REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2990** (CTA Case No. 9933)
	Present:
- versus -	**RINGPIS-LIBAN,** *P.J.*, **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
C.U.T. COMMERCIAL CORPORATION, Respondent.	Promulgated: JAN 30 2026 2:25pm

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) seeking to reverse the Special First Division's Decision[2] promulgated on 22 March 2024 (**assailed Decision**) and its Resolution[3] issued on 13 August 2024 (**assailed**

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[1] Filed on 25 September 2024, *rollo*, pp. 9-19.

[2] Division Docket, pp. 551-562. Penned by Associate Justice Marian Ivy F. Reyes-Fajardo, concurred in by Presiding Justice Roman G. Del Rosario (Ret.) and Associate Justice Catherine T. Manahan (Ret.).

[3] Id., pp. 576-577.

Resolution), pursuant to Section 2(a)(1),[4] Rule 4 of the Revised Rules of the Court of Tax Appeals[5] (**RRCTA**).

In the assailed Decision and assailed Resolution, the Special First Division granted respondent C.U.T. Commercial Corporation's (**respondent**'s) prior Petition for Review (**prior petition**) with Motion to Suspend Collection of Taxes[6] (**Motion for Suspension**) and cancelled the Preliminary Collection Letter (**PCL**) dated 15 August 2018[7] for being void and ineffectual. The said PCL requested for the payment of the alleged deficiency income tax (**IT**) and compromise penalties in the aggregate amount of ₱1,343,766.85 assessed against respondent.

PARTIES TO THE CASE

Petitioner is the head of the Bureau of Internal Revenue (**BIR**) tasked to decide disputed assessments, refunds of internal revenue taxes, fees or charges, penalties imposed in relation thereto. He or she may be served with notices, pleadings, resolutions, orders, decisions, and other legal processes at the BIR National Office Bldg., Agham Road, Diliman, Quezon City.[8]

Respondent, on the other hand, is a corporation duly organized and existing under the laws of the Philippines, with principal address at 22 Quezon St., Iloilo City Proper, Iloilo.[9]

FACTS OF THE CASE

On 01 October 2015, respondent received Letter of Authority (**LOA**) No. LOA-074-2015-00000068 (eLA201100059826), dated 08 September 2015,[10] which authorized Revenue Officer (**RO**)

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4 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:
1. Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry and Department of Agriculture[.]

5 A.M. No. 05-11-07-CTA.

6 Division Docket, pp. 10-16.

7 Exhibit "P-7", id., p. 487

8 Par. 1, Pre-Trial Order, id., p. 270.

9 Par. 1, Petition for Review with Motion to Suspend Collection of Taxes, id., p. 10.

10 Exhibit "R-1", BIR Records, p. 20.

Ma. Cecilia Nava (**Nava**) and Group Supervisor (**GS**) Jucy Villarba (**Villarba**) to examine respondent's books of accounts and other accounting records for all internal revenue taxes for the period 01 January 2014 to 31 December 2014, or calendar year (**CY**) 2014.

After respondent received the "First Request for Presentation of Records" dated 14 December 2015[11] and "Second and Final Notice" dated 19 January 2016,[12] it submitted its books of accounts and other records (in support of its tax returns and financial statements [**FS**]) to the assigned RO.[13]

After a series of communications (between the two [2] parties), on 20 June 2017, respondent received the Preliminary Assessment Notice (**PAN**) dated 05 June 2017,[14] with Details of Discrepancies.[15] There, respondent was found liable for deficiency IT in the amount of ₱1,325,158.97 and compromise penalties of ₱3,000.00.

In response thereto, on 27 June 2017, respondent filed a Legal Petition Notice dated 23 June 2017[16] and argued that the PAN was prematurely issued considering that the assigned RO and GS did not conduct any 'closing conference' as required under Revenue Audit Memorandum Order (**RAMO**) No. 1-2000.[17]

Undeterred, on 06 July 2017, petitioner issued the Formal Letter of Demand[18] (**FLD**) with the Details of Discrepancies,[19] Assessment Notices[20] (**ANs**) and Transcript of Assessment,[21] which respondent received on 07 September 2017. In the said notices, except for the interest (on the tax assessment), both the deficiency IT and compromise penalties were maintained.

11 Exhibit "R-5", id., p. 31.
12 Exhibit "R-6", id., p. 32.
13 See Legal Petition Notice dated 30 January 2016, id., pp. 38-42 and Transmittal of Evidences, id., pp. 33-37.
14 Exhibit "R-12", id., pp. 273-274.
15 Id., pp. 271-272.
16 Id., pp. 309-314.
17 Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000).
18 Exhibit "R-14", BIR Records, pp. 330-331.
19 Id., pp. 328-329.
20 Id., pp. 326-327.
21 Id., pp. 324-325.

Dissatisfied, on 05 October 2017, respondent filed its Protest (by way of a request for reinvestigation) through a Legal Petition Notice dated 30 September 2017.[22] In its bid to overturn the deficiency assessment, respondent undertook to submit documents in support of its arguments within sixty (**60**) days from the filing of the Protest.[23]

Despite its undertaking to submit documents, in its two (2) Legal Petition Notices dated 12 October 2017[24] and 16 November 2017,[25] respectively, respondent insisted on examining petitioner's "working papers" which the latter used as basis in computing the deficiency IT assessment. Respondent added that the absence of a 'closing conference' is a violation of its right to a transparent audit investigation.

Addressing respondent's insistence on a 'closing conference', in a letter dated 19 October 2017,[26] petitioner explained that, with the issuance of Revenue Regulations (**RR**) No. 18-2013[27] removing the requirement for informal conferences, a 'closing conference' is similarly no longer necessary. Such is aligned with the BIR's intention to rid of "red tape" that usually happens during these meetings. Nonetheless, even with the said meetings' removal, due process is still afforded to every taxpayer during the conduct of the audit.

In the same letter of 19 October 2017, petitioner also informed respondent that its request for reinvestigation was granted and that it should submit all relevant documents within 60 days reckoned from 05 October 2017. Respondent received the said letter on 17 November 2017.

Replying to the letter, respondent claimed that under the Freedom of Information Bill as circulated *via* Revenue Memorandum Circular (**RMC**) No. 075-2017,[28] it may still access the said "working papers" as part of BIR's public and official records. Moreover,

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22 Id., pp. 412-425.
23 See par. 55 of the Legal Petition Notice dated 30 September 2017, id., p. 435.
24 Id., pp. 491-495.
25 Id., pp. 500-505.
26 Id., pp. 471-472.
27 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
28 Promulgation and Implementation of the People's Freedom of Information Manual of the Bureau of Internal Revenue.

respondent declared that it had until 04 December 2017 to submit the supporting documents related to its Protest.[29]

Thereafter, on 15 February 2018, Regional Director (**RD**) Alberto S. Olasiman (**Olasiman**) issued the Final Decision on Disputed Assessment[30] (**FDDA**), which respondent received on 05 March 2018.[31] In the FDDA, petitioner claimed that the documents (which respondent had submitted) were insufficient to overturn the BIR's previous findings. Thus, petitioner demanded that respondent pays the deficiency IT and compromise penalties otherwise it may appeal the FDDA before the Court of Tax Appeals (**CTA**) or to the CIR, both within thirty (30) days from the receipt thereof.

Respondent opted to file a Motion for Reconsideration (**MR to the FDDA**) through a Legal Petition Notice dated 16 March 2018[32] before the CIR on 02 April 2018. During the pendency of the MR to the FDDA, BIR's Collection Division, Officer-In-Charge Chief Lilibeth L. Po (**OIC Chief Po**) issued the subject PCL.[33] Respondent received the same on 23 August 2018.[34]

PROCEEDINGS BEFORE THE COURT IN DIVISION

On 24 September 2018, respondent (then petitioner) filed the prior petition[35] with this Court arguing that the PCL was prematurely issued and that petitioner failed to provide the factual and legal bases for the assessment, thus rendering the same void. A Motion for Suspension was contained in the said petition. As stated, the case was docketed as CTA Case No. 9933 entitled "*C.U.T. Commercial Corporation v. Bureau of Internal Revenue*" and was raffled to the First Division.[36]

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29 See Legal Petition Notice dated 27 November 2017, BIR Records, pp. 511-515.
30 Exhibit "P-5", Division Docket, pp. 455-457.
31 Id.
32 Exhibit "P-6", id., pp. 458-464.
33 Supra at note 7.
34 Id.
35 Supra at note 6.
36 Then composed of Presiding Justice Roman G. Del Rosartio (Ret.), Associate Justice Esperanza Fabon-Victorino (Ret.) and Associate Justice Catherine T. Manahan (Ret.).

On 07 November 2018, petitioner (then respondent) filed an "Opposition with Motion to Dismiss"[37] and averred that the Court has no jurisdiction over the prior petition as there was yet no final decision that could be a subject of any appeal. Contrary to respondent's position, the subject PCL could not be considered as the CIR's final decision. Thus, without jurisdiction, petitioner moved for the dismissal of both the prior petition and the Motion for Suspension.

On 06 December 2018, the hearing on the Motion for Suspension proceeded. Respondent presented Divine Grace Fresco (**Fresco**), respondent's Tax Consultant. She testified that the PCL was prematurely issued since respondent had then a pending MR to the FDDA before the CIR. Moreover, respondent's cash for CYs 2014-2016 merely averaged to ₱300,000.00, whereas its inventories amounted to ₱6,480,000.00. Fresco claimed that should respondent pay the alleged deficiency tax liability, it will not be able to settle its liabilities and may eventually close the business.[38]

On cross-examination, Fresco confirmed that the trade receivables are part of respondent's current assets. Nonetheless, she cannot guarantee that these are collectible or recoverable since she was not the accountant who signed the FS.[39] No redirect examination was conducted.[40]

Subsequently, on 11 December 2018, petitioner and respondent both filed their respective Memoranda in relation to the Motion for Suspension.[41] On even date, respondent also filed its "Formal Offer of Evidence (Re: [Motion for Suspension])"[42] (**FOE for Motion for Suspension**) which offered Exhibits "**P-1**" to "**P-10-a**". After petitioner's filing of the Comment[43] thereto, the First Division admitted Exhibits "**P-6**", "**P-10**" and "**P-10-a**" and denied the other offered exhibits for failure to present the originals for comparison or for not being found in the records.[44]

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[37] Division Docket, pp. 64-71.
[38] Exhibit "P-10", Judicial Affidavit (For Witness: Ms. Divine Grace Fresco), Division Docket, pp. 77-85. See also Order dated 06 December 2018, pp. 92-93.
[39] TSN dated 06 December 2018, pp. 6-9.
[40] Id., p. 12.
[41] Petitioner's Memorandum (Re: [Respondent's] Motion to Suspend Collection of Taxes), Division Docket, pp. 99-105; Respondent's Memorandum (Re: [Respondent's] Motion to Suspend Collection of Taxes, id., pp. 107-111.
[42] Id., pp. 120-122.
[43] Id., pp. 123-124.
[44] See Resolution dated 11 February 2019, id., pp. 175-176.

Prior to the resolution of the Motion for Suspension, petitioner transmitted the BIR Records to the Court.[45] In addition, petitioner filed his or her "Answer with Opposition to Motion [for Suspension]"[46] on 24 January 2019.[47] There, petitioner reiterated that the CTA has no jurisdiction over the case and the assessment had already attained finality for respondent's failure to make a timely appeal. He or she claimed that respondent received a decision denying the MR to the FDDA on 17 August 2018. Hence, with the finality of the assessment, the issuance of the PCL was proper. Apart from it, petitioner maintained that the findings on the assessment have factual and legal bases. As for the Motion for Suspension, petitioner argued that respondent could not be entitled to any ancillary remedy since it failed to prove that it will be greatly prejudiced with the collection of the tax liability.

Acting on all the pending incidents,[48] in a Resolution dated 21 March 2019,[49] the First Division denied petitioner's Motion to Dismiss and declared that a full-blown trial is necessary to determine the nature of the PCL. Further, the First Division also denied the Motion for Suspension for respondent's failure to prove that its interest will be jeopardized with the collection of the deficiency tax liability. It explained that most of respondent's exhibits (that were offered to support the said Motion) were not admitted and, thus, were not considered in the resolution thereof.

After the parties agreed not to have the case mediated,[50] the pre-trial conference was scheduled on 10 October 2019.[51] Respondent filed its Pre-Trial Brief[52] on 20 August 2019 while petitioner filed his or her Pre-Trial Brief[53] on 08 October 2019. After the conclusion of the Pre-Trial Conference,[54] the parties filed their Joint Stipulation of Facts and Issues[55] (**JSFI**) on 25 October 2019. Thereafter, the First Division

45 See Compliance filed on 15 February 2019, id., pp. 178-183.
46 Id., pp. 159-171.
47 See Motion for Leave to Admit Attached Answer filed on 24 January 2019, id., pp. 155-157.
48 Respondent's Opposition (To [Petitioner's] Motion to Dismiss filed on 10 December 2018, id., pp. 126-128; Petitioner's Manifestation and Reply with Leave of Court (Re: [Respondent's] Opposition to [Petitioner's] Motion to Dismiss filed on 04 January 2019, id., pp. 130-137.
49 Id., pp. 187-191.
50 No Agreement To Mediate dated 01 July 2019, id., p. 208.
51 See Order dated 20 August 2019, id., p. 218.
52 [Respondent's] Pre-Trial Brief, id., pp. 220-224.
53 [Petitioner's] Pre-Trial Brief, id., pp. 229-232.
54 See Order dated 10 October 2019, id., pp. 239-240.
55 Id., pp. 258-263.

approved the JSFI,[56] terminated the Pre-Trial Conference[57] and issued the Pre-Trial Order on 10 December 2019.[58]

Thereafter, trial ensued. Respondent presented two (2) witnesses, namely: (1) Fresco, its Tax Consultant; and (2) Keiner Cua (**Cua**), the Assistant Manager.

Fresco's previous testimony during the hearing on the Motion for Suspension was adopted as part of the evidence for respondent's prior petition. No further cross-examination was conducted.[59]

As for the second witness, Cua testified that: (1) he personally received the PAN, FLD, FDDA and PCL relative to the subject assessment; (2) after receiving the FLD, respondent filed a Protest (by way of a request for reinvestigation) through a Legal Petition Notice dated 30 September 2017;[60] (3) respondent then received the FDDA through which it filed an MR to the FDDA[61] with the CIR; and (4) without any decision on the said MR, respondent received the PCL.[62]

On cross-examination, Cua only confirmed that respondent's prior petition was filed after the PCL's receipt.[63] No redirect examination was conducted.[64]

Before the filing of respondent's FOE on 10 June 2020, respondent filed a "Motion to Cancel Assessment"[65] (**Motion to Cancel**) and claimed that it availed the benefits of tax amnesty on delinquencies under Republic Act (**RA**) No. 11213.[66] According to respondent, it paid forty percent (40%) of the basic deficiency tax plus the compromise penalty of ₱3,000.00. However, it had yet to secure the Notice of Issuance of Authority to Cancel of Assessment (**NIATCA**). Nonetheless,

56 See Resolution dated 07 November 2019, id., pp. 266-267.
57 Id.
58 Id., pp. 269-275.
59 See Minutes of the hearing dated 12 December 2019, id., pp. 283-285.
60 Supra at note 22.
61 Supra at note 32.
62 Supra at note 7.
63 TSN dated 28 January 2020, pp. 11-12.
64 Id.
65 Division Docket, pp. 322-328.
66 An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2017 and Prior Years with Respect to Estate Tax, Other Internal Revenue Taxes, and Tax on Delinquencies.

respondent prayed for the cancellation of the assessment and the referral of the case to the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**).

Without petitioner's Comment,[67] the First Division[68] deferred the resolution of the Motion to Cancel pending the submission of the originals (or certified true copies) of the required documents such as (but not limited to) the NIATCA, BIR Payment Form, Acceptance Payment Form, Tax Amnesty Return and payment slip.[69]

Although respondent was able to submit the originals of the BIR Payment Form, payment slip, Tax Amnesty Return and Acceptance Payment Form,[70] it failed to submit the NIATCA[71] despite the First Division's repeated directives.[72] Hence, the First Division denied respondent's Motion to Cancel.[73]

Later or on 02 May 2022, respondent filed its FOE[74] that included Exhibits "**P-1**" to "**P-7**" and "**P-10**" to "**P-11**", with sub-markings.[75] After petitioner filed the Comment[76] thereto, the First Division admitted all of respondent's exhibits.[77]

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67 See Resolution dated 09 December 2020, Division Docket, pp. 355-356

68 Then composed of Presiding Justice Roman G. Del Rosartio (Ret.) and Associate Justice Catherine T. Manahan (Ret.).

69 See Resolution dated 08 January 2021, Division Docket, pp. 359-362.

70 See Compliance filed on 29 January 2021, id., pp. 374-389.

71 See Records Verification dated 30 June 2021, id., p. 395.

72 See Resolution dated 20 May 2021, id., p. 394; Resolution dated 16 July 2021, id., p. 398.

73 See Resolution dated 30 March 2022, id., pp. 415-416.

74 Id., pp. 417-421.

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Exhibits	Description
"P-1"	Letter of Authority (eLA No.201100059826) dated 8 September 2015
"P-2"	Preliminary Assessment Notice (PAN) dated 5 June 2017
"P-3"	Formal Letter of Demand (FLD) dated 6 July 2017
"P-4"	Legal Petition Notice dated 30 September 2017
"P-5"	Final Decision on Disputed Assessment (FDDA) dated 15 February 2018
"P-6"	Motion for Reconsideration dated 16 March 2018
"P-7"	Preliminary Collection Letter (PCL) dated 15 August 2018
"P-10" "P-10-A"	Judicial Affidavit and signature of Ms. Divine Grace Fresco
"P-11" "P-11-A"	Judicial Affidavit and signature of Mr. Keiner Cua

76 See Comment (On [Respondent's] Formal Offer of Evidence), id., pp. 489-490.

77 See Resolution dated 28 June 2022, Division Docket, pp. 497-498. The First Division then was composed of Presiding Justice Roman G. Del Rosartio (Ret.), Associate Justice Catherine T. Manahan (Ret.) and Associate Justice Marian Ivy F. Reyes-Fajardo.

For petitioner's part, RO Nava was presented as the sole witness. She testified that: (1) she was authorized to perform the audit of respondent's books (through the issued LOA); (2) after her investigation, she recommended the issuance of the PAN; (3) she also recommended the FLD's issuance when she did not find any substantial arguments in respondent's reply (to the PAN); (4) although respondent filed a Protest to the FLD, petitioner issued the FDDA which maintained the deficiency IT assessment and compromise penalties.[78]

On cross-examination, RO Nava clarified that the findings made on respondent's reply (to the PAN) and Protest (to the FLD) were made in separate Memoranda, an internal document not furnished to respondent. Nevertheless, she declared that the PAN, FLD and FDDA were accompanied with their corresponding Details of Discrepancies bearing the factual and legal bases for the assessment of respondent. In addition, RO Nava said that it is the Regional Office's Assessment Division that prepared the FDDA.[79]

On redirect examination, RO Nava explained that the BIR Regional Office prepared the FDDA as respondent's assessment was already endorsed to the said office.[80] No re-cross examination was conducted.[81]

Subsequently, on 18 October 2022, petitioner filed his or her FOE[82] and offered Exhibits "**R-1**" to "**R-17**", with sub-markings.[83] Without

78 See Judicial Affidavit of Ma. Cecili P. Lim-Nava, Exhibit "R-17", id., pp. 250-257.

79 TSN dated 16 August 2022, pp. 13-26.

80 Id., pp. 26-27.

81 Id.

82 Division Docket, pp. 515-520.

83

Exhibit	Description
"R-1"	Letter of Authority No. LOA-074-2015-00000068 dated 8 September 2015
"R-2"	Checklist of Requirements
"R-3"	Letter dated 1 December 2015
"R-4"	Checklist of Requirements issued on 01 December 2015
"R-5"	First Request for Presentation of Records dated 15 December 2015
"R-6"	Second and Final Notice dated 19 January 2016
"R-7"	Memorandum Report dated 6 September 2016
"R-8"	Memorandum dated 11 November 2016
"R-9"	Memorandum of Assignment No. MOA0742015LOA220009 dated 13 December 2016
"R-10"	Memorandum dated 14 March 2017
"R-11"	Memorandum of Assignment No. MOA0742015LOA24676 dated 24 March 2017
"R-12"	Preliminary Assessment Notice dated 5 June 2017 with attached Details of Discrepancies

respondent's objection,[84] the First Division admitted all offered exhibits.[85] It also ordered the parties to file their respective memoranda.[86] Respondent eventually filed its Memorandum[87] on 20 April 2023 whereas petitioner did not file any.[88]

In the *interim*, following the reorganization of the Court's Divisions, the Special First Division promulgated the now assailed Decision.[89] The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the Petition for Review is **GRANTED**. The subject Preliminary Collection Letter dated August 15, 2018 is **ANNULLED** for being void and ineffectual.
>
> **SO ORDERED.**
>
> ...

Citing the case of *Light Rail Transit Authority v. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue*[90] (**LRTA**), the Special First Division declared that there is no delinquent tax to speak of as respondent timely filed an MR to the FDDA before the CIR. Without the latter's action on the MR, the subject deficiency assessment remained non-demandable, thus petitioner cannot collect the taxes thereon.

Further, contrary to petitioner's claim that respondent received a decision on the MR to the FDDA on 17 August 2018, the same was not duly proven. The BIR Records and the case docket are bereft of such

"R-13"	Memorandum of Assignment No. MOA0742015LOA31168
"R-14"	Formal Letter of Demand dated 6 July 2017 with attached Details of Discrepancies
"R-15"	Final Decision on Disputed Assessment dated 15 February 2018
"R-16"	BIR Records Folder 1
"R-17" "R-17-a"	Judicial Affidavit of Ma. Cecilia P. Lim-Nava Signature of Ma. Cecilia P. Lim-Nava

84 See Records Verification dated 02 November 2022, Division Docket, p. 523.

85 See Resolution dated 06 January 2023, id., pp. 526-528.

86 Id.

87 See Motion to Admit Memorandum, id., pp. 532-534; Memorandum, id., pp. 535-545.

88 See Records Verification dated 14 March 2023, id., p. 529.

89 Pursuant to Administrative Circular No. 01-2023 dated 23 May 2023, which was issued following the retirement of Associate Justice Erlinda P. Uy, the Court underwent a reorganization. The instant case stayed with the Special First Division, which was composed of the same members of the prior First Division.

90 G.R. No. 231238, 20 June 2022.

decision. Moreover, the same was neither offered in petitioner's FOE nor testified on by RO Nava. Accordingly, the PCL was declared void and ineffectual.

Aggrieved, on 11 April 2024, petitioner filed a "Motion for Reconsideration (Re: Decision dated 21 March 2024)"[91] (**MR**). There, petitioner reiterated that the PCL is valid considering that he or she issued a decision on the MR to the FDDA and respondent received it on 17 August 2018. Unconvinced, on 13 August 2024, the Special First Division rendered the assailed Resolution which denied the MR for lack of merit.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Dissatisfied with the Special First Division's actions, on 10 September 2024, petitioner filed a Motion for Extension of Time to File Petition for Review[92] (**Motion for Extension**) and requested for an additional fifteen (15) days or until 26 September 2024 to file the petition. In a Minute Resolution dated 13 September 2024, the same was granted.[93] Accordingly, on 25 September 2024, petitioner filed the Petition for Review[94] before the Court *En Banc*.

Respondent failed to file a Comment[95] on the present petition despite due notice.[96] Accordingly, in a Minute Resolution dated 30 January 2025,[97] the Court *En Banc* submitted the case for decision.

ISSUES

Petitioner puts forward the following issues for the Court *En Banc*'s resolution:

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91 Division Docket, pp. 563-568.
92 *Rollo*, pp. 1-4.
93 Id., p. 8.
94 Supra at note 1.
95 See Records Verification dated 07 January 2025, *rollo*, p. 44.
96 See Minute Resolution dated 18 November 2024, id., p. 43.
97 Id., p. 45.

I.
WHETHER THE SPECIAL FIRST DIVISION ERRED IN RULING THAT IT HAS JURISDICTION OVER THE CASE; AND

II.
WHETHER THE SPECIAL FIRST DIVISION ERRED IN RULING THAT THE PRELIMINARY COLLECTION LETTER (PCL) IS VOID. [98]

ARGUMENTS

In calling for the reversal of the Special First Division's actions, petitioner vehemently insists the CTA has no jurisdiction over respondent's judicial appeal. He or she argues that the subject PCL could not be considered as the CIR's final decision for the following reasons: (1) it does not contain words of finality that indicate that it is the final determination of the subject assessment; (2) there is no warning that failure to pay the tax liability would entitle BIR to resort to administrative remedies for collection; and (3) the PCL did not mention nor resolve respondent's MR to the FDDA.

Petitioner also avers that respondent engaged in forum shopping when it availed a remedy before this Court while its MR to the FDDA was still pending before the CIR, both with the intention of nullifying the subject assessment issued against it. Apart from lack of jurisdiction, petitioner asserts that the case should be dismissed as it impinges on well-settled procedural processes.

Lastly, petitioner underscores that respondent received the decision resolving its MR to the FDDA on 17 August 2018. However, as the latter failed to file an appeal, the subject assessment had become final and demandable. Relative thereto, petitioner contends that for respondent's failure to pay the deficiency tax within the period provided in the FDDA, the same also became delinquent. Thus, petitioner could resort to collection measures to satisfy respondent's tax liability.

As earlier stated, respondent failed to file Comment on the present petition before the Court *En Banc*.[99]

98 See Assignment of Errors in the Petition for Review, id., p. 12.
99 Supra at note 95.

RULING OF THE COURT *EN BANC*

Before We proceed to resolve the merits of the case, We deem it propitious to determine whether this Court has jurisdiction over the instant petition.

Section 3(b) of Rule 8 of the RRCTA, as amended, provides:

> ...
> SEC. 3. *Who may appeal; period to file petition.* —
> ...
>
> (b) A party adversely affected by a decision or **resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned** decision or **resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.[100]
>
> ...

Relative thereto, in the case of *Claudine Monette Baldovino-Torres v. Jasper A. Torres, et al.,*[101] the Supreme Court reaffirmed its rulings in *National Power Corporation v. National Labor Relations Commission, et al.*[102] and *Commissioner of Customs v. Court of Appeals, et al.,*[103] clarifying that the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the Office of the Solicitor General (**OSG**), to wit:

> ...
>
> In the case of *National Power Corporation v. National Labor Relations Commission* (*NAPOCOR*), the Court held that **the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG. In holding so, the Court emphasized that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control**

100 Italics in the original text and emphasis supplied.
101 G.R. No. 248675, 20 July 2022.
102 G.R. Nos. 90933-61, 29 May 1997.
103 G.R. No. 132929, 27 March 2000.

over the deputized lawyer. As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.

The *NAPOCOR* case was cited in the subsequent case of *Commissioner of Customs v. Court of Tax Appeals*, where it was reiterated that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive.**

In the same vein, the period to file a motion for reconsideration in the present case should be counted from the receipt by the OSG of a copy of the RTC Decision on April 4, 2017. Consequently, the filing by the OSG of its Motion for Reconsideration questioning the RTC Decision on April 18, 2017 was well within the reglementary period for filing such motion. **The counting of the period for its filing should be reckoned from the date of receipt of the assailed decision by the OSG** and not by the public prosecutor. This is because the public prosecutor acted as a mere representative of the OSG which, in turn, retained supervision and control over the former.[104]

...

Applying the foregoing to the case at bar, it is noted that the Special First Division issued the assailed Resolution[105] denying petitioner's MR on 13 August 2024. Petitioner, through the OSG, received the same on **15 August 2024**.[106] Counting 15 days therefrom, petitioner had until **30 August 2024** to file an appeal before this Court.

However, a perusal of the records reveals that petitioner only filed a Motion for Extension on **10 September 2024** as he or she reckoned the counting of the 15-day period from the **BIR's receipt on 27 August 2024**.[107] On the other hand, the instant petition was only filed on **25 September 2024**.[108] As it appears, both the Motion for Extension and the instant Petition for Review have been belatedly filed.

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104 Citations omitted, emphasis supplied and italics in the original text.
105 Supra at note 3.
106 See Notice of Resolution dated 14 August 2024, *rollo*, p. 38.
107 Id.
108 Supra at note 1.

Consequently, the assailed Decision[109] and assailed Resolution[110] of the Court's Special First Division have become final, executory and unappealable. The Court *En Banc* is thus bereft of jurisdiction to review them and has no recourse but to dismiss outright this present petition.

It is worthy to note that the right to appeal is neither a natural nor a constitutional right but is a mere statutory right. The party seeking to avail of the right to appeal must comply with the procedures and rules governing appeals set by law; otherwise, the right may be lost or squandered. In other words, **the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional, and the failure to perfect the same renders the judgment final and executory**. Execution of the judgment then follows, for just as a losing party has the privilege to appeal within the prescribed period, so does the winner have the correlative right to enjoy the finality of the decision.[111]

In *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation,*[112] the Supreme Court affirmed that the failure to timely perfect an appeal cannot simply be regarded as a mere technicality, for it is, in truth, jurisdictional, *viz*:

> ...
>
> It has been ruled that **perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.** At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.

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109 Supra at note 2.

110 Supra at note 3

111 *Marcelino E. Lopez, et al. v. The Hon. Court of Appeals and Primex Corporation*, G.R. Nos. 163959 & 177855 (Resolution), 01 August 2018, citing *Spouses Elbe Lebin and Erlinda Lebin v. Vilma S. Mirasol and Regional Trial Court of Iloilo, Branch XXVII*, G.R. No. 164255, 07 September 2011; *Marcos V. Prieto v. The Hon. Court of Appeals (Formerly Ninth Division), et al.*, G.R. No. 158597, 18 June 2012; *Accessories Specialist, Inc., a.k.a. ARTS 21 Corporation, and Tadahiko Hashimoto v. Erlinda B. Alabanza, for And in behalf of her deceased husband, Jones B. Alabanza*, G.R. No. 168985, 23 July 2008.

112 G.R. No. 167606, 11 August 2010 [Per J. Mendoza, Second Division]; Citation omitted, emphasis in the original text and supplied.

> Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite time fixed by law. Such rules are necessary incidents to the proper, efficient and orderly discharge of judicial functions. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the fruits of his victory. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal. Undeniably, there are exceptions to this rule. Petitioner, however, did not present any circumstances that would justify the relaxation of said rule.
>
> It need not be overemphasized that it is the responsibility of the counsel to check and keep track of the period of time left to file an appeal. He cannot escape from the inflexible observance of this rule which is jurisdictional. **The rules, particularly on the statutory requirement for perfecting an appeal within the reglementary period provided, must be strictly followed. If an appeal is not taken within the period prescribed therefor, the judgment becomes final and the court loses all jurisdiction over the case.**
>
> ...

With the foregoing, the Court *En Banc* shall no longer proceed to the resolution of the second issue.

WHEREFORE, with the foregoing premises considered, petitioner Commissioner of Internal Revenue's Petition for Review filed on 25 September 2024 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

x - x

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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 the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice