REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1601
(CTA Case No. 8502)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

- versus -

MACARIO LIM GAW, JR.,
Respondent.

Promulgated:

SEP 20 2018
3:57 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court En Banc is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) against Macario Lim Gaw, Jr. (Lim Gaw) seeking the reversal of the Decision dated September 2, 2016 rendered by the First Division of this Court in CTA Case No. 8502 which granted Lim Gaw's Petition for Review and cancelled and withdrew the CIR's deficiency tax assessment against him for taxable year 2007 in the amount of ₱1,295,855,151.89. The CIR seeks the reversal of the Resolution dated February 8, 2017 which denied his Motion for Reconsideration thereof as well.

The Parties

Petitioner CIR is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayers pursuant to the provisions of the National Internal Revenue Code ("Tax Code"). He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[1]

Respondent Macario Lim Gaw, Jr. is an individual taxpayer, of legal age, Filipino, and with address at No. 5 David Street, Corinthian Gardens, Quezon City.[2]

The Facts[3]

The relevant antecedents, as stipulated[4] by the parties and as borne by the records of the case, are as follows:

In November 2007, Lim Gaw acquired six (6) parcels of land covered by Transfer Certificates of Title (TCT) Nos. 168947, 166440, 158155, 158156, 158149, and 158150 in the aggregate amount of One Billion Nine Hundred Fifty-Seven Million Four Hundred Twenty-Two Thousand Pesos (₱1,957,422,000.00).[5]

During the period of April to June 2008, Lim Gaw acquired four (4) more parcels of land covered by TCT Nos. 161711, 173506, 1673508, and 173510 in the aggregate amount of Two Billion Sixty-Three Million Nine Hundred Five Thousand Five Hundred Pesos (₱2,063,905,500.00).[6]

The BIR Revenue District Office (ROO) No. 52-Paranaque City issued the corresponding Certificates Authorizing Registration (CARs) in connection with Lim Gaw's purchase of the parcels of land covered by TCT Nos. 168947, 166440, 158155, 158156, 158149, 158150, 161711, 173506, 1673508, and 173510.[7]

On April 15, 2008, Lim Gaw filed his Annual Income Tax Return (ITR) for taxable year 2007.[8]

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[1] Docket, p. 108, par. 4, JSFI, Admitted Facts I.
[2] *Id.*, Vol. II, p. 564, par. 1, Stipulation of Facts, Joint Stipulation of Facts (JSF).
[3] As found by the First Division and as culled from the records of the case.
[4] *Id.* at Note 2, pp. 394-401.
[5] *Id.*, p. 565, par. 3.
[6] *Id.*, par. 4.
[7] *Id.*, par. 5.
[8] Exhibit "JJJ".

Thereafter, on August 25, 2010, a Letter of Authority (LOA) No. 2009-00044669[9] was issued. LOA No. 2009-00044669 authorized the examination of Lim Gaw's books of accounts and other accounting records for all internal revenue taxes.[10] It covered taxable year 2008 and "Unverified prior years."

On August 26, 2010, the CIR filed with the Department of Justice (DOJ) a Joint Complaint Affidavit against Lim Gaw for violations of Sections 254 and 255 of the NIRC of 1997, as amended, docketed as NPS Docket No. XVI- INV-10H-00256.[11]

Meanwhile, on October 4, 2010, Lim Gaw submitted copies of his Annual Income Tax Returns for the taxable years 2007 and 2008 to the BIR National Investigation Division.[12]

The CIR issued a Notice for Informal Conference[13] on January 12, 2011, requesting a conference on January 17, 2011 pursuant to eLOA No. 211-2010-00000215.[14]

In a letter dated January 13, 2011,[15] Lim Gaw requested the CIR to reset the scheduled January 17, 2011 Informal Conference to January 20, 2011 to discuss the audit findings, if any, covering both LOA No. 2009-00044669 and eLOA No. 211-2010-00000215.

On February 15, 2011, the CIR, through the BIR National Investigation Division (NID), issued a Preliminary Assessment Notice[16] (PAN) with attached Details of Discrepancies and Computation Sheets, informing Lim Gaw of his alleged deficiency income and percentage taxes based on third-party information for taxable years 2007 and 2008.[17]

In a letter-reply dated March 28, 2011[18], Lim Gaw challenged the deficiency tax findings of the BIR for taxable year 2007.

[9] *Id.* at Note 2, par. 6, Exhibit "KKK"; Exhibit "3".
[10] *Id.*, par. 7.
[11] *Id.*, p. 566, par. 8.
[12] Exhibit "OOO".
[13] Exhibit "PPP".
[14] *Id.* at Note 11, par. 9.
[15] Exhibit "QQQ".
[16] *Id.* at Note 2, pp. 781-789, Exhibit "RRR"; Exhibit "6".
[17] *Id.* at Note 11, par. 10.
[18] Exhibit "SSS".

Thereafter, on April 8, 2011, Lim Gaw received a copy of the Resolution dated March 17, 2011[19] issued by the DOJ in NPS Docket No. XVI-INV-10H-00256, dismissing the charges against him for violation of Section 254 of the NIRC of 1997, as amended, for the taxable year 2007; which is also the subject matter of this case. Lim Gaw alleges that the BIR did not file a motion for reconsideration or an appeal from the Resolution of the DOJ.

On May 24, 2011, the CIR served on Lim Gaw a Formal Letter of Demand dated April 8, 2011[20] informing him of his alleged deficiency income and value-added taxes based on third-party information for taxable years 2007 and 2008.[21]

Subsequently, on June 9, 2011, Lim Gaw, through his legal counsel, filed his protest letter[22] dated June 7, 2011 on the Formal Letter of Demand, which detailed the factual and legal bases of his protests against the deficiency tax assessments for taxable years 2007 and 2008.

On May 22, 2012, the CIR served on Lim Gaw a copy of FDDA No. 2012-0001 dated May 18, 2012.[23] The FDDA resolved Lim Gaw's protest and assessed Lim Gaw the amount of ₱7,016,541,855.80 representing deficiency income and VAT assessments for taxable years 2007 and 2008, including 50% surcharge and 20% annual interest for late payment until fully paid. The FDDA also indicated that this was the CIR's "final decision on the matter".

Lim Gaw then filed a Petition for Review[24] before the Court in Division on June 19, 2012, docketed as CTA Case No. 8502, entitled *"Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue"*.

In his Answer filed on August 15, 2012, the CIR interposed his special and affirmative defenses stating that: a) the assessments issued were based on facts, law, rules, and jurisprudence all supporting the confidential information received by him that Lim Gaw committed tax evasion through his scheme of making it appear that the numerous real properties he acquired and subsequently sold are capital assets instead of ordinary assets; b) that the total purchase price of the parcels of land sold is grossly disproportionate to Lim Gaw's total

[19] Exhibit "NNN".
[20] *Id.* at Note 2, pp. 790-797, Exhibit "TTT"; Exhibit "7".
[21] *Id.*, p. 566, par. 11.
[22] Exhibit "VVV".
[23] *Id.* at Note 2, pp. 802-812, par. 12; Exhibit "A"; Exhibit "9".
[24] *Id.* at Note 1, pp. 6-33.

cumulative disposable cash resulting in undeclared income; c) that Lim Gaw did not pay the correct income tax and VAT, also using various TINs in the acquisition and sale of the parcels of land; d) that Lim Gaw is a taxpayer habitually engaged in real estate business and misclassified the parcels of land, as capital assets; e) that even assuming the funds used to purchase the parcels of land came from a Five Billion Short Term Loan (STL) from Banco de Oro (BDO), he would need collateral for those loans; f) that the LOA is legally valid, especially since this case involves tax fraud which is different from ordinary assessments; g) that the assertion of prescription is not viable as the ten-year prescriptive period due to fraud and under-declaration of income applies; h) that Lim Gaw filed a pro forma protest letter to the FDDA; and, finally, i) that the finding of deficiency tax liabilities against Lim Gaw is proper in all respects.[25]

The parties filed their Joint Stipulation of Facts[26] on October 8, 2012 which was approved by the Court in Division in the Resolution[27] dated October 10, 2012. Pre-Trial was terminated and, afterwards, the parties filed a Supplemental Joint Stipulation of Facts[28] on December 19, 2012. This was approved by the Court in Division in a Resolution[29] dated December 27, 2012.

Trial ensued and Lim Gaw presented Ms. Florita B. Santos, Managing Partner of the accounting firm Santos Verde San Juan & Associates[30] as his witness.

Lim Gaw filed his Formal Offer of Documentary Exhibits[31] on February 1, 2013. While most of his exhibits were admitted by the Court in Division, in a Resolution[32] dated March 5, 2013, Exhibits "NNN", "PPP", "WWW-1", "WWW-2", "WWW-3", "WWW-4", "WWW-5", "WWW-6", "WWW-7", "WWW-8", "WWW-9", "WWW-10", "WWW-11", "WWW-12", "WWW-13", "WWW-14", and "WWW-15" were denied for failure of Lim Gaw to have the witness identify the afore-mentioned exhibits.

Lim Gaw filed a Motion for Partial Reconsideration (Re: Resolution promulgated on 05 March 2013)[33] on March 18, 2013. This was partially granted

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[25] *Rollo*, pp. 24-36.
[26] *Id.* at Note 2, pp. 564-568.
[27] *Id.*, pp. 570-571.
[28] *Id.*, pp. 615-616.
[29] *Id.*, p. 618.
[30] *Id.* at Note 1, Judicial Affidavit of Ms. Florita B. Santos; p. 569, Minutes of the Hearing dated October 10, 2012.
[31] *Id.* at Note 2, pp. 675-684.
[32] *Id.*, pp. 701-702.
[33] *Id.*, pp. 705-709.

by the Court in Division in the Resolution[34] dated June 6, 2013 which admitted Exhibits "NNN" and "PPP", but denied Exhibits "WWW-1" to "WWW-15".

On May 17, 2013, Presiding Justice Roman G. Del Rosario voluntarily inhibited himself from the case, as the Division he headed, when he was Assistant Solicitor General, acted as counsel for the People of the Philippines in connection with the filing of a *Petition for Certiorari* before the Supreme Court to seek the annulment of the Resolution dated January 3, 2013 rendered by then CTA First Division in the consolidated cases of *People of the Philippines vs. Macario Lim Gaw, Jr.*, CTA Crim No. 0-026; *People of the Philippines vs. Macario Lim Gaw, Jr.*, CTA Crim No. 0-027; and *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue*, CTA Case No. 8503.[35]

When it came for his time to present evidence, the CIR presented Revenue Officer Leonesto D. Bernal as his sole witness.[36] He filed his Formal Offer of Evidence[37] on November 7, 2013 and in a Resolution[38] dated February 24, 2014, the Court admitted all of the CIR's exhibits except Exhibit "4" for failure to submit the original document for comparison. In the same Resolution, the Court in Division likewise granted the CIR's motion to set additional hearing for the presentation of rebuttal evidence.

The CIR filed a Motion for Reconsideration (Re: Resolution dated February 24, 2014)[39] on March 17, 2014, praying that the denial of Exhibit "4" be reconsidered and that the same be admitted as evidence.

During the hearing on March 20, 2014, instead of presenting the testimony of Lim Gaw's witness subject of the subpoena, the parties stipulated on the Transcript of Stenographic Notes taken during the hearing held on April 25 and May 9, 2012 in CTA Crim. Case Nos. 0-206 and 0-207.[40] Thereafter, on March 31, 2014, Lim Gaw filed his Formal Offer of Rebuttal Evidence.[41]

On April 2, 2014, Lim Gaw filed an Extremely Urgent Verified Motion for Suspension of Collection of Taxes[42]. In support of his motion, he presented

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[34] *Id.*, pp. 727-729.
[35] *Id.*, pp. 722-723.
[36] *Id.*, pp. 747-756, Judicial Affidavit of Leonesto D. Bernal; pp. 842-846, Minutes of the Hearing dated October 22, 2013.
[37] *Id.*, pp. 853-859.
[38] *Id.*, pp. 887-888.
[39] *Id.*, pp. 894-897.
[40] *Id.*, pp. 904-905, Resolution dated March 20, 2014.
[41] *Id.*, pp. 909-911.
[42] *Id.*, pp. 1116-1130.

Ms. Florita B. Santos[43] as his witness. Lim Gaw then filed his Formal Offer of Evidence in Support of Motion[44] on April 22, 2014. All of his exhibits were admitted during the hearing on April 25, 2014.[45]

The CIR, on the other hand, presented his witness, Revenue Officer Cynthia M. Catolico[46] during the said hearing. The CIR verbally offered his documentary exhibits, which were all admitted by the Court in Division.[47]

Lim Gaw filed his Memorandum (Re: Petitioner's Extremely Urgent Verified Motion for Suspension of Collection of Taxes)[48] on April 28, 2014. The CIR likewise filed his Memorandum[49] on April 28, 2014.

In a Resolution[50] dated April 28, 2014, the Court in Division granted Lim Gaw's Extremely Urgent Verified Motion for Suspension of Collection of Taxes and directed the CIR to cease and desist from collecting the alleged income tax deficiency from Lim Gaw subject to his filing of a cash bond.

On May 6, 2014, Lim Gaw filed a Motion to Nullify 29 April 2014 Auction Sale[51]. The motion was denied by the Court in Division in the Resolution[52] promulgated on July 21, 2014. Lim Gaw then filed a Motion for Reconsideration (Re: *Resolution* dated 21 July 2014)[53] on August 12, 2014. This was also denied by the Court in Division in a Resolution[54] dated October 23, 2014.

On April 6, 2015, the Court in Division resolved Lim Gaw's Formal Offer of Rebuttal Evidence and admitted his Exhibits "P-1-Rebuttal" and "P-2-Rebuttal", inclusive of sub-markings.[55]

[43] *Id.*, pp. 1279-1285, Exhibit "P-9-Motion", Judicial Affidavit of Ms. Florita B. Santos (In support of Petitioner's Extremely Urgent Motion for the Suspension of Collection of Taxes); pp. 1217-1219, Minutes of the Hearing dated April 11, 2014.
[44] *Id.*, pp. 1240-1244.
[45] *Id.*, pp. 1300-1304, Minutes of the Hearing dated April 25, 2014; pp. 1306-1307, Resolution dated April 25, 2014.
[46] *Id.*, pp. 1291-1296, Exhibit "R-3-Suspension", Judicial Affidavit of Revenue Officer Cynthia M. Catolico; pp. 1300-1304, Minutes of the Hearing dated April 25, 2014.
[47] *Id.*, pp. 1300-1304, Minutes of the Hearing dated April 25, 2014; pp. 1306-1307, Resolution dated April 25, 2014.
[48] *Id.*, pp. 1308-1322.
[49] *Id.*, pp. 1324-1335.
[50] *Id.*, pp. 1339-1346.
[51] *Id.*, pp. 1339-1346.
[52] Docket, Vol. III, pp. 1392-1395.
[53] *Id.*, pp. 1397-1411.
[54] *Id.*, pp. 1425-1433.
[55] *Id.*, pp. 1446-1448, Resolution dated April 6, 2015.

On May 8, 2015, the CIR filed a Motion for Issuance of Subpoena Ad Testificandum and Subpoena Duces Tecum to require Banco De Oro Assistant Manager, Ms. Filipina R. Matito, or any other officer of BDO who was competent to testify on some BDO promissory notes. This was granted by the Court in Division and a Subpoena Duces Tecum and Ad Testificandum[56] was issued to Ms. Filipina R. Matito on May 14, 2015.

In the Resolution[57] dated July 24, 2015, the CIR was deemed to have waived his right to present sur-rebuttal evidence for failure of his counsel to comply with the Resolution[58] dated June 4, 2015.

Within the extended time granted by the Court in Division,[59] Lim Gaw filed his Memorandum[60] on September 28, 2015. The CIR, on the other hand, failed to file his Memorandum per Records Verification Report[61] issued by this Court's Judicial Records Division on October 2, 2015. Hence, in the Resolution[62] dated October 8, 2015, the Court in Division declared the case submitted for decision.

On September 2, 2016, the Court in Division promulgated the assailed Decision granting Lim Gaw's Petition and declaring the deficiency income tax assessment issued against him for taxable year 2007 void due to the invalidity of the LOA which covered audit of "unverified prior years". The dispositive portion thereof reads, as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax assessment for taxable year 2007, amounting to ₱1,295,855,151.89 as found in FDDA No. 2012-0001, is hereby **CANCELLED** and **WITHDRAWN.**
>
> **SO ORDERED**."

The CIR filed his Motion for Reconsideration through registered mail on September 21, 2016 which the Court received on September 28, 2016. Lim Gaw filed his Opposition (Re: Respondent's Motion for Reconsideration dated 21 September 2018) thereto on November 2, 2016.

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[56] *Id.*, p. 1453.
[57] *Id.*, pp. 1467-1468.
[58] *Id.*, p. 1463.
[59] *Id.*, p. 1472, Order dated August 27, 2015; p. 1478, Resolution dated September 16, 2015.
[60] *Id.*, pp. 1479-1524.
[61] *Id.*, pp. 1527.
[62] *Id.*, p. 1528.

In a Resolution dated February 8, 2017, the Court in Division denied the CIR's motion, thus:

> "**WHEREFORE,** premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Within the extended period granted by the Court *en banc*[63], on March 13, 2017, the CIR timely filed his Petition for Review, docketed as CTA EB No. 1601.[64]

In a Resolution dated April 21, 2017,[65] respondent Lim Gaw was ordered to file his Comment to the Petition.

On May 19, 2017, Lim Gaw filed for a Motion for Extension[66] to file his Comment. This was granted by the Court *en banc* via Minute Resolution issued on May 22, 2017.[67]

Within the extended period granted by the Court, Lim Gaw filed his Comment (Re: Petition for Review dated 10 March 2017) on May 31, 2017.[68]

On June 29, 2017, the Court *en banc* resolved to give due course to the petition and ordered the parties to submit their respective memoranda.[69]

On August 14, 2017, the CIR filed a Motion for Extension of Time to File Memorandum[70] which was granted by the Court via Minute Resolution issued on August 16, 2017.[71]

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[63] *Id.* at Note 25, p. 5.
[64] *Id.*, pp. 6-17.
[65] *Id.*, pp. 65-67.
[66] *Id.*, pp. 66-69.
[67] *Id.*, p. 70.
[68] *Id.*, pp. 71-100.
[69] *Id.*, pp. 102-103.
[70] *Id.*, pp. 104-107.
[71] *Id.*, p. 108.

On August 29, 2017, the CIR filed his Memorandum.[72] Lim Gaw, on the other hand, filed his Memorandum on August 30, 2017.[73] Subsequently, on October 9, 2017, the case was submitted for decision.

The Assignments of Errors

The CIR's Petition for Review assigns one main error to Court in Division's assailed Decision and Resolution in that it declared the LOA invalid. He argues instead that: a) the LOA is valid as it was issued pursuant to the RATE program of the BIR; b) an LOA is not indispensable in the assessment of Lim Gaw as none of his financial books or records were examined; and c) Lim Gaw is estopped from attacking the validity of the LOA.

The Ruling of the Court

A careful perusal of the records reveals that the Verification and Certification of Non-Forum Shopping attached to the Petition pertains to another case and not the instant case.

Rule 7, Section 1 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides for the procedure in appealed cases, thus:

> "**SECTION 1.** *Applicability of the Rules of the Court of Appeals, exception.* – The procedure in the Court *en banc* or in Divisions in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in these Rules."

In relation to that, Rule 8, Section 4(b) of the RRCTA provides that an appeal from a decision or resolution of the Court in Division shall be taken to the Court *en banc* by a petition for review under Rule 43 of the Rules of Court:

> "**SEC. 4.** *Where to appeal; mode of appeal.* – x x x
>
> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken

[72] *Id.*, pp. 109-118.
[73] *Id.*, pp. 119-144.

> to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal."

On the other hand, Rule 43, Sections 5 and 6 of the Rules of Court require the filing of a **verified petition for review**, which should contain a **sworn certification against forum shopping**.

> "Section 5. How appeal taken. — Appeal shall be taken by filing **a verified petition** for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency a quo. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.
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> x x x
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> Section 6. Contents of the petition. — The petition for review shall x x x (d) contain as provided in the last paragraph of section 2, Rule 42. The petition **a sworn certification against forum shopping** shall state the specific material dates showing that it was filed within the period fixed herein." *(Emphasis supplied)*

In this case, the CIR failed to comply with the mandatory requirements in filing an appeal when he attached to the Petition a Verification and Certification of Non-Forum Shopping dated March 13, 2017 **referencing a different case.** The relevant excerpts thereof read, as follows:

> "2. I have caused the preparation of the foregoing **Petition for Review captioned 'Commissioner of Internal Revenue vs. G&W Architects, Engineers, and Project Consultants' docketed as CTA E.B. No. 1572 (Case No. 8604)**, and read the same, the contents and allegations of which are true and correct of my own knowledge and based on authentic records at hand;
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> 3. **I certify that I have not commenced any other action or proceeding involving the same issue** before this Honorable Court, or any Division thereof, the Supreme Court, the Court of Appeals, the Regional Trial Court or any tribunal or agency. To the best of my knowledge, no such action or proceeding has been filed or is pending before this Honorable Court, or any tribunal or agency. Should I learn that a similar action or proceeding has been

> filed or is pending before this Honorable Court or any tribunal or agency, I will notify this Honorable Court within five (5) days from such notice." (*Emphasis supplied)*

The present case is docketed as CTA EB No. 1601 and entitled *"Commissioner of Internal Revenue vs. Macario Lim Gaw, Jr."*. The Verification and Certification of Non-Forum Shopping attached to the Petition refers to an entirely difference case docketed as *CTA EB No. 1572 (Case No. 8604)* and entitled *"Commissioner of Internal Revenue vs. G&W Architects, Engineers, and Project Consultants."*

In *Fernandez vs. Villegas*[74], the Supreme Court elucidated on the subject of the required Verification and Certification Against Forum Shopping, thus:

> "The Court laid down the following guidelines with respect to noncompliance with the requirements on or submission of a defective verification and certification against forum shopping, viz.:
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> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and noncompliance with the requirement on or submission of defective certification against forum shopping.
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> 2) As to **verification**, non-compliance therewith or a defect therein **does not necessarily render the pleading fatally defective**. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
>
> 3) Verification is **deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification**, and when matters alleged in the petition have been made in good faith or are true and correct.
>
> 4) As to **certification against forum shopping, non-compliance therewith or a defect therein**, unlike in

[74] G.R. No. 200191, August 20, 2014.

verification, **is generally not curable by its subsequent submission or correction thereof**, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[75] (Emphases supplied)"

In the *Fernandez* case, the Court of Appeals (CA) granted respondents' Motion to Dismiss Appeal, holding that the verification and certification against forum shopping attached to the CA petition was defective since it was signed only by Lourdes, one of the plaintiffs in the case, in violation of Section 5,[76] Rule 7 of the Rules of Court which requires all the plaintiffs to sign the same. There was also no showing that Lourdes was authorized by her co-plaintiff, Cecilia, to represent the latter and to sign the said certification, and neither did the submission of the special powers of attorney of Cecilia and Imelda to that effect constitute substantial compliance with the rules. The CA further noted that plaintiffs failed to comply with its prior Resolution dated October 11, 2010

[75] *Ingles v. Estrada*, G.R. Nos. 141809, 147186, and 173641, April 8, 2013, 695 SCRA 285, 317-319, citing *Altres v. Empleo*, 594 Phil. 246, 261-262 (2008).

[76] SEC. 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. x x x.

requiring the submission of an amended verification/certification against forum shopping within five (5) days from notice, warranting the dismissal of the CA petition on this score.

The Supreme Court granted the Petition for Certiorari of Fernandez holding that due to the peculiar circumstances of the case, there was sufficient compliance with the verification and certification requirement.

The instant case differs from *Fernandez* in that the verification and certification against forum shopping attached to the Petition pertains to another case. The signatory thereof, Jesus Clint O. Aranas, Deputy Commissioner of the Legal Group of the BIR, was attesting to facts relevant to **CTA EB No. 1572** and **not** the present petition under consideration, **CTA EB No. 1601.** It is as if no verification and certification against forum shopping accompanied the Petition.

Records show that the faulty verification and certification was brought to the attention of the CIR in Lim Gaw's Comment to the Petition **as early as May 31, 2017** when it was served its copy thereof. From the time it was given notice of the error **until August 29, 2017**, the time the CIR filed its Memorandum, the CIR did not even attempt to rectify the same by filing the correct verification and certification against forum shopping pertaining to this case. Neither did the CIR address this in his Memorandum.

In *Shipside Incorporated v. Court of Appeals, et al.,*[77] the Supreme Court discussed the rationale and effects of lack of verification and certification against forum shopping in this wise:

> "The Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional (*Uy v. LandBank*, G.R. No. 136100, July 24, 2000). Such requirement is simply a condition affecting the form of the pleading, non-compliance with which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are

[77] G.R. No. 143377, February 20, 2001.

> such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.
>
> On the other hand, **the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition.** Section 5, Rule 45 of the 1997 Rules of Civil Procedure provides that the failure of the petitioner to submit the required documents that should accompany the petition, including the certification against forum shopping, shall be sufficient ground for the dismissal thereof. The same rule applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation."

From the foregoing, it follows that while the requirement regarding verification of a pleading is merely formal and not jurisdictional in nature; the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition and shall be sufficient ground for the dismissal thereof.

It is well-settled that the right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege and may be exercised only in the manner and in accordance with the provisions of law.[78] In *Macapagal vs. People*,[79] the Supreme Court ruled that the perfection of an appeal in the manner laid down by law is mandatory and jurisdictional, to wit:

> "It is the duty of counsel to make sure of the nature of the errors he proposes to assign, to determine which court has appellate jurisdiction, and to follow the requisites for appeal. **Any error in compliance may be fatal to the client's cause. It should be stressed that the right to appeal is neither a natural right nor a part of due process. It is merely a procedural remedy of statutory origin and may be exercised only in the manner prescribed by the provisions of law authorizing its exercise.** The requirements of the rules on appeal cannot be considered as merely harmless and trivial technicalities that can be discarded at whim. In these times when court dockets are clogged with numerous litigations, parties have to abide by these rules with

[78] ***Fenequito v. Vergara Jr.***, G.R. No. 172829, July 18, 2012, 677 SCRA 113, 117.
[79] 717 SCRA 425, 433-434 (2014).

greater fidelity in order to facilitate the orderly and expeditious disposition of cases." *(Emphasis supplied)*

Consequently, the right to appeal is forfeited by the litigant who does not comply with the manner prescribed by the Rules.[80] The perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and noncompliance with such legal requirements is fatal and has the effect of rendering final and executory the judgment of the court below.[81] Considering that the CIR's Petition has not been perfected, the Court *en banc* is bereft of jurisdiction over this case.

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Ma. Belen R-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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Official Business)
CIELITO N. MINDARO-GRULLA
Associate Justice

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[80] *Bejarasco, Jr. vs. People*, 641 SCRA 328 (2011).
[81] *Alto Sales Corp. vs. IAC*, 197 SCRA 618 (1991); *Laza vs. Court of Appeals*, 269 SCRA 654 (1997); *Cabellan vs. Court of Appeals*, 304 SCRA 119 (1999); *Yalong vs. People*, 704 SCRA 195 (2013).

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice