the Agreement, dated 10 July 2008, Azure assigned the Agreement to Eagle I Landholdings, Inc. Thereafter, as stipulated in the Agreement, petitioner executed ten (10) deeds of absolute sale covering the ten (10) properties acquired in 2007 and 2008, together with nine (9) other real estate transactions by various corporations in which he appeared as attorney-in-fact.

From the foregoing transactions, petitioner gained an income of ₱4,115,297,361.12 for the year 2008, but failed to reflect this income in his Income Tax Return for the year 2008. He instead sought to pay the Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) through the BIR's One-Time Transaction System (ONETT). Based on information and documents supplied by the petitioner where he classified the real properties he acquired as capital assets, ONETT computed the tax liability. Petitioner then paid the CGT, as computed by ONETT, and the corresponding Certificate Authorizing Registration (CAR) was issued.

On 25 August 2010, Letters of Authority authorized Revenue Officers accounting records for the taxable years 2008, 2009 and unverified prior years. The investigation revealed that for the year 2008, petitioner paid the following: (1) Income Tax, ₱342,123.66; (2) CGT, ₱9,111,801.69 and ₱418,746,021.11; and (3) the corresponding DST – but that he never paid Value Added Tax (VAT).

Finding discrepancies in the petitioner's tax incidents, the BIR officers filed a Joint Complaint Affidavit on 26 August 2010. Subsequently, on 19 April 2011, the Department of Justice filed two (2) Informations for violation of Section 255 of the National Internal Revenue Code (NIRC), as amended, docketed as Criminal Cases Nos. O-206 and O-207 with the First Division of the CTA.

The Information in Crim. Case No. O-206 alleged that petitioner failed to file his VAT Return for the taxable year 2008 and to pay the 12% VAT, in violation of Sec. 255 in relation to Sec. 114 of the NIRC, as amended: "on the sale of his real estate properties classified as ordinary assets in the gross amount of ₱8,419,621,441.12." The Information alleged that petitioner deliberately misclassified the sales of the ten (10) parcels of land in Parañaque City "as sales of capital assets when they are actually sales of ordinary assets," to the damage and prejudice of the Government in the amount of ₱1,010,354,572.93 "as basic VAT liability exclusive of penalties, surcharges and interests."

The Information in Crim. Case No. O-207 alleged that petitioner wilfully, unlawfully and feloniously failed to supply the correct and accurate information in his Income Tax Return for taxable year 2008 in violation of Sec. 255 in relation to Sec. 51 of the NIRC, as amended: "by making it appear under oath" that his income for that taxable year was "derived purely from compensation, [and] was only in the amount of P1,238,599.25, when, in truth and in fact, said accused had other income in the amount of P4,115,297,361.12" from the sales of the ten (10) parcels of land classified as ordinary assets, to the damage and prejudice of the Government in the amount of ₱1,316,860,155.56 "as basic income tax liability, exclusive of penalties, surcharges and interests."

These two (2) criminal cases were eventually consolidated. During their pendency, on 18 May 2012, respondent issued her Final Decision on Disputed Assessment (FDDA) No. 2012-0001 against the petitioner, requiring him to pay ₱7,016,541,855.80 "including 50% surcharge and 20% annual interest for late payment until fully paid pursuant to Sections 248 and 249 of the NIRC of 1997 in satisfaction of Income Taxes and Value-Added

Tax deficiencies for taxable years 2007 and 2008." The FDDA was served on petitioner's househelp on 22 May 2012.[1]

By Urgent Motion dated 29 May 2013 and filed on 30 May 2013, petitioner sought confirmation from the First Division that the civil action for recovery of civil liability for taxes and penalties was deemed instituted with the consolidated criminal cases. By Resolution dated 06 June 2012, such confirmation was given, and the First Division further ruled that petitioner was liable to pay the docket fees only upon a finding that he was liable for the deficiency tax assessment[2] subject of the FDDA.

On 19 June 2012, petitioner filed a "Petition for Review *Ad Cautelam* (with Motion for Consolidation with CTA Crim. Case Nos. O-206 and O-207)." This was docketed as Civil Case No. 8503. The motion for consolidation was granted by the Second Division on 17 August 2012, subject to the conformity of the First Division, which conformity was given on 07 December 2012.

On 03 January 2013, the First Division dismissed the two (2) criminal cases upon the granting of the Demurrer to Evidence filed on 18 September 2012 by the accused, finding the accused entitled to acquittal based on reasonable doubt.

On 1 March 2013, the First Division resolved to dismiss Civil Case No. 8503, for lack of jurisdiction for petitioner's failure to pay the docket fees.

Petitioner, on 18 March 2013, moved for the reconsideration of the Resolution dated 1 March 2013, but was denied by Resolution dated 24 June 2013. Thereupon, on 25 July 2013, petitioner filed the instant Petition for Review with the Court *En Banc*.

On 11 September 2013, this Court ordered the respondent to file her Comment, which was filed on 11 October 2013.

On 02 December 2013, the Court admitted the respondent's Comment and required the parties to submit their memoranda within a non-extendible period of thirty (30) days from receipt of its Resolution. The Court received petitioner's Memorandum on 17 January 2014, and that of the respondent on 23 January 2014. The petitioner averred that he received

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the Resolution on 18 December 2013; the respondent furnished no information as to the timeliness of the filing of its Memorandum.

On 12 February 2014, the Court *En Banc* deemed the case submitted for decision.

THE ISSUE

No appeal has been taken from the acquittal of the accused in Criminal Cases Nos. O-206 and O-207. Thus, the sole issue in this case, as framed by the petitioner, is whether or not the First Division erred in issuing the Resolutions dated 01 March 2013 and 24 June 2013, dismissing CTA Case No. 8503.

More specifically, the issue is this: whether or not the Petition for Review *Ad Cautelam* filed by petitioner on 19 June 2012 is in the nature of a civil action deemed instituted with the criminal action, and thus within the jurisdiction of the First Division despite the non-payment of docket fees. An affirmative answer would render erroneous the First Division's dismissal of the said petition on the ground of lack of jurisdiction.

THE APPLICABLE LAW AND RULES

Section 7(b)(1) of R.A. No. 9282, which the petitioner invokes to justify the non-payment of docket fees, provides:

> Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.

A careful reading of Section 7(b)(1) of R.A. No. 9282 would establish that the civil action deemed instituted with the criminal action is not just any civil action, but "the *corresponding* civil action for the recovery of civil liability for taxes and penalties." Clearly, what this provision contemplates is not a civil action by the taxpayer, but by the taxing authority on whose behalf a criminal action is filed.

This civil action is akin to, if not the same as, that covered by Section 220 of the NIRC, which states in part that no civil action *instituted in behalf of the Government* for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under the Code shall be filed in court without the approval of the Commissioner of Internal Revenue. Section 254 of the NIRC also states that in a criminal action for an attempt to evade or defeat tax, "the conviction or acquittal obtained under this Section shall not be a bar to the filing of a *civil suit for the collection of taxes.*"

Section 7(b)(1) of R.A. No. 9282 is reiterated by Section 11 of Rule 9 of the Revised Rules of the Court of Tax Appeals, *viz*:

> **SEC. 11.** *Inclusion of civil action in criminal action.* – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized. (Rules of Court, Rule 111, sec. 1[a], par. 1a)[3]

The respondent, on the other hand, contends that what should apply in resolving the issue is Section 3 of the 2005 Revised Rules of the Court of Tax Appeals (A.M. No. 05-11-07-CTA, 22 November 2005), which took effect on 15 December 2005, *viz*:

> "SEC. 3. *Payment of docket fees.* – <u>The Clerk of Court shall not receive a petition for review for filing unless the petitioner submits proof of payment of the docket fees</u>. Upon receipt of the petition or the complaint, it will be docketed and assigned a number, which shall be placed by the parties on all papers thereafter filed in the proceeding. The Clerk of Court will then issue the necessary summons to the respondent or defendant." *(RRCTA, Rule 5, sec. 3a; underscoring added, for emphasis)*

Section 3, Rule 42 of the Revised Rules of Court adds:

> "SEC. 3. *Effect of failure to comply with requirements.* – <u>The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees</u>, the deposit for costs, proof of service of the

petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof." (underscoring added, for emphasis)

DISCUSSION

What civil action was deemed instituted with the criminal actions in these cases? Obviously, and initially, *not* the Petition for Review *Ad Cautelam* (CTA Case No. 8503) against the Final Decision on Disputed Assessment, because the FDDA had not yet been issued by the respondent at the time the criminal actions were filed. FDDA No. 2012-0001 was issued by the respondent only on 18 May 2012, and received by the petitioner's house help on 22 May 2012, while the criminal actions were filed more than a year earlier, on 19 April 2011.

Thus, the First Division could have disallowed the consolidation of CTA Case No. 8503 with Criminal Cases Nos. O-206 and O-207. But in the proper exercise of its discretion, the First Division allowed the consolidation, and in its Resolution dated 06 June 2012 specifically deemed instituted "the civil action for recovery of the civil liabilities of the accused for taxable year 2008 stated in the Final Decision on Disputed Assessment (FDDA) dated May 18, 2012."

This did not, however, convert the petition in CTA Case No. 8503 against the FDDA into the civil action contemplated in Section 7(b)(1) of R.A. No. 9282, the very law being invoked by the petitioner. The latter action is, *by operation of law*, deemed *simultaneously* instituted with the criminal action with which it corresponds, while the former was allowed by the First Division, *as a matter of discretion*, to be actually (not just "deemed") and *belatedly* instituted, and consolidated, with the criminal cases pending before it.

The petitioner had thirty (30) days from receipt of the FDDA within which to appeal to the CTA, under Section 11 of R.A. No. 1125, as amended by Section 9 of R.A. 9282, and under Sec. 228 of the NIRC. The petitioner admitted that the FDDA was served on his house help on 22 May 2012.[4] Within the prescribed 30-day period to appeal, on 19 June 2012, petitioner filed his Petition for Review *Ad Cautelam*, which was docketed as Civil Case No. 8503.

Petitioner alleges that he was "placed in a legal quandary"[5] by the issuance and receipt of the FDDA. But that was because he construed the FDDA as "pertaining to the civil liability in the criminal case."[6]

Why the petitioner so construed the FDDA is beyond this Court. *First*, the two (2) criminal cases in these consolidated cases both pertain to tax liabilities for taxable year 2008 alone, while the FDDA covers tax liabilities for taxable years 2007 and 2008. *Second*, the FDDA pertains to *deficiency* income tax and VAT, while Criminal Case No. O-206 pertains to *basic* VAT liability and Criminal Case No. O-207 pertains to *basic* income tax liability. *Third*, the amounts of liability vary: in the FDDA, it is ₱7,016,541,855.80, while in Criminal Case No. O-206 it is ₱1,010,354,572.93, and in Criminal Case No. O-207 the amount is ₱1,316,860,155.56; adding the amounts in the two criminal cases, the total of ₱2,327,214,728.49 is still way below the amount sought to be collected under the FDDA. The petitioner did not bother to explain how the FDDA could have possibly pertained "to the civil liability in the criminal case."

Moreover, a criminal action for tax evasion or failure to file a required return may be instituted even without a tax assessment, under Section 222 of the NIRC of 1997 (R.A. No. 8424)[7], contrary to the posture of petitioner that the filing of the criminal charges against him ahead of a final decision on the deficiency assessment bespoke "arbitrariness."[8] After all, a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.[9] So how could the petitioner tenably conclude that the civil aspect of the criminal cases necessarily pertains to the FDDA and nothing else or nothing more?

It thus appears to this Court that the petitioner merely conjured a "legal quandary" as a pretext to wrangle confirmation from the First Division – and now from the *En Banc* – that in these criminal cases, "the civil action for the recovery of civil liability for taxes [was] already deemed instituted."[10]

The *corresponding* civil action for the recovery of civil liability for taxes and penalties was indeed deemed simultaneously instituted with the criminal actions, until the criminal actions were dismissed with the acquittal of the

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[5] Petition for Review, CTA EB Crim. Case No. 026, p. 2.
[6] Ibid.
[7] See *Lucas G. Adamson, et al. vs Court of Appeals and Liwayway Vinzons-Chato, in her capacity as Commissioner of the Bureau of Internal Revenue*, G.R. No. 120935, 21 May 2009.
[8] Petitioner's Memorandum in CTA EB Crim. No. 026 filed on 17 January 2014, p. 9.
[9] *Commissioner of Internal Revenue vs Pascor Realty and Development Corporation, et al.*, G.R. No. 128315, 29 June 1999, 309 SCRA 402. See also *Quirico P. Ungab vs Hon. Vicente N. Cusi, Jr., et al.*, G.R.

accused based on reasonable doubt. The First Division and this Court have no quarrel with this position, which is consistent with Section 7(b)(1) of R.A. No. 9282 and Section 11 of Rule 9 of the RRCTA. But that civil action was not the Petition for Review *Ad Cautelam* in CTA Case No. 8503, which was separately dismissed on a different ground, *i.e.*, lack of jurisdiction for non-payment of docket fees. The First Division, in its Resolution of 01 March 2013, properly drew the distinction between these two civil actions:

> "To reiterate, CTA Crim. Case Nos. O-206 and O-207 (which includes the civil action to recover the supposed civil liabilities, if any, from the accused therein) are separate and distinct from CTA Case No. 8503, although said criminal cases and civil case were subsequently consolidated. Definitely, the acquisition of jurisdiction by this Court over the said criminal actions did not automatically carry with it the acquisition of jurisdiction by the same Court over the said Petition for Review."

The First Division, in its Resolution of 01 March 2013, further explained why the petitioner's civil action against the FDDA was "not deemed instituted" in the two criminal cases: "it entails different procedural requirements mandated under Section 228 of the NIRC of 1997, in relation to Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282."[11]

Petitioner confused himself by construing the "civil action" mentioned in Section 7(b)(1) of R.A. No. 9282 *out of context.* Properly read, that civil action must *correspond* to or with the criminal action – which would exclude any other civil action. The civil action under Section 7(b)(1) of R.A. No. 9282 is necessarily one initiated and prosecuted by the People, for the recovery of civil liabilities *from* the accused -- rather than a civil action *by* the accused, against State. Conceivably, the accused can pray for civil remedies, through his Answer, by way of a counterclaim, and thus dispense with the need to file a separate civil action, but if his counterclaim is permissive it will be subject to the payment of legal fees,[12] the rule in permissive counterclaims being that "for the trial court to acquire jurisdiction, the counterclaimant is bound to pay the prescribed docket fees."[13]

But the petitioner, despite his averments of willingness to pay docket fees, was apparently more interested in being exempted from paying them. This was why he was so desperate to have his Petition for Review *Ad*

[11] First Division Resolution dated 01 March 2013, p. 11.
[12] See *Tiu Po, et al. vs Hon. Pedro JL Bautista, et al.*, G.R. No. L-55514, 17 March 1981.

Cautelam accepted as the civil case deemed instituted with Criminal Cases Nos. O-206 and O-207, which were filed by the government. He wanted a free ride, because the Republic of the Philippines and its agencies and instrumentalities are expressly exempted from paying the legal fees prescribed under Rule 141 of the Rules of Court, by virtue of Section 22 of Rule 141. However, his petition did not qualify as "the corresponding civil action for the recovery of civil liability for taxes and penalties" that is required, under Section 7 (b)(1) of R.A. No. 9282, to be "simultaneously instituted" with the two criminal cases. Moreover, there is no legal basis for exempting the petitioner, from payment of docket fees, for he is far from being an indigent litigant who is entitled to the exemption under Section 19 of Rule 141 and Section 21 of Rule 3 of the Rules of Court.

If indeed the petitioner believed that the civil action was already deemed instituted with the two criminal cases, as confirmed by the First Division through its Resolution dated 06 June 2012, then why did he still file a separate civil action (*i.e.*, the Petition for Review *Ad Cautelam*) on 19 June 2012 and seek its consolidation with the criminal cases? It is apparent that despite his feigned confusion, the petitioner knew that the civil action deemed instituted with the two criminal cases was limited in purpose to the recovery of the civil liability -- *from him, rather than by him* -- for taxes arising from the criminal actions, and could not extend to the freezing, invalidation or modification of the FDDA.

Petitioner's recourse of filing the Petition for Review *Ad Cautelam* was explained by him as, to quote, "a matter of extreme caution to prevent the FDDA from becoming final with respect to the 2008 assessment."[14] This is an admission that, indeed, his Petition for Review *Ad Cautelam* cannot be the civil action contemplated in Section 7(b)(1) of R.A. No. 9282. Otherwise, if his petition was no different from the government's civil action in the criminal cases, then his petition would be a surplusage.

It is crystal clear that the petitioner deliberately blurred the distinctions between, first, a civil action for the recovery of civil liability for taxes and penalties, corresponding to and deemed instituted with the criminal action under Section 7(b)(1) of R.A. No. 9282, without need for the payment of docket fees, and, second, a civil action by a taxpayer under Section 228 of the NIRC. By so mixing oil and water, he would want this Court to rule that the second type of civil action, which is his Petition for Review *Ad Cautelam* against the FDDA, should be deemed instituted with Criminal Cases Nos. O-206 and O-207 and thereby be exempted from the payment of docket fees. To buttress this formulation, he insists that these criminal cases cannot proceed without a tax assessment (*i.e.*, the FDDA) for their basis. He summed up his core arguments thus:

> "Regardless of whether the case was pursued by the State or petitioner, since the civil action is deemed instituted in the criminal case, the core issue pursued on the civil aspect shall still pertain to the right of the State to recover any of the alleged tax liabilities in the FDDA. It is a matter of record that petitioner complied with the procedural requirements when he filed the Petition for Review *Ad Cautelam* as a matter of extreme caution only to prevent the FDDA from becoming final and executory. That petitioner included in his Petition a motion to consolidate the civil action with Criminal Case Nos. O-206 and O-207, which motion was not opposed by respondent and was subsequently granted by the Court, only bolsters petitioner's position.[15]"

Unfortunately for the petitioner, the foregoing theory of the case finds no support in the law, the rules, or jurisprudence, as the disquisition up to this point has amply established.

The "legal quandary" conjured by the petitioner cannot be equated with that in *Alfonso T. Yuchengco vs. Republic, et al.*,[16] where the Supreme Court observed some ambiguity in the Sandiganbayan Law and its amendments, and lack of precision in the Revised Rules of the Sandiganbayan, as of 1988. In *Yuchengco*, the petitioner had promptly paid what the Sandiganbayan initially held to be the payable amount, but balked when the Sandiganbayan very belatedly increased the fees. In its resolution in *Yuchengco*, the Supreme Court remarked: In light of the nine (9)-year history of the case before the Sandiganbayan, it cannot be asserted that the proper amount of docket fees was clear and explicit from the start and that petitioner deliberately refused to pay the easily ascertained amount. Or that no uncertainty and doubt should be considered in favor of petitioner."

What was decisive for the petitioner in *Yuchengco* was the inexistence of "a clear and unambiguous rule", coupled with "the vacillating role of the Sandiganbayan," which led the high tribunal "to apply equitable considerations."

In the case at bar, there is no *Yuchengco*-type ambiguity in Section 7(b)(1) of R.A. No. 9282, as reiterated by Section 11 of Rule 9 of the 2005 RRCTA, in relation to Section 3 of the 2005 RRCTA, Section 3 of Rule 42 of the Rules of Court, and Rule 141 of the Rules of Court. The only ambiguities or doubts that visited this case were authored by the petitioner, by interpreting and mixing the laws and the rules in ways that border on the absurd.

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We turn now to the suggestion of Justice Erlinda Uy for the petitioner to avail of "appropriate remedies"[17] to prevent the FDDA from becoming final and executory. It was incumbent on the petitioner to determine for himself, with the aid of counsel, what remedy or remedies would be appropriate under the law. Section 9 of R.A. No. 9282 prescribes the filing of an appeal, in the form of a petition for review, with the CTA. This civil action is a *taxpayer's remedy*; this is not congruent with the corresponding civil action for the recovery of civil liability for taxes and penalties that is deemed instituted with the criminal action contemplated in Section 7(b)(1) of R.A. No. 9282, which remedy belongs not to the taxpayer but to the *taxing authority*.

Alternatively or additionally, what the petitioner could have done was to avail of Section 3, Rule 10, of the 2005 RRCTA:

> "**SEC. 3.** *When to file.* – The motion for the suspension of the collection of the tax may be filed together with the petition for review or with the answer, or in a separate motion filed by the interested party at any stage of the proceedings." *(RRCTA, Rule 12, Sec. 2)*

If the petitioner had availed of Section 3, Rule 10, of the 2005 RRCTA, however, he would have been required to file a bond:

> "**SEC. 6.** *Hearing of the motion.* – The movant shall, upon receipt of the opposition, set the motion for hearing at the next available motion day, and the Court shall give preference to the motion over all other cases, except criminal cases. At the hearing, both parties shall submit their respective evidence. If warranted, the Court may grant the motion if the movant shall deposit with the Court an amount in cash equal to the value of the property or goods under dispute or filing with the Court of an acceptable surety bond in an amount not more than double the disputed amount or value. However, for the sake of expediency, the Court, *motu proprio* or upon motion of the parties, may consolidate the hearing of the motion for the suspension of the collection of the tax with the hearing on the merits of the case." *(RRCTA, Rule 12, Sec. 5a)*

Given the amount involved in the FDDA -- ₱7,016,541,855.80 -- the bond, whether in cash or surety, would have been quite substantial, if not effectively prohibitive. This was apparently the reason why the petitioner, instead of filing a motion in the criminal cases to suspend the collection of the taxes subject of the supervening FDDA, sought a cheaper alternative, and took the "suggestion" to file a petition for review *ad cautelam*. This petition for review could indeed have been an appropriate remedy to forestall the FDDA from attaining finality, but only if the petitioner duly complied with the jurisdictional requirement of paying the docket fees in full within the period to file an appeal.

Petitioner did file, on 17 January 2013, an "Extremely Urgent Verified Motion for Suspension of Collection of Taxes (with Application for Waiver of Deposit or Bond Requirement)", but this was denied on 01 March 2013 when the First Division granted the respondent's "Motion to Dismiss" dated 22 January 2013. In any event, petitioner's "Extremely Urgent Verified Motion for Suspension of Collection of Taxes (with Application for Waiver of Deposit or Bond Requirement)" obviously could not have been granted, because the Court has no discretion to depart from the command of Sec. 6, Rule 10, of the 2005 RRCTA, that such motion may be granted only "if warranted" *and* "if the movant shall deposit with the Court an amount in cash equal to the value of the property or goods under dispute or filing with the Court of an acceptable surety bond in an amount not more than double the disputed amount or value."

Petitioner also faulted others for his non-payment of docket fees. He insinuated that because he was led to believe that his petition for review was a civil case deemed instituted with the criminal actions subject of these cases, he was no longer required to pay docket fees. He alleged that he "was led to believe in good faith that no filing fees were due."[18] But as the preceding disquisition has established, it was the petitioner himself who contrived to bring about the impression that his Petition for Review *Ad Cautelam* is the civil case that is deemed instituted with the criminal actions in these cases. It was he who led the First Division to believe that no docket fees were due.

No absolute exemption was given by the First Division that could have placed it in some form of estoppel. When Justice Erlinda Uy opined that petitioner shall be liable to pay the docket fees only upon a finding that he is liable for the deficiency tax assessment[19] subject of the FDDA, petitioner should have been put on guard, for such an opinion was not definitive, and cannot be construed as amendatory of the RRCTA and Rule 42 of the Rules of Court. Justice Uy herself clarified this, when she penned the First Division Resolution dated 01 March 2013:

> "Additionally, it must be emphasized that the statements made by the ponente during the hearing held on June 6, 2012 were notably not definitive pronouncements that can bind the

Court because of the words ***"it will all depend"***, and ***"suggestion"***, to wit:

> "JUSTICE UY:
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> However, if it is deemed instituted, **it will all depend** on the finding of this Court if there is civil liability, was there a misclassification. So, if indeed there is misclassification, they will need to pay the docket fees. So, **our suggestion**, file a Petition for Review Ad Cautelam so that the same will be file(d) within the thirty (30) day period and we will take note of that reservation to pay the docket fees should there be a refindings (*sic*) so that your right to come to this Court will not be taken away from you, it will not become final and executory."[20]

Next, petitioner imputes the fault to the Clerk of this Court. The petitioner cannot blame the Court or its Clerk for his non-payment of the docket fees.

The Computation Sheet (Annex "B") issued by the Clerk of Court in CTA Case No. 8503 -- which had the entry "Payment Exemption" under the column "Type of Fund," with the "Description Column" left blank -- carried a handwritten annotation, "*Per Resolution of the First Division dated June 6, 2012.*" The pertinent part of the dispositive portion of the Resolution dated 06 June 2012, however, made no mention whatsoever of any exemption –

> "As regards, accused's Urgent Motion (With Leave of Court for Confirmation that the Civil Action for Recovery of Civil Liability for Taxes and Penalties is Deemed Instituted in the Consolidated Criminal Cases)" filed on May 30, 2012, the same is hereby GRANTED. The civil action for recovery of the civil liabilities of accused for taxable year 2008 stated in the Final Decision on Disputed Assessment (FDDA) dated May 18, 2012 is DEEMED INSTITUTED with the instant consolidated criminal cases, without prejudice to the right of the accused to avail of whatever legal remedy he may have, to prevent said FDDA from becoming final and executory for taxable year 2008."[21]

It appears, then, that the Clerk of Court was beguiled, induced or instigated into adopting the petitioner's position of being exempt or exempted from the payment of docket fees. Having determined that the Resolution of the First Division dated June 6, 2012 in fact did not order or allow any exemption from docket fees, the said Computation Sheet cannot be given effect.

Petitioner further alleged willingness to pay the proper docket fees. Mere willingness, however, cannot substitute for actual and full payment of the proper docket fees, the amount of which the petitioner's counsel could have determined or at least approximated from the provisions of Rule 141 of the Rules of Court. Appellate docket and other lawful fees are required to be paid within the same period for taking an appeal,[22] without need for a court order. The rules prescribe the period for the payment of the docket fees precisely because the time of payment cannot be left to the petitioner's or appellant's willingness that is not time-bound. The consequence of emptily declaring willingness to pay, followed by actual failure to pay the correct docket fee with the period prescribed, must be borne by the petitioner alone. Thus, the First Division correctly dismissed the petition in CTA Case No. 8503 for failure of the petitioner to comply with the jurisdictional requirement.

Most instructive and *appropos* to the case at bar is the reminder of the Supreme Court *en banc* in *Re: Petition for Recognition of the Exemption of the Government Service Insurance System from Payment of Legal Fees*[23] --

> "Indeed, payment of legal (or docket) fees is a jurisdictional requirement. It is not simply the filing of the complaint or appropriate initiatory pleading but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject-matter or nature of the action. Appellate docket and other lawful fees are required to be paid within the same period for taking an appeal. Payment of docket fees in full within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory." *(citations omitted; underscoring added for emphasis)*

It is thus the ineluctable conclusion of this Court that the assailed resolutions of the First Division are consistent with the applicable laws and rules. Civil Case No. 8503 was validly dismissed, even after having been set for pre-trial, on the ground of the First Division's failure to acquire jurisdiction due to the petitioner's failure to pay the prescribed docket fees.

The failure to pay the docket fees produced the effect of not having filed the petition at all. And no appeal having been validly filed against it, the FDDA issued by the respondent attained finality against the petitioner.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**, for lack of merit. The Resolutions of the First Division of this Court promulgated on 01 March 2013 and 24 June 2013 are hereby **AFFIRMED**.

Costs against the petitioner.

SO ORDERED.

Ma. Belen S-L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice