REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2264** (CTA Case No. 9507)
-*versus*-	Present: **DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
NATIONWIDE HEALTH SYSTEMS BAGUIO, INC., *Respondent.*	Promulgated: MAR 06 2024 11:30am

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is petitioner Commissioner of Internal Revenue's ("petitioner" or "CIR") Petition for Relief from Judgment ("Petition"),[1] posted on 5 September 2022, and received by the Court *En Banc* on 13 September 2022, *sans* answer from respondent.[2]

In the Petition, the CIR seeks to be relieved from the effects of the Entry of Judgment issued in relation to the Court's Decision promulgated on 9 December 2021,[3] and be given another chance to elevate his claim to the Court *En Banc* via Motion for Reconsideration.[4]

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[1] *Rollo*, pp. 140-165, with annexes.
[2] See Records Verification Report, *id.*, p. 179.
[3] See Decision dated 9 December 2021, *id.*, pp. 97-116.
[4] See Prayer, Petition for Relief from Judgment, *id.*, p. 155.

The CIR states that on 7 July 2022, he received a copy of the Entry of Judgment, through a notice, dated 30 June 2022. Thus, petitioner claims that he had sixty (60) days from date of notice, or until 5 September 2022, within which to file the instant Petition. He further states that the same Petition is filed within the six (6)-month period from the date the judgment or final order was entered, prescribed under the Revised Rules of Court.

CIR avers that sufficient grounds exist that would warrant his Petition. He posits that *first*, there is a valid reason why he failed to file the Motion for Reconsideration with the Court *En Banc*, and *second*, meritorious defenses support his position.

For the *first* point, petitioner claims that his counsel from the Office of the Solicitor General, had already prepared and forwarded to the filing staff the copy of the Motion for Reconsideration as early as 5 January 2022. This was even prior to 2 February 2022, the next working day after the extended filing due date set by the Supreme Court through ***Administrative Circular 01-2022***.[5] The counsel, however, assumed that the motion was filed and was surprised to learn of the issuance of an Entry of Judgement.

Petitioner further narrates that the supposed filing of the motion for reconsideration on 2 February 2022 was a crucial time considering the number of pleadings filed by the Litigation Division. The filing personnel prepared and filed a total of around forty (40) pleadings, some with corresponding attachments. The inadvertence coupled with the time constraints led to the non-filing of the pleading. According to the CIR, ordinary diligence and prudence could not have guarded against the untoward situation that happened; thus, the failure to file due to excusable negligence of the filing staff should not prejudice petitioner's rights and interest.

As regards the *second* point, or the claimed meritorious defense, petitioner raises that the Court in Division erred in ruling that it has jurisdiction over the original petition. Specifically, he claims that there is no legal basis stating that the Warrant of Distraint and/or Levy ("WDL") is tantamount to the denial of the CIR in an action for reconsideration and should thus be considered the reckoning point within which respondent can elevate its claim before the Court in Division.

Further, petitioner advances that the Court in Division erred in ruling against the validity of the assessment for failure to attach the Final Assessment Notice ("FAN") to the Formal Letter of Demand ("FLD") and for the lack of a due date of payment. He contends that the burden to prove that the FAN was

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[5] Administrative Circular No. 01-2022, dated 10 January 2022, states:
"In view of the alarming number of Covid-19 infections, the effects of super typhoon Odette, and the request of the 25th Board of Governors of the Integrated Bar of the Philippines, the filing periods of any and all pleadings and other court submissions falling due in the month of January 2022 in all courts are hereby EXTENDED until February 1, 2022."

indeed not received should have shifted back to the respondent. Thus, there was error in finding for respondent's non-receipt of the FAN. It was further emphasized that while the FLD did not state a payment due date, the same was indicated in the FAN.

Based on the foregoing, petitioner requests the Court *En Banc* to revive the right to file a Motion for Reconsideration which was lost upon Entry of Judgment.

Petitioner failed to comply with the double prescriptive period of 60 days from notice and 6 months after entry of judgment.

The filing of a petition for relief from judgment is governed by ***Rule 38 of the Revised Rules of Court. Sections 1 and 3*** thereof states:

> "**Section 1.** *Petition for relief from judgment, order, or other proceedings.* — When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.
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> **Section 3.** *Time for filing petition; contents and verification.* — A petition provided for in either of the preceding sections of this Rule must be verified, filed **within <u>sixty (60) days</u> after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than <u>six (6) months</u> after such judgment or final order was entered, or such proceeding was taken,** and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be."

The Supreme Court expounded on the foregoing provision in the case of ***Commissioner of Internal Revenue vs. Yi Wine Club, Inc.***,[6] citing ***Quelnan vs. VHF Philippines***,[7] as follows:

> "Clear it is from the above that a petition for relief from judgment must be filed within: (a) 60 days from knowledge of judgment, order or other proceedings to be set aside; and (b) six (6) months from entry of such judgment, order or other proceeding. These two periods **must concur**. Both periods are also **not extendible and never interrupted. Strict compliance** with these periods stems from the equitable character and nature of the petition for relief. Indeed, relief is allowed only in exceptional cases as when there is no other available or adequate remedy. As it were, a petition for relief is actually the "last chance" given by law to litigants to question a final judgment or order. **And failure**

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[6] G.R. No. 250698 (Notice), 23 November 23, 2021.
[7] G.R. No. 138500, 16 September 2005.

to avail of such "last chance" within the grace period fixed by the Rules is fatal."
(Emphasis in the original.)

To reiterate the High Court's pronouncement, a double period for filing a petition for relief from judgment is mandated under the rules: (a) sixty (60) days from the knowledge of the decision; and (b) six (6) months from the entry of judgment. Both periods must be strictly complied with and cannot be extended and interrupted.

In the case at hand, Petitioner invokes that the 60-day period must be counted from the receipt of the notice of the Entry of Judgment, and posits that it was when "petitioner learns of the judgment, final order or other proceeding to be set aside." Meanwhile, there was a mere mention of his supposed compliance with the 6-month period without any discussion on how the same should be calculated. Records, however, show that petitioner failed to conform therewith.

Section 2,[8] Rule 36 of the Rules of Court, as amended, states that the date of finality of the judgment or final order shall be deemed to be the date of its entry. Consistent thereto, the Supreme Court clarified in the case of ***Juliet Vitug Madarang, et al. vs. Spouses Jesus D. Morales, et al.***[9] that the 6-month period for filing a petition for relief from judgment must be counted from the finality of judgment or final order.

To recall, the Decision of the Court *En Banc* was promulgated on 9 December 2021. A copy of the same was received by the Office of the Solicitor General, as counsel of petitioner, on 21 December 2021.[10] Petitioner then had fifteen (15) days[11] from such receipt within which to file an appeal, otherwise the judgment shall become final. However, due to the extension granted by the Court through ***Supreme Court A.C. No. 01-2022***, the due date fell on 2 February 2022. Thus, counting six (6) months therefrom, petitioner had until 2 August 2022 within which to file his petition. In this regard, the Court finds the instant Petition belatedly filed on 5 September 2022.

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[8] **Section 2.** *Entry of judgments and final orders.* — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, within a certificate that such judgment or final order has become final and executory.

[9] G.R. No. 199283, 9 June 2014.

[10] See Compliance dated 27 December 2021, *Rollo*, p. 124.

[11] See ***Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals*** which states:

Rule 15 – Motion for Reconsideration or New Trial.

Section 1. Who may and when to file motion.- Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a motion for reconsideration or new trial within **fifteen days** from the date he received notice of the decision, resolution or order of the Court in question. (Emphasis supplied.)

An outright dismissal of the Petition is in order, on this ground alone. Nevertheless, the Court *En Banc* opts to review petitioner's claim on the existence of meritorious defenses supposedly warranting the grant of the petition and discuss why We still find the contentions untenable.

It also does not escape the Court *En Banc*'s attention that the defenses raised by the petitioner have already been tackled in the Decision, dated 15 October 2019, and Resolution, dated 11 March 2020, both issued by the Court in Division; and the Decision dated 9 December 2021.

The Court in Division acquired jurisdiction over the original petition.

Petitioner claims that the Court in Division did not acquire jurisdiction over the original petition due to prescription. We, however, find no merit in such position, and hereby reiterate and affirm the disquisitions of the Court in Division in the Resolution dated 11 March 2020:

> "In Philippine Journalists, Inc. v. Commissioner of Internal Revenue, the Supreme Court declared:
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> xxx xxx xxx
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> > The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.
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> xxx xxx xxx
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> Consistent with the above, this Court may validly look into the regularity of the issuance of the WDL and reckon the 30-day period to appeal before it from petitioner's receipt thereof. This proceeds from the fact that **the WDL constitutes an act of respondent on "other matters" arising under the NIRC or other laws administered by the Bureau of Internal Revenue (BIR), which could similarly be the subject of an appropriate appeal with the CTA.**
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> Considering further that the issuance of WDL is provided under Sec. 205 (a) of the NIRC, as amended, **the action questioning the validity thereof (as in the instant case) falls squarely under the phrase "other matter arising from the NIRC,"** pursuant to Section 7 (a) (i) 7 of R.A. No. 1125, as amended."
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> (Emphasis supplied; citations omitted.)

Indeed, the issuance of the WDL is an action that can be validly questioned before the Court, pursuant to ***Section** 7(a)(i)7*[12] ***of the Republic Act No. 1125***,[13] as "other matters arising under the NIRC."

Accordingly, We find no error in ruling that the Court in Division has acquired jurisdiction over the original petition.

The FAN and FLD are void as the burden of proving non-receipt of the FAN is not shifted back to respondent, and the lack of due date in the FLD negates the required demand for payment.

Petitioner contends that respondent's claim that the FAN was not received is merely a self-serving statement. He further argues that the burden to prove such failure to receive FAN has been shifted back to respondent considering that petitioner has presented registry receipt and registry return card.

We find this argument devoid of merit.

As cited in the Decision, dated 9 December 2021, the Supreme Court held in the case of ***Commissioner of Internal Revenue vs. T Shuttle Services, Inc.***[14] that mere presentation of registry receipt is insufficient to prove actual receipt of the notices. The witness must further identify and authenticate the signature appearing on the registry receipts, and ascertain whether this was signed by the taxpayer's authorized representative.

Here, the submitted registry return receipt[15] indicates a name and signature of a certain Chevy Marrero who was not proven by petitioner as an authorized representative of the respondent. The testimony of Revenue Officer Rhodaline Fortea Ramelo even failed to establish that she has personal knowledge as to the fact of the actual mailing of the FAN.[16] Accordingly, the Court *En Banc* cannot give credence to petitioner's position that the burden of proof has shifted to respondent considering that there is categorical denial

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[12] **Section 7.** Jurisdiction. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.

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

[13] An Act Creating the Court of Tax Appeals, 16 June 1954.

[14] G.R. No. 240729, 24 August 2020.

[15] BIR Records, Folder 3, p. 1377.

[16] See Judicial Affidavit of Revenue Officer Rhodaline Fortea Ramelo, Division Docket (CTA Case No. 9507), Vol. 1, pp. 266-269.

of due receipt of the FAN and the lack of identification of the registry return receipt signatory.

Corollary, as it is ruled that the FAN was not received by the respondent, there is no valid demand for payment due to the lack of due date in the FLD.

The CTA *En Banc* thus sees no justifiable reason to grant petitioner's petition on giving another chance to elevate the instant claim via Motion for Reconsideration.

WHEREFORE, premises considered, the **Petition for Relief from Judgment** filed by the petitioner is, hereby, **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I concur in the result based on out-of-time filing solely.
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice