REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA EB CASE NO. 1065
(CTA Case No. 8552)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

NOV 12 2014
11:50 a.m.

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DECISION

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* by way of a *Petition for Review*[1] filed on September 16, 2013, pursuant to Section 18 of Republic Act No. 1125, as amended by Section 11 Republic Act No. 9282 and Republic Act No. 9503[2], are the May 2, 2013 *Resolution*[3] and the August 14, 2013 *Resolution*[4] enunciated by the First Division of the Court of Tax Appeals

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[1] *Rollo*, pp. 1-20.
[2] Otherwise known as "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."
[3] *Rollo*, pp. 26 31.
[4] *Rollo*, pp. 32 35.

(CTA) in CTA Case No. 8552, entitled "*Power Sector Assets and Liabilities Management Corporation, vs. Commissioner of Internal Revenue*".

The dispositive portions of the assailed *Resolutions* read:

Resolution dated May 2, 2013:

> "**WHEREFORE**, respondent's *Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court* is hereby **GRANTED**. Accordingly, the instant Petition is hereby **DISMISSED** for lack of jurisdiction."

Resolution dated August 14, 2013:

> "**WHEREFORE**, petitioner's *Motion for Reconsideration* filed on May 24, 2013 is hereby **DENIED** for lack of merit."

Petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) seeks the issuance of an order setting aside the above *Resolutions* and reinstating its Petition for Review[5] (CTA Case No. 8552) for being filed on time.

FACTS OF THE CASE

Petitioner PSALM is a government-owned entity. It holds business at the 7th Floor, Bankmer Building, 6756 Ayala Avenue, Makati City. It may be served with legal processes through the Office of the Government Corporate Counsel (OGCC), 3rd Floor, MWSS Bldg., Katipunan Road, Balara, Quezon City.[6]

Respondent Commissioner of Internal Revenue (CIR) is vested under the law with the authority to carry out the functions, duties and responsibilities of the Bureau of Internal Revenue (BIR), including, *inter alia,* the power to decide assessments, cancel, and abate tax liabilities pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC) and other tax laws, rules and regulations. It may be served

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[5] *Division Rollo*, pp. 6 40.
[6] *Division Rollo*, p.3112, par. 1 Joint Stipulation of Facts and Issues (JSFI).

with legal processes through the Litigation Division, Bureau of Internal Revenue, Room 703, BIR Bldg., Diliman, Quezon City.[7]

On February 7, 2012, respondent CIR issued a Formal Letter of Demand[8] and Final Assessment Notice (FAN) covered by Assessment Numbers LTEADI-IT-2008-00085[9], LTEADI-VT-2008-00082[10], LTEADI-WE-2008-00112[11], LTEADI-WF-2008-00069[12], LTEADI-WG-2008-00022[13], LTEADI-DS-2008-00006[14], and LTEADI-MC-08-00001[15], alleging that, for taxable year 2008, petitioner PSALM has deficiency taxes inclusive of penalties and interests, totaling P17,789,732,537.66.[16]

Petitioner PSALM was assessed for alleged deficiency income tax, value-added tax (VAT), withholding VAT and percentage tax, expanded withholding tax, final withholding tax, documentary stamp tax (DST), and unremitted tax.[17]

On March 8, 2012, petitioner PSALM filed its March 6, 2012 administrative protest against the FAN with the BIR Large Taxpayers' Audit and Investigation Division (LTAID).[18] The respondent CIR failed to resolve petitioner PSALM's protest within the 180-day period provided under Section 228 of the 1997 NIRC, as amended.

The last day of the 180-day period within which the Bureau of Internal Revenue (BIR) should have acted upon petitioner's protest was on September 4, 2012.[19]

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[7] *Division Rollo*, par. 2, pp. 3112-3113, JSFI.
[8] *Rollo*, pp. 36-38, Annex "C" of the Petition for Review.
[9] *Rollo*, p. 42, Annex "E" of the Petition for Review.
[10] *Rollo*, p. 43, Annex "F" of the Petition for Review.
[11] *Rollo*, p. 44, Annex "G" of the Petition for Review.
[12] *Rollo*, p. 45, Annex "H" of the Petition for Review.
[13] *Rollo*, p. 46, Annex "I" of the Petition for Review.
[14] *Rollo*, p. 47, Annex "J" of the Petition for Review.
[15] *Rollo*, p. 48, Annex "K" of the Petition for Review.
[16] *Division Rollo*, par. 3, p. 3113, JSFI.
[17] ADMITTED FACT: par. 3, pp. 1-2 of respondent's Answer to the Petition for Review docketed as CTA Case No. 8552.
[18] *Division Rollo*, p. 3115, par. 5 JSFI.
[19] *Division Rollo*, p. 3115, par. 8 JSFI.

On October 5, 2012, by reason of the alleged inaction or failure of the respondent CIR to act on the abovementioned administrative protest, petitioner PSALM filed with the Court in Division its Petition for Review[20], which was docketed as CTA Case No. 8552.[21]

Respondent filed her Answer[22] on December 28, 2012 raising, among others, the special and affirmative defense of prescription of petitioner's period to appeal the inaction of respondent CIR and the lack jurisdiction of this Court over petitioner's appeal because of the alleged prescription. Respondent claims that petitioner PSALM's Petition for Review[23] (CTA Case No. 8552) was filed with the Division of this Court beyond the 30-day period provided under Section 228 of the 1997 NIRC, as amended.

On March 7, 2013, respondent CIR filed a Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court[24] which sought for the dismissal of PSALM's Petition for Review (CTA Case No. 8552) for being time-barred and lack of jurisdiction. Petitioner PSALM filed its Comment (To Respondent's Motion for Early Resolution)[25] on March 25, 2013.

In a *Resolution*[26] promulgated on May 2, 2013, the Court in Division found that the filing of PSALM's Petition for Review (CTA Case No. 8552) on October 5, 2012 was indeed beyond the mandated period to appeal, thus, respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court was granted and petitioner PSALM's Petition for Review (CTA Case No. 8552) was dismissed for lack of jurisdiction. The Court in Division emphasized that aside from the fact that petitioner failed to sufficiently establish the existence of strong and compelling circumstances which would warrant the relaxation of the application of the period to appeal prescribed by law, the Court is a court of special jurisdiction and as such

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[20] *Supra*, Note 5.
[21] *Division Rollo*, p. 3115, par. 9 JSFI.
[22] *Division Rollo*, pp. 148 169.
[23] *Supra*, Note 5.
[24] *Division Rollo*, pp. 203 214.
[25] *Division Rollo*, pp. 3090 3097.
[26] *Supra*, Note 3.

it can take cognizance only of such matters as are clearly within its jurisdiction.

On August 14, 2013, the Court in Division resolved to deny petitioner's Motion for Reconsideration for lack of merit.[27]

Hence, the filing of the subject *Petition for Review*[28] with the Court *En Banc* on September 16, 2013.

Respondent CIR filed her *Opposition and/or Comment (Re: Petition for Review dated 12 September 2013)*[29], by registered mail, on November 27, 2013. Subsequently, both parties were ordered to file their respective memoranda.[30]

This Court received petitioner PSALM's *Memorandum*[31] on March 3, 2014, while respondent CIR failed to file her memorandum within the period allowed. Thus, the present *Petition for Review*[32] was submitted for decision on April 8, 2014.

ISSUE/S

Whether the CTA First Division erred in dismissing PSALM's Petition for Review[33] (CTA Case No. 8552) for lack of jurisdiction.

Arguments of Petitioner PSALM[34]

Petitioner PSALM insists that the Petition for Review filed with the Court in Division observed the reglementary periods provided under Section 228 of the NIRC. Petitioner explains that it filed its protest on March 8, 2012 and so the CIR had 180-days, or until the end of September 4, 2012, within which to act on petitioner's protest; thus, petitioner claims that the "expiration" of CIR's 180-day period could only mean the day

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[27] *Supra*, Note 4.
[28] *Supra*, Note 1.
[29] *Rollo*, pp. 231-239.
[30] *Rollo*, pp. 243-244.
[31] *Rollo*, pp. 254-270.
[32] *Supra*, Note 1.
[33] *Supra*, Note 5.
[34] *Rollo*, pp. 260-267, Memorandum of petitioner.

after September 4, 2012, *i.e., at 00:00 hour of September 5, 2012*; and since the appeal should be made within 30 days "from the expiration of the period fixed by law", the counting of the 30-day period should start after September 5, 2012, which fell on October 5, 2012 – the date on which petitioner PSALM timely filed its Petition for Review with the Court in Division.

Further, petitioner contends that there is a very compelling reason to relax procedural rules. Petitioner reasons that granting without admitting that PSALM's Petition for Review (CTA Case No. 8552) should have been filed on or before October 4, 2012 instead of October 5, 2012, the injustice it will suffer is not commensurate with the one-day procedural lapse allegedly committed, emphasizing the bulk of the deficiency assessment against it totaling P17,789,732,537.66 which is premised on the VAT-ability of the proceeds from PSALM's privatization of the National Power Corporation's (NPC) assets.

For its final point, petitioner argues that if a mere technicality is allowed to prevail, the government will be unjustly enriched as it will be allowed to collect VAT on VAT exempt transactions, to the prejudice of petitioner PSALM.

Arguments of Respondent CIR[35]

Respondent CIR holds the view that: the Petition for Review (CTA Case No. 8552) is bereft of any foundation. Respondent insists that petitioner's failure to comply with the thirty (30) day mandatory period renders the said petition with the CTA void; by reason of petitioner's failure to file within the mandatory period to appeal, the CTA did not acquire jurisdiction over CTA Case No. 8552; and the assessments involved therein had already become final and demandable pursuant to Section 228 of the 1997 NIRC, as amended.

RULING OF THE COURT *EN BANC*

The Court has observed that the points and arguments in the present *Petition* had already been painstakingly discussed

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[35] *Rollo*, pp.231 238, Opposition and/or Comment of respondent.

and substantially resolved by the CTA First Division in its *Resolutions* dated May 2, 2013[36] and August 14, 2013[37]. On this point, The Court *En Banc* finds no compelling reason to deviate from the conclusions arrived at by the Court in Division.

Timeliness of PSALM's appeal of the CIR's inaction on its assessment protest

The Court *En Banc* affirms the Court *a quo's* pronouncement that the filing of petitioner PSALM's Petition for Review (CTA Case No. 8552) before the Court in Division on October 5, 2012 was beyond the mandated 30-day period to appeal.

The periods to be observed in protesting an assessment are specifically provided for in Section 228 of 1997 NIRC, as amended:

> **"SEC. 228. Protesting of Assessment. –**
>
> xxx
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by** the decision or **inaction may appeal to the Court of Tax Appeals within thirty (30) days** from receipt of the said decision, or **from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**

Consistent with the above provision are Section 11 of Republic Act (RA) 1125, An Act Creating the Court of Tax Appeals, as amended by RA 9282, and Section 3(a), Rule 8 of the Revised Rules of the CTA, which speaks of the period to appeal the decision and inaction of the CIR to the CTA *via* a Petition for Review. Section 11 of the said law provides that ***"[a]ny party adversely affected by xxx inaction of the Commissioner of Internal Revenue, xxx may file an***

[36] *Supra*, Note 3.
[37] *Supra*, Note 4.

***appeal with the CTA within thirty (30) days xxx after the expiration of the period fixed by law** xxx. **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.**"*

Section 228 of the 1997 NIRC, as amended, explicitly states that in case the taxpayer opts to appeal the CIR's inaction on the assessment protest, such appeal must be made within 30 days from the lapse of the one-hundred eighty (180) day period.

In ascertaining the day when to start counting the 30-day period to appeal provided under Section 228, the Court takes its bearing from the ruling of the Supreme Court in the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[38] (*RCBC case*). In the said case, the Supreme Court declared that the action for cancellation of assessment had already prescribed, and it quoted a portion of the ruling of the Second Division of the CTA, which showed how the periods in protesting an assessment under Section 228 of the 1997 NIRC, as amended, were computed, *viz*:

> "As aptly observed by the OSG, even if the petition for relief from judgment would be granted, petitioner will not fare any better if the case were to be returned to the CTA *Second* Division since its action for the cancellation of its assessments had already prescribed. (Underscoring supplied)
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> Petitioner protested the assessments pursuant to Section 228 of the NIRC, which provides:
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> SEC. 228. *Protesting of Assessment*.- x x x.
>
> x x x x
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> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer

[38] G.R. No. 168498, June 16, 2006.

> fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise the decision shall become final, executory and demandable. (Emphasis supplied)
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> The CTA Second Division held:
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> Following the periods provided for in the aforementioned laws, from July 20, 2001, that is, the date of petitioner's filing of protest, it had until September 18, 2001 to submit relevant documents and from September 18, 2001, <u>the Commissioner had until March 17, 2002 to issue his decision. As admitted by petitioner, the protest remained unacted by the Commissioner of Internal Revenue. Therefore, it had until April 16, 2002 within which to elevate the case to this court. Thus, when petitioner filed its Petition for Review on April 30, 2002, the same is outside the thirty (30) period</u>. (Underscoring supplied)
>
> As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment."

In the *RCBC case*[39], the counting of ***day one (1)*** of the 30-day period to appeal under Section 228 of the 1997 NIRC **started on March 18, 2002**, the day following March 17,

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[39] *Supra*, Note 38.

2002 which is the last day of the 180-day period or the last day of the CIR to act on the assessment protest. Thus, since March 18, 2002 was considered as *day 1* of the 30-day period to appeal, ***day thirty (30)*** naturally **fell on April 16, 2002**. Hence, as found in the above-quoted case, petitioner therein had until April 16, 2002 to elevate to this Court the CIR's inaction on the assessment protest.

Further, in the very recent case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[40] (*Mindanao case*), the Court finds instructive the illustration therein as to the counting/reckoning of the 30-day period to appeal CIR's inaction over claims for refund, *viz*:

> "B. The Judicial Claim Was Belatedly Filed
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> In this case, the facts are not up for debate. Mindanao II filed its administrative claim for refund or credit for the second, third, and fourth quarters of 2004 on 6 October 2005. The CIR, therefore, had a period of 120 days, or until **3 February 2006**, to act on the claim. The CIR, however, failed to do so. Mindanao II then could treat the inaction as a denial and appeal it to the CTA **within 30 days from 3 February 2006, or until 5 March 2006**.
>
> Mindanao II, however, filed a Petition for Review only on 21 July 2006, 138 days after the lapse of the 30-day period on 5 March 2006. The judicial claim was therefore filed late. (See timeline below.)"

The Court is well aware that the above-quoted *Mindanao case* involves claims for refund under Section 112(C) of the 1997 NIRC; however, the discussion therein which exemplified how the the 30-day period to appeal CIR's inaction was computed is undeniably relevant in the present circumstance, this is so because, as in the present case, the above *Mindanao case* likewise speaks of the procedural remedy for CIR's inaction, the 30-day period to appeal CIR's inaction, and that such appeal must be made within 30 days after the expiration of the period fixed by law for the CIR to act.

In the *Mindanao case*[41], the counting of ***day 1*** of the 30-day period to appeal **started on February 4, 2006**, the day

[40] G.R. No. 191498, January 15, 2014.
[41] *Supra*, Note 40.

following February 3, 2006 which is the last day of the 120-day period or the last day of the CIR to act on the claim. Thus, since February 4, 2006 was considered as *day 1* of the 30-day period to appeal, ***day 30*** naturally **fell on March 5, 2006**. Hence, as found in the above-quoted case, petitioner therein had until March 5, 2006 to elevate to this Court the CIR's inaction on the claim for refund.

With the foregoing jurisprudence as benchmark, the Court is not inclined to indulge the petitioner in its argument that *day 1* of the 30-day period to appeal CIR's inaction should be counted on September 6, 2012, which is already two (2) days following the last day of the 180-day period (September 4, 2012) for the CIR to act on the assessment protest. This is not in accord with the foregoing jurisprudence.

In this case, petitioner admits that it filed its protest on March 8, 2012. Pursuant to Section 228 of the 1997 NIRC, as amended, the CIR had a period of 180 days, or until September 4, 2012, to act on the assessment protest. The CIR, however, failed to act on the protest, thus, under said Section 228 petitioner PSALM had the option to appeal CIR's inaction to this Court within 30 days from the lapse of the 180-day period, or until October 4, 2012. Petitioner exercised this option; however, its Petition for Review was filed a day late, *i.e.,* on October 5, 2012.

Applying the foregoing jurisprudential precepts in this case, it is clear that ***day 1*** of the 30-day period to appeal under Section 228 of the 1997 NIRC, as amended, **started on September 5, 2012**, the day following September 4, 2012 which is the last day of the 180-day period or the last day of the CIR to act on the assessment protest. Thus, since September 5, 2012 is considered as *day 1* of the 30-day period to appeal, ***day 30*** predictably **falls on October 4, 2012**. In view thereof, petitioner PSALM had until October 4, 2012 to elevate to this Court the CIR's inaction on the assessment protest.

Indeed, the filing of petitioner PSALM's Petition for Review before the Court in Division on October 5, 2012 was beyond the mandated 30-day period to appeal.

Whether there is a compelling reason to relax the application of the period to appeal prescribed by law

Some of such strong and compelling reasons, warranting the relaxation of the period to appeal, were exemplified in the following cases, *to wit*:

- In *Heirs of Rodolfo Crisostomo vs. Rudex International Development Corporation*[42] the delay was excused because it was aptly explained and proved that the secretary of the party's counsel, who failed to file the petition, indeed brought her children to the doctor on the deadline for filing the petition for review; petitioners submitted an affidavit from the secretary, who narrated her ordeal that day and why she was not able to inform her employer of the whereabouts of the petition and a certification from the doctor of one of the secretary's children.

- In *Gonzales vs. Pennisi*[43], the respondent had a valid excuse for the late filing of the petition as there was a pending petition for prohibition before the trial court that had to be withdrawn before the filing of the petition for review with the appellate court.

- In *Dalton-Reyes vs. Court of Appeals*[44], the reason for the delay given by petitioner, a stenographic reporter of the Office of the Ombudsman, that she was not assisted by a lawyer at that time was considered as an excusable negligence under the policy of social justice where the law bends over backward to accommodate the interests of the working class on the humane

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[42] G.R. No. 176129, August 24, 2011 citing *Philippine Amusement and Gaming Corporation v. Angara*, 511 Phil. 486, 498 (2005).
[43] G.R. No. 169958, March 5, 2010, 614 SCRA 292.
[44] G.R. No. 149580, March 16, 2005.

justification that those with less privilege in life should have more in law; more so in the case of one who pursues her case even without the assistance of counsel.

In this case, petitioner PSALM explains that the delay is because it believed in good faith that it legally had until September 5, 2012 within which to file its Petition for Review, and that this confusion in the computation of the period to appeal could not have happened had the CIR face squarely the issues PSALM raised. Further, petitioner avers that the injustice it will suffer is not commensurate with the one-day procedural lapse allegedly committed.

After a careful consideration of the relevant laws and jurisprudence, the Court is convinced that the reasons advanced by petitioner to justify the belated filing of the subject Petition for Review (CTA Case No. 8552), cannot be catalogued as one of those reasons sufficient to exempt petitioner from the stringent application of the substantive law and rules limiting the period to appeal with this Court.

The failure of petitioner to comply with the 30-day statutory period bars its appeal and deprives the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments.[45]

In *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[46], the Supreme Court had the occasion to reiterate the ruling in In *Ker & Company, Ltd. v. Court of Tax Appeals*[47], viz:

> "the Court held that while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss."

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[45] *Commissioner of Internal Revenue v. Western Pacific Corporation*, 121 Phil. 889, 893 (1965).
[46] G.R. No. 168498, June 16, 2006.
[47] G.R. No. L-12396, January 31, 1962, 4 SCRA 160, 163.

Finally, it bears to stress that under Section 228 of the 1997 NIRC, as amended, the failure of a taxpayer to appeal from an assessment on time renders the assessment final, executory and demandable. Accordingly, petitioner is barred from disputing the correctness of the assessments.

WHEREFORE, premises considered, the instant *Petition for Review* is **DENIED**. The May 2, 2013 *Resolution*[48] and the August 14, 2013 *Resolution*[49] of the First Division in CTA Case No. 8552, are hereby **AFFIRMED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[48] *Rollo*, pp. 26 31.
[49] *Rollo*, pp. 32 35.

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

Ma. Belen
MA. BELEN 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 with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice