REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

DACUDAO BROTHERS, INC., Represented by its President, ANTONIO G. DACUDAO,
Petitioner,

- versus -

COURT OF TAX APPEALS, 2nd DIVISION, BUREAU OF INTERNAL REVENUE REGION NO. 16, Represented by ESMERALDA M. TABULE, Regional Director
Respondents.

CTA EB No. 819
(CTA Case No. 8146)

Present:

DEL ROSARIO, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, *and*
COTANGCO-MANALASTAS,
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 30 2013 CwHpalisario 10:45 a.m.

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DECISION

UY, *J*.:

Before the Court *En Banc* is a Petition for Review filed on August 17, 2011, assailing the Resolutions dated April 28, 2011 and July 19, 2011 promulgated by the Second Division of this Court (or "Court in Division") in CTA Case No. 8146 entitled *"Dacudao Brothers, Inc., Represented by its President Antonio G. Dacudao, Petitioner, versus Bureau of Internal Revenue, Revenue Region No. 16, Represented by Esmeralda M. Tabule, Regional Director, Respondents."* The dispositive portions of the assailed Resolutions respectively read as follows:

Resolution dated April 28, 2011:

> "**WHEREFORE,** premises considered, petitioner's **Motion for Judgment on the Pleading** is hereby

DENIED for lack of merit. Let the pre-trial be set on June 9, 2011 at 1:30 p.m.

SO ORDERED."[1]

Resolution dated July 19, 2011:

"**WHEREFORE,** premises considered, petitioner's **'Motion for Reconsideration'** is hereby **DENIED** for lack of merit. As previously scheduled, the pre-trial is set on July 21, 2011 at 1:30 p.m.

SO ORDERED."[2]

Specifically, in the instant Petition for Review, petitioner prays that judgment be rendered in its favor as follows:

"***Upon Filing***

1.- Ordering the respondent Hon. Court of Tax Appeals to restrain for further hearing the case until the issues and matters set forth herein are finally resolved;

After Trial

2.- That the Injunction/TRO be made permanent;

On the Petition

3.- Declaring the Final Decision on Disputed Assessment dated May 07, 2010 as invalid/null and void;

4.- Granting all the reliefs prayed for in petitioner's Petition for Summary Judgment;

Such other just and equitable reliefs are prayed for."

THE FACTS

Petitioner Dacudao Brothers, Inc. is a family corporation with offices at Corrales Extension, Cagayan de Oro City, Philippines.[3]

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[1] Docket, pp. 15 to 22.
[2] Docket, pp. 38 to 39.
[3] Par. 4, Petition for Review, Division Docket (CTA Case No. 8146), p. 21.

Respondents consist of the Court in Division, and the Bureau of Internal Revenue (BIR), the government agency in charge of assessment and collection of revenues with offices at Agham Road, Diliman, Quezon City and/or Revenue Regional Office No. 16 at Cagayan de Oro City under Regional Director Esmeralda M. Tabule, with address at G/F BIR Building, Bulua, Cagayan de Oro City.[4]

On August 12, 2010, petitioner filed a *Petition for Review*[5] with the Court in Division, docketed as CTA Case No. 8146, seeking the declaration of nullity of the *Final Decision on Disputed Assessment* dated May 7, 2010 issued by the BIR Regional Director Esmeralda M. Tabule, Revenue Region No. 16 - Cagayan De Oro City, wherein petitioner was informed of the denial, for lack of factual basis, of its protest against the BIR's deficiency income and value-added tax assessments in the total amount of ₱ 1,295,184.95 for calendar year 2006. It appears that the said tax assessments sprung from the supposed undeclared rentals of petitioner, who in turn denies ownership over the leased property.

On September 22, 2010, respondent BIR filed her *Answer*,[6] interposing certain special and affirmative defenses.

Subsequently, the parties were notified by the Court in Division that the case is set for pre-trial conference on October 28, 2010 at 1:30 p.m., and were directed to file their respective Pre-Trial Brief.[7]

On October 8, 2010, petitioner filed, through registered mail, a *Request for Admission*,[8] which requested respondent BIR to admit the authenticity, genuineness and due execution of certain documents. Parenthetically, the Court in Division received the said Request for Admission only on October 15, 2010.

The Court in Division then issued the Resolution dated October 20, 2010,[9] which directed respondent BIR to file a sworn statement either denying specifically the matters which an admission is requested or setting forth in detail the reasons why those matters cannot be truthfully admitted or denied; otherwise, each of the

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[4] Par. 4.01, Petition for Review; and Par. 1, Answer; Division Docket (CTA Case No. 8146), pp. 21, and 81 to 82.
[5] Division Docket (CTA Case No. 8146) pp. 20 to 38.
[6] Division Docket (CTA Case No. 8146), pp. 81 to 94.
[7] Division Docket (CTA Case No. 8146), p. 96.
[8] Division Docket (CTA Case No. 8146), pp. 114 to 118.
[9] Division Docket (CTA Case No. 8146), p. 119.

matters of which an admission is requested shall be deemed admitted. In the meantime, respondent BIR filed its *Pre-Trial Brief*[10] on October 7, 2011.

At the hearing held on October 28, 2010, upon motion of respondent BIR's counsel, on the ground that they have not yet received the copy of petitioner's *Request of Admission*, the Court in Division ordered petitioner to furnish respondent BIR with the said copy. Respondent was then granted fifteen (15) days from said date or until November 12, 2010 to file a comment thereto. And upon motion of petitioner's counsels, petitioner was granted ten (10) days from receipt of the comment to file a reply to said comment. By agreement of the parties, the pre-trial conference was reset on December 9, 2010.[11]

On October 29, 2010, the Court in Division received petitioner's *Pre-Trial Brief*.[12] The latter was filed by petitioner, through registered mail, on October 20, 2010.

On November 18, 2010, respondent BIR filed a *Motion to Admit Attached Objections/Opposition Re: Request for Admission.*[13]

In the Resolution dated November 22, 2010,[14] the Court in Division ordered petitioner to file a comment on the said *Motion to Admit*. Parenthetically, the records are bereft of any indication that petitioner filed said comment.

At the hearing held on December 9, 2010, counsels for both parties failed to stipulate as to the ownership of the subject property and with regard to the Declaration of Real Property under Tax Declaration No. 3-078753. Counsel for petitioner manifested that petitioner would file a Motion for Judgment on the Pleadings or any appropriate motion. The Court in Division then gave petitioner's counsels until January 18, 2011 to file the same, and counsels for respondent BIR, a fifteen-day period from receipt of the petitioner's motion, within which to file their comment thereto.[15]

[10] Division Docket (CTA Case No. 8146) pp. 98 to 104.
[11] Minute Resolution, Division Docket (CTA Case No. 8146), p. 125.
[12] Division Docket (CTA Case No. 8146), pp. 126 to 132.
[13] Division Docket (CTA Case No. 8146), pp. 134 to 148.
[14] Division Docket (CTA Case No. 8146), p. 150.
[15] Division Docket (CTA Case No. 8146), pp. 152 to 153.

On January 12, 2011, petitioner filed, through registered mail, its *Motion for Judgment on the Pleadings.*[16] Subsequently, on February 11, 2011, respondent BIR filed a *Motion to Admit Attached Comment/Opposition Re: Motion for Judgment on the Pleadings.*[17] It was then followed by the filing by petitioner, on March 14, 2011, of its *Motion to Admit Herein Counter-Comment To the Motion to Admit Attached Comment/Opposition Re: Motion for Judgment on the Pleadings.*[18]

On April 28, 2011, the Court in Division issued the Resolution,[19] granting respondent BIR's *Motion to Admit Attached Objections/Oppositions Re: Request of Admission* and *Motion to Admit Attached Comment/Opposition Re: Motion for Judgment on the Pleadings*, and petitioner's *Motion to Admit Herein Counter-Comment To the Motion to Admit Attached Comment/Opposition Re: Motion for Judgment on the Pleadings*, and admitting the Comments/Oppositions respectively attached to the said Motions. In the same Resolution, the Court in Division denied petitioner's *Motion for Judgment on the Pleadings*, upon the ground that *"there are no admissions by respondent to make a judgment on the pleadings proper."* Accordingly, the Court in Division set the pre-trial on June 9, 2011 at 1:30 p.m. Counsels for both parties, however, failed to appear on the said date. Thus, the pre-trial was reset to July 21, 2011 at 1:30 p.m.[20]

On June 21, 2011, the Court in Division received petitioner's *Urgent Motion to Postpone/ Defer Pre-Trial*[21] (set on June 9, 2011) and *Verified Motion for Reconsideration*[22] of the Resolution dated April 28, 2011. The said Motions were filed, through registered mail, on June 2, 2011.

The Court in Division issued a Resolution dated June 23, 2011,[23] ordering respondent BIR to comment on said *Urgent Motion* and *Verified Motion for Reconsideration.*

On July 8, 2011, respondent BIR filed its Comment,[24] but only

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[16] Division Docket (CTA Case No. 8146), pp. 156 to 166.
[17] Division Docket (CTA Case No. 8146), pp. 177 to 189.
[18] Division Docket (CTA Case No. 8146), pp. 191 to 197.
[19] Division Docket (CTA Case No. 8146), pp. 169 to 176.
[20] Minutes of the hearing held on June 9, 2011, Division Docket (CTA Case No. 8146), p. 199.
[21] Division Docket (CTA Case No. 8146), pp. 200 to 202.
[22] Division Docket (CTA Case No. 8146), 205 to 212.
[23] Division Docket (CTA Case No. 8146), p. 216.
[24] Division Docket (CTA Case No. 8146), pp. 217 to 221.

with respect to petitioner's *Verified Motion for Reconsideration*. Nonetheless, it was prayed that the same be denied for lack of merit.

Thereafter, on July 19, 2011, the Court in Division, in the assailed Resolution dated July 19, 2011,[25] resolved the two (2) Motions. It decreed that the resetting of the pre-trial to July 21, 2011 at 1:30 p.m. has rendered the resolution of petitioner's *Urgent Motion to Postpone/ Defer Pre-Trial* moot. However, it denied petitioner's *Motion for Reconsideration* for lack of merit. In the same Resolution, the Court in Division reiterated the schedule of the pre-trial, *i.e.*, on July 21, 2011 at 1:30 p.m.

On July 18, 2011, petitioner filed, through registered mail, a *Motion to Defer Pre-Trial*.[26] Thus, during the hearing held on July 21, 2011, the pre-trial conference was further reset to September 15, 2011 at 1:30 p.m.[27] However on August 9, 2011, respondent BIR filed a *Motion to Reset Hearing,*[28] which the Court in Division granted in its Order dated August 15, 2011.[29] Correspondingly, the Pre-Trial Conference was further reset to September 29, 2011 at 1:30 p.m.

Subsequently, petitioner filed, through registered mail, on August 17, 2011, the instant Petition for Review before the Court *En Banc*, seeking a review of the Resolution dated April 28, 2011 issued by the Court in Division, denying petitioner's *Motion for Judgment on the Pleadings*; and the Resolution dated July 19, 2011, denying petitioner's *Motion for Reconsideration*.

During the pre-trial conference held on September 29, 2011, only counsel for respondent BIR appeared while petitioner filed, through registered mail, on September 12, 2011 with the Court in Division, a *Motion to Hold in Abeyance Pre-Trial*.[30] In said motion, petitioner alleges that it filed a Petition for Certiorari by mail with the Court of Tax Appeals *En Banc* seeking a review of the Resolution of the Court in Division dated April 28, 2011 denying its Motion for Judgment on the Pleadings, as well as the Resolution dated July 19, 2011, also of the Court in Division, denying its Motion for Reconsideration.

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[25] Division Docket (CTA Case No. 8146), pp. 225 to 226.
[26] Division Docket (CTA Case No. 8146), pp. 238 to 241.
[27] Minute Resolution dated July 21, 2011, Division Docket (CTA Case No. 8146), p. 235.
[28] Division Docket (CTA Case No. 8146), pp. 249 to 253.
[29] Division Docket (CTA Case No. 8146), p. 255.
[30] Division Docket (CTA Case No. 8146), pp. 299 to 301.

Thus, respondent's counsel manifested before the Court in Division that she will file a Comment on the said *Motion to Hold in Abeyance Pre-Trial*, and a Motion to Dismiss.[31]

On October 10, 2011, respondent BIR filed, before the Court in Division, a *Motion to Dismiss*,[32] allegedly for failure to prosecute due to the inexcusable failure of petitioner to appear at the pre-trial conference. Consequently, petitioner filed its *Opposition/Comment (To the Respondent's Motion to Dismiss)*[33] and *Additional Grounds/Arguments*[34] on November 11, 2011 and November 21, 2011, respectively.

In the Resolution dated December 12, 2011, the Court in Division[35] held that petitioner's *Motion to Hold in Abeyance Pre-Trial* is considered moot and academic considering that the scheduled hearing on September 29, 2011 for the supposed pre-trial conference had already transpired. However, as regards respondent BIR's *Motion to Dismiss*, the Court in Division held in abeyance the resolution of the same during the pendency of the instant Petition (for Certiorari) before the Court *En Banc*, pursuant to the doctrine of judicial courtesy.

As regards the instant Petition, the Court *En Banc* ordered respondent BIR to file comment, within ten (10) days from receipt of the Resolution dated April 16, 2012.[36] It appears however that respondent BIR filed two (2) motions for extensions of time to file the required comment. The first *Motion for Extension of Time to File Comment*[37]" was filed on May 3, 2012 praying for an additional period of ten (10) days to file comment which was granted by the Court *En Banc* in the Resolution dated May 7, 2012.[38] The second *Motion for Extension of Time to File Comment*[39] was filed on May 14, 2012 wherein the Court *En Banc* granted respondent BIR a fresh period of ten (10) days or until May 23, 2012 to file the required Comment with the warning that no further extension shall be entertained.[40]

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[31] Minutes of the hearing held on September 29, 2011, Division Docket (CTA Case No. 8146), p. 298.
[32] Division Docket (CTA Case No. 8146), pp. 308 to 314.
[33] Division Docket (CTA Case No. 8146), pp. 316 to 318.
[34] Division Docket (CTA Case No. 8146), pp. 326 to 328.
[35] Division Docket (CTA Case No. 8146), pp. 331 to 334.
[36] Docket, pp. 55 to 56.
[37] Docket, pp. 57 to 61.
[38] Docket, p. 63.
[39] Docket, pp. 64 to 67.
[40] Resolution dated May 22, 2012, Docket, pp. 70 to 71.

On May 23, 2012, respondent BIR filed a *Motion to Admit Attached Comment (RE: Petition for Review dated August 16, 2011)*[41] along with her *Comment (RE: Petition for Review dated August 16, 2011).*[42]

In the Resolution dated June 18, 2012,[43] the Court *En Banc* admitted said *Comment*, and resolved to give due course to the instant Petition for Review and ordered both parties to file their respective Memoranda, within thirty (30) days from notice of said Resolution.

On August 6, 2012, respondent BIR filed a *Manifestation*,[44] indicating that it is adopting the *Comment (RE: Petition for Review dated August 16, 2011)*[45] filed before the Court *En Banc*. On September 5, 2012, petitioner filed its *Memoranda (For the Petitioner).*[46] Thus, this case was deemed submitted for decision in the Resolution dated October 3, 2012.

Hence, this Decision.

THE ISSUES

Based on the Assignment of Errors raised by petitioner in its Memorandum, these are the issues submitted for the Court *En Banc*'s resolution, to wit:

> ***"Whether the Court of Tax Appeals, 2nd Division committed grave abuse of discretion amounting to lack of jurisdiction when it ordered the denial of petitioner's motion for judgment on the pleadings;***
>
> ***Whether respondent BIR's 'Final Decision on Disputed Assessment' dated 07 May 2010 is null and void for lack of the essential requisites of a valid Decision and therefore violative of Due Process;***

[41] Docket, pp. 72 to 79.
[42] Docket, pp. 80 to 93.
[43] Docket, pp. 96 to 97.
[44] Docket, pp. 108 to 110.
[45] Docket, pp. 80 to 93.
[46] Docket, pp. 120 to 132.

Whether the Hon. Court of Tax Appeals En Banc has jurisdiction to hear, entertain and decide the instant petition for certiorari."[47]

Petitioner's arguments:

Petitioner argues that respondent BIR's *Final Decision on Disputed Assessment* is null and void for being violative of due process clause of the constitution, as it failed to include therein the elements of a valid decision, such as the specific provisions of law and jurisprudence to support its findings.

Allegedly, the instant Petition for *certiorari* is the recognized legal remedy availed by petitioner in the exercise of his right to due process and that it should not be considered as a resort to technicalities, much less to delay this case as it is allegedly clear that the infirmity and validity of said Final Decision is found on the face thereof.

Furthermore, according to petitioner, the Court *En Banc* has jurisdiction to hear and entertain petitions for *certiorari* provided that it involves or concerns taxes.

Lastly, petitioner points out that in the *Answer*, respondent BIR had judicially admitted the alleged defective and invalid *Final Decision on Disputed Assessment*, and that said admissions are admissible against respondent BIR without need of further proof. Consequently, petitioner's motion for judgment on the pleadings is most proper. Such being the case, respondent Court in Division allegedly committed grave abuse of discretion amounting to lack of jurisdiction when it denied said motion.

Respondent's counter-arguments:

Respondent BIR contends that the denial of petitioner's *Motion for Judgment on the Pleadings* and *Motion for Reconsideration,* were interlocutory orders which are not the proper subject of an appeal or a petition for *certiorari* as it does not touch on the merits of the case or put an end to the proceedings, and should not be the subject of an appeal.

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[47] Memoranda (For Petitioner), Docket, pp. 123 to 124.

In addition, respondent BIR asserts that the Court in Division did not commit grave abuse of discretion in denying petitioner's *Motion for Judgment on the Pleadings* because a writ of *certiorari* is not intended to correct every controversial interlocutory ruling, it is resorted only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction.

Finally, according to respondent BIR, assuming but without conceding that the Court in Division committed grave abuse of discretion amounting to lack or excess of jurisdiction, still the Court *En Banc* has no jurisdiction over special civil actions for *certiorari* under Rule 65 of the Rules of Court. Thus, the Court *En Banc,* being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.

THE COURT *EN BANC*'S RULING

We find no merit in the instant Petition for Review on Certiorari

***The Court of Tax Appeals is without jurisdiction to take cognizance of petitions for* certiorari**

As held in the case of Soller v. Sandiganbayan, the rule is that in order to ascertain whether a court has jurisdiction or not, the provisions of the law should be inquired into.[48] In this connection, We look into pertinent provisions of the law creating the Court of Tax Appeals, Republic Act No. (RA) 1125,[49] as amended by RA 9282.[50]

The jurisdiction of the Court of Tax Appeals is specifically provided in the following provisions of said law, to wit:

"Sec. 7. *Jurisdiction.* – The CTA shall exercise:

[48] *Soller, et al. vs. Sandiganbayan, et al.,* G.R. Nos. 144261-62, May 9, 2001.
[49] AN ACT CREATING THE COURT OF TAX APPEALS.
[50] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

(a) Exclusive **appellate jurisdiction** to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in them in the exercise of their original or appellate jurisdiction;

(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money, charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

(5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

(6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review, from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

(7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Sections 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive **original jurisdiction** over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: *Provided, however*, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. 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.

(2) Exclusive **appellate jurisdiction** in criminal offenses:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respective territorial jurisdiction.

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(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

(c) Jurisdiction over tax collection cases as herein provided:

(1) Exclusive **original jurisdiction** in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: *Provided, however*, That collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.

(2) Exclusive **appellate jurisdiction** in tax collection cases:

(a) Over appeals from the judgments, resolution or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.

(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, in their respective jurisdiction." *(Emphases supplied)*

As regards the mode of appeal before this Court, the same law provides as follows:

"Sec. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of

Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. **A Division of the CTA shall hear the appeal**: *Provided, however,* That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction **appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.**

All other case involving rulings, orders or decisions filed with the CTA as provided for in Section 7 shall be raffled to its Divisions. **A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration or new trial before the same Division of the CTA within fifteen (15) days from notice thereof**: *Provided, however*, That in criminal cases, the general rule applicable in regular Courts on matters of prosecution and appeal shall likewise apply.

xxx xxx xxx." *(Emphases supplied)*

"Sec. 18. ***Appeal to the Court of Tax Appeals En Banc.*** – No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration

> **or new trial, may file a petition for review with the CTA *en banc*.**" *(Emphases and Underscoring supplied)*

Clearly from the above-quoted provisions, there is no mention about the jurisdiction of the CTA *En Banc* to hear and entertain petitions for certiorari under a procedure analogous to that provided for under Rule 65 of the 1997 Rules of Civil Procedure, even when these involve or concern taxes.

Considering that the CTA is a court of limited jurisdiction, its jurisdiction to take cognizance of a case should be clearly conferred and should not be deemed to exist on mere implication.[51]

In arguing that the Court *En Banc* has original exclusive jurisdiction to entertain the instant Petition for Certiorari as it allegedly involves the collection of taxes, petitioner points to Sections 1 and 2 [sub-paragraphs (a) and (d)], Rule 4 of the Revised Rules of the Court of Tax Appeals, to wit:

> "RULE 4
> JURISDICTION OF THE COURT
>
> SECTION 1. *Jurisdiction of the Court.*— The Court shall exercise exclusive original jurisdiction over or appellate jurisdiction to review by appeal the cases specified in Republic Act No. 1125, Section 7 as amended by Republic Act No. 9282, Section 7.
>
> SEC. 2. *Cases within the jurisdiction of the Court en banc.*— The Court *en banc* shall exercise **exclusive appellate jurisdiction to review by appeal** the following:
>
> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
>
> xxx xxx xxx
>
> (d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division **in the exercise of its exclusive original jurisdiction over tax collection cases**;" *(Emphases supplied)*

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[51] *Southern Cross Cement Corporation v. Philippine Cement Manufacturers Corp et. al.*, G.R. No. 158540, July 8, 2004.

Apparently, petitioner misread or misunderstood the foregoing provisions.

As can be gleaned from the above-quoted Section 2, the jurisdiction of the Court *En Banc* is merely appellate. Apropos, jurisprudence tells Us that appellate jurisdiction is only a continuation of the exercise of the same judicial power which has been executed in the court of original jurisdiction.[52]

This is not so in the case of a petition for *certiorari.*

Over a *certiorari*, the higher court uses its **original jurisdiction** in accordance with its power of control and supervision over the proceedings of lower courts.[53] A petition for *certiorari* is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of.[54]

And while Section 7 of RA 1125, as amended by RA 9282, enumerates certain cases over which this Court may exercise original jurisdiction, a petition for *certiorari* is not one of them.

It must be emphasized that certiorari is a remedy narrow in its scope and inflexible in its character. It is not a general utility tool in the legal workshop.[55]

Such being the case, the statute creating the CTA, does not extend to it the power to hear and decide petitions for *certiorari.* Thus, the Court *En Banc* hereby rules that it has no jurisdiction to hear and entertain the present Petition.

There was no grave abuse of discretion on the part of the Court in Division in denying petitioner's Motion for Judgment on the Pleading.

Even granting for the sake of argument that the Court *En Banc* has the power to hear and decide *certiorari* cases, still We find that the Court in Division did not commit any grave abuse of discretion.

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[52] *Agustin vs. Bacalan, et al.*, G.R. No. L-46000, March 18, 1985.
[53] *Spouses Ruben and Myrna Leynes vs. Former Tenth Division of the Court of Appeals, et al.*, G.R. No. 154462, January 19, 2011.
[54] Id.
[55] *Silverio vs. Court of Appeals, et al.*, G.R. No. L-39861, March 17, 1986.

Petitioner claims that in the *Answer* of respondent BIR in CTA Case No. 8146, the latter had judicially admitted the defective and invalid Final Decision, and thus, such admission are admissible against respondent BIR without need of further proof. Petitioner thus argues that its Motion for Judgment on the Pleadings is most proper so that the Court in Division allegedly committed grave abuse of discretion amounting to lack of jurisdiction when it denied said Motion.

We disagree.

In several pronouncements of the Supreme Court, an act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same is performed in a capricious or whimsical exercise of judgment, which is equivalent to lack of jurisdiction.[56] Mere abuse of discretion is not enough. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[57] Failure on the part of the petitioner to show grave abuse of discretion will result in the dismissal of the petition.[58]

In the instant case, the Court *En Banc* sees no grave abuse of discretion, gross or otherwise, when the Court in Division denied petitioner's *Motion for Judgment on the Pleadings.*

Section 1, Rule 34 of the 1997 Rules of Procedure provides:

> "RULE 34
> JUDGMENT ON THE PLEADINGS
>
> SECTION 1. *Judgment on the pleadings.*— **Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading.** However, in actions for declaration of nullity or annulment of marriage or for

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[56] *Beluso v. Commission on Elections*, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456-457; citing *De Vera v. De Vera*, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 514-15; *Fajardo v. Court of Appeals*, G.R. No. 157707, October 29, 2008, 570 SCRA 156, 163.

[57] JOSE Y. FERIA & MARIA CONCEPCION S. NOCHE, CIVIL PROCEDURE ANNOTATED 463 (2001).

[58] *Tañada v. Angara*, G.R. No.118295, May 2, 1997.

legal separation, the material facts alleged in the complaint shall always be proved." *(Emphasis supplied)*

In *Tan, et al. vs. De la Vega, et al.*,[59] the Supreme Court said:

"Where a motion for judgment on the pleadings is filed, the essential question is whether there are issues generated by the pleadings. **In a proper case for judgment on the pleadings, there is no ostensible issue at all because of the failure of the defending party's answer to raise an issue.** The answer would fail to tender an issue, of course, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all. **Now, if an answer does in fact specifically deny the material averments of the complaint and/or asserts affirmative defenses (allegations of new matter which, while admitting the material allegations of the complaint expressly or impliedly, would nevertheless prevent or bar recovery by the plaintiff), a judgment on the pleadings would naturally be improper.**"

We quote with approval the disquisition of the Court in Division on the matter, to wit:

"This Court finds no merit in petitioner's argument.

A motion for judgment on the pleadings admits the truth of all the material and relevant allegations of the opposing party and the judgment must rest on those allegations taken together with such other allegations as are admitted in the pleadings. A judgment on the pleadings is therefore, based exclusively upon the allegations appearing in the pleadings of the parties and the annexes, if any, without any evidence *aliunde*.

Furthermore, a judgment on the pleadings is proper when an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. However, when it appears that not all the material allegations of the complaint were admitted in the

[59] G.R. No. 168809, March 10, 2006.

> answer for some of them were either denied or disputed, and the defendant has set up certain special defenses which, if proven, would have the effect of nullifying plaintiff's main cause of action, judgment on the pleadings cannot be rendered.
>
> xxx xxx xxx
>
> On the alleged admission by respondent of the Final Decision, a perusal of the Answer shows that respondent merely admitted the existence of the Final Assessment in her Answer and such admission is not enough for this Court to conclude that there are no genuine issues left that need to be tried. On the contrary, respondent sets up special and affirmative defenses in her Answer that need to be proven.
>
> All told, there are no admissions by respondent to make judgment on the pleadings proper."

The Court in Division correctly held that there is no admission of respondent to make a judgment on the pleadings proper. An analysis of the Answer of respondent BIR reveals that it has merely admitted the existence of the Final Decision on Disputed Assessment dated May 7, 2010, and that it raised an affirmative defense that the subject assessments have become final, unappealable and demandable. Specifically, said *Answer*, in part, states:

> "**ANSWER**
>
> **RESPONDENT,** by the undersigned counsel, to this Honorable Court, most respectfully avers that:
>
> xxx xxx xxx
>
> 3. <u>Except for the existence of the Final Decision on Disputed Assessment dated May 7, 2010 which she ADMITS</u>, she SPECIFICALLY DENIES the rest of the allegations contained in paragraph 17 under the caption 'Facts of the Case' of this petition for lack of knowledge or information sufficient to form a belief as to the truth thereof.
>
> xxx xxx xxx

6.5. Failure to file a valid protest within said period means that the assessment *ipso jure* becomes final and unappealable, as a consequence of which legal proceedings may then be initiated for collection thereof as provided for under 3.1.5 of RR 12-99, *supra*. Since petitioner's letter-protest was void and without force and effect for lacking legal basis, it is as if no protest was made against the assessment. Hence, the Final Assessment Notice issued to petitioner on February 22, 2010 had already attained finality on March 24, 2010 or 30 days after receipt by petitioner of the Assessment and no valid protest had been filed against it. This has the effect of making the assessed tax collectible.

xxx xxx xxx

9. Prescinding from and anent the foregoing considerations, it can categorically be stated that a discussion on the validity and legality of the assailed Final Decision on Disputed Assessment dated May 7, 2010, as what the instant petition is pressing on the Honorable Court, is moot and academic. An issue or a case becomes moot and academic when it ceases to present a justiciable controversy so that a determination thereof would be without practical use and value (James L. King, et al., vs. Court of Appeals, et al., G.R. No. 158195 December 16, 2005). In such cases, there is no actual substantial relief to which the petitioner would be entitled to and which would be negated by the dismissal of the petition (Vda. De Davao vs. Court of Appeals, 426 SCRA 91 [2004]). xxx.

Since the assessment issued against petitioner had long become final, unappealable and demandable, the issue raised by petitioner questioning the validity and legality of the Final Decision on Disputed Assessment dated May 7, 2010 has become moot and academic. Hence, there is no necessity for discussion of the same for it ceased to present a justiciable controversy. Consequently, the determination of the said issue would be of no practical use or value."

Contrary to the stance of petitioner, respondent BIR, in the *Answer*, did not admit that the *Final Decision on Disputed Assessment* dated May 7, 2010 was defective and invalid. Admitting the existence of the said document is one thing, and admitting the invalidity and defectiveness of the same is quite another.

Furthermore, by alleging that petitioner failed to file a valid protest, respondent BIR's *Answer* has generated or raised the issue as to whether or not the subject assessments have long become final, unappealable and demandable—an issue which the Court in Division is required to resolve with evidence *aliunde*.

Such being the case, judgment on the pleadings was indeed improper in the case at bar. Consequently, the Court in Division did not commit grave abuse of discretion when it denied petitioner's *Motion for Judgment on the Pleadings*.

WHEREFORE, in view of the foregoing considerations, the instant Petition for Review is hereby **DENIED**. The assailed Resolution dated April 28, 2011 and Resolution dated July 19, 2011, both rendered by the Court in Division are hereby **AFFIRMED**.

The appropriate Court in Division is hereby directed to resume the proceedings in CTA Case No. 8146, with utmost dispatch.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
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

Ma. Belen R. Li
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice