REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

THE COURT OF TAX APPEALS-SECOND DIVISION and EDS MANUFACTURING, INC.,
Respondents.

CTA *EB* NO. 2062
(CTA Case No. 8830)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 16 2021
4:16 p.m.

x --- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for *Certiorari*[1] under ***Section 1, Rule 65 of the Rules of Court***,[2] asking the Court *En Banc* to reverse and set aside the assailed Resolutions, dated 11 January 2019 and 7 March 2019, rendered by the Court of Tax Appeals ("CTA") Special Second Division ("Court in Division"). The assailed Resolutions denied petitioner's Petition for Relief from Judgment dated 31 October 2018.

Petitioner alleges that the assailed Resolutions effectively precluded him from appealing the Decision (hereinafter referred to as "Original Decision") promulgated on 3 August 2017, and Resolution (hereinafter referred to as "Original Resolution"), dated 12 December 2017, by the Court in Division which ordered the cancellation of the Final Decision on Disputed

[1] Petition for *Certiorari*; *EB Records*, pp. 1-112, with annexes.
[2] Bar Matter No. 803, 8 April 1997.

Assessment ("FDDA") issued against private respondent for fiscal year ended March 2009 in the aggregate amount of ₱67,663,010.38.

The Parties

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide on 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 (hereinafter referred to as "Tax Code"), or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Public respondent Court in Division is implicated in the above-captioned case as the Court which issued the assailed Resolutions. It may be served with legal processes at the Court of Tax Appeals Building, Agham Road, Diliman, Quezon City.

Private respondent EDS Manufacturing, Inc. is a corporation duly organized and existing under Philippine laws. It has been a registered taxpayer since 22 June 1994, with Taxpayer Identification No. ("TIN") 000-289-584-000. It is also registered with the Philippine Economic Zone Authority ("PEZA") as an Ecozone Export Enterprise at the EMI-Special Economic Zone since 25 November 2002. It may be served with legal processes through its counsel at 4th & 6th Floors, Citibank Center, 8741 Paseo de Roxas, Makati City.

The Facts

On 5 June 2014, private respondent filed a Petition for Review with the Court in Division, docketed as CTA Case No. 8830, praying for the cancellation and nullification of the FDDA dated 9 May 2014. In the FDDA, private respondent was assessed for alleged deficiency taxes for fiscal year March 2009 in the aggregate amount of ₱67,663,010.38.[3]

Thereafter, the Petition for Review was granted by the Court in Division through the Original Decision,[4] promulgated on 3 August 2017, the dispositive portion of which provides, to wit:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Consequently, the Final Decision on Disputed Assessment dated May 9, 2014 and the Assessment Notices are declared **NULL and VOID.**

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[3] Resolution dated 11 January 2019; *EB Records*, pp. 25-29.

[4] *Ibid.*

SO ORDERED."

Aggrieved, petitioner filed his "Motion for Reconsideration Re: Decision dated August 3, 2017" on 22 August 2017, asking for the reconsideration of the Original Decision. Likewise, private respondent filed its "Comment/Opposition (To Respondent's Motion for Reconsideration dated 18 August 2017)" on 20 September 2017.[5]

On 12 December 2017, the Court in Division issued the Original Resolution denying petitioner's "Motion for Reconsideration Re: Decision dated August 3, 2017" for lack of merit.[6] Petitioner received the said Resolution on 27 December 2017.[7]

Subsequently, the Court in Division found, based on its Verification Report, dated 20 March 2018, that petitioner did not file an appeal on the Original Resolution.

This prompted the Court in Division to issue a Resolution, on 4 April 2018, ordering the issuance of the Entry of Judgment in CTA Case No. 8830 and for the Clerk of Court to enter the Original Decision in the Book of Entries of Judgments. The Original Decision became final and executory on 24 January 2018.[8]

Almost 10 months after, or on 5 November 2018, petitioner filed a Petition for Relief from Judgment asking the Court in Division to recall the Entry of Judgment and to allow him to appeal CTA Case No. 8830 to the Court *En Banc* via Petition for Review.[9]

On 11 January 2019, the Court in Division issued the first assailed Resolution[10] denying petitioner's Petition for Relief from Judgment for being filed out of time. The dispositive portion is hereby quoted, to wit:

> "**WHEREFORE,** the **Petition for Relief from Judgment** is hereby **DISMISSED** at respondent's costs.
>
> **SO ORDERED.**"

Undeterred, petitioner filed his "Motion for Reconsideration (Re: Resolution promulgated on 11 January 2019)" on 8 February 2019. Likewise, private respondent filed its "Comment/Opposition (To respondent's Motion for Reconsideration dated 7 February 2019)" on 21 February 2019.[11]

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[5] *Ibid.*
[6] *Ibid.*
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*
[11] Resolution dated 7 March 2019; *EB Records*, pp. 31-33.

On 7 March 2019, the Court in Division issued the second assailed Resolution denying petitioner's "Motion for Reconsideration (Re: Resolution promulgated on 11 January 2019)" for lack of merit.[12] Petitioner received its copy of the second assailed Resolution on 14 March 2019.[13]

Thereafter, petitioner filed the instant Petition for *Certiorari* on 14 May 2019.[14] Meanwhile, private respondent posted its Comment on 4 December 2019,[15] which was filed within the extended period granted by the Court *En Banc*.[16]

With the filing of private respondent's Comment, the Court *En Banc*, on 28 January 2020, submitted the case for decision.[17] Hence, this Decision.

The Issues[18]

> WHETHER THE COURT IN DIVISION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT THERE IS NO VALID REASON WHY PETITIONER FAILED TO APPEAL THE DECISION AND RESOLUTION OF THE COURT IN DIVISION TO THE COURT *EN BANC*. NEVERTHELESS, PETITIONER SHOULD NOT BE MADE TO SUFFER THE CONSEQUENCES OF THE EXCUSABLE NEGLIGENCE OF HIS COUNSEL.
>
> WHETHER PETITIONER HAS A GOOD AND SUBSTANTIAL CAUSE OF ACTION.

Arguments of the Parties

Petitioner's Arguments[19]

Petitioner argues that the Court in Division committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying his Petition for Relief from Judgment. He contends that the Court in Division should have relaxed the application of the technical rules of procedure given the special circumstances in this case.

[12] *Ibid.*
[13] *Ibid.*
[14] Petition for *Certiorari*; *EB Records*, pp. 1-112, with annexes.
[15] Comment (on the Petition for *Certiorari* dated 9 May 2019); *EB Records*, pp. 121-193.
[16] Minute Resolution; *EB Records*, p. 120.
[17] Resolution dated 28 January 2020; *EB Records*, pp. 195-196.
[18] Petition for *Certiorari*, p. 8; *EB Records*, pp. 1-112, with annexes.
[19] *Ibid.*

Petitioner explains that his former handling counsel failed to file a timely appeal because she was on leave due to emergency health concerns of her children during the date of the BIR Litigation Division's receipt of the Original Resolution and several days thereafter. He contends that the former handling counsel only came to know of the Original Resolution when she received the Entry of Judgment issued by the Court in Division.

On top of this, the head of the BIR Litigation Division transferred to another government office. Hence, the position was left vacant from 20 December 2017 to February 2018.[20] Petitioner claims that this situation left the BIR Litigation Division in great mess and chaos since there was no proper turn-over of accountabilities between the former head to the succeeding officer-in-charge.

Petitioner also alleges that his former counsel handles numerous cases including reassigned ones transferred to her due to the resignations and reassignments of lawyers from the BIR Litigation Division.

Given the foregoing, petitioner asks the Court *En Banc* to revive his right to appeal the Original Decision and Resolution. He posits that the foregoing reasons constitute excusable negligence by his former handling counsel that should not bind him especially since this would result in his outright deprivation of property and would run against substantial justice.

Petitioner also argues that he has a good and substantial cause of action to appeal the Original Decision and Resolution. He posits that the Court in Division was erroneous in nullifying the FDDA on the ground of lack of authority of the revenue officers who conducted private respondent's audit investigation.

Petitioner explains that, contrary to the findings of the Court in Division, the revenue officers were duly authorized by virtue of a Memorandum of Assignment ("MOA"), duly signed by Ms. Edralin M. Silario, OIC-Chief of Large Taxpayers Regular Audit Division I.

Finally, he avers that the issue as to the revenue officers' authority was never challenged by private respondent. He claims that it even voluntarily submitted to the jurisdiction and necessary investigation of the BIR. Hence, private respondent can no longer question the propriety of the assessment issued against it.

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[20] Petitioner did not specify the exact day on which this vacancy was filled.

<u>Private respondent's Counter-Arguments</u>[21]

Private respondent contends that the filing of the Petition for *Certiorari* is improper. It explains that petitioner did not cite any basis to show that the Court in Division acted arbitrarily when it issued the assailed Resolutions. It points out that the Petition for *Certiorari* must fail since petitioner's arguments are mere reiterations of his allegations in CTA Case No. 8830 which were already passed upon by the Court in Division.

Private respondent insists that the Court in Division was correct in denying petitioner's Petition for Relief from Judgment considering that it was filed beyond the sixty (60)-day and six (6)-month periods as mandated under the Rules of Court. Likewise, it argues that petitioner failed to show the existence of any valid ground to support its Petition for Relief from Judgment.

Private respondent posits that the acts exhibited by petitioner's former handling counsel constitute inexcusable negligence which does not warrant the relaxation of the application of the technical rules of procedure. It stresses that petitioner should be bound by the mistakes of its former handling counsel.

Lastly, private respondent belies petitioner's contention that his appeal, should it be allowed, has a good and substantial cause of action. It stresses that petitioner was already given full opportunity to present his case and that the Court in Division had already thoroughly ruled on the merits of the same in its Original Decision and Resolution.

<u>The Ruling of the Court</u>

After considering the issues raised by petitioner and the arguments propounded by the private respondent, the Court *En Banc* sees no cogent reason to reverse the assailed Resolutions of the Court in Division.

<u>The Court *En Banc* has jurisdiction to take cognizance of the present Petition for *Certiorari*.</u>

Before delving on the issues raised by petitioner, the Court *En Banc* deems it proper to first determine whether this Court has jurisdiction to take cognizance of the present Petition for *Certiorari*.

[21] Comment (on the Petition for *Certiorari* dated 9 May 2019); *EB Records*, pp. 121-193.

Settled is the rule that the authority to issue writs of *certiorari* involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law.[22]

In the case of the CTA, the Supreme Court ruled in ***City of Manila v. Hon. Grecia-Cuerdo et. al., (hereinafter referred to as "Grecia-Cuerdo Case")***[23] that this Court, by constitutional mandate, has the power to issue writs of *certiorari*, specifically, under ***Article VIII of the 1987 Constitution***. The grant of said powers is, likewise, found to be consistent and deemed necessarily included with the CTA's appellate jurisdiction over appealed tax cases from the BIR. The pertinent portion of the said Decision is hereby quoted, as follows:

> "The foregoing notwithstanding, while there is no express grant of such power, with respect to the CTA, **Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not tbere has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**.
>
> **On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases**.
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> **Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total**.
>
> Consistent with the above pronouncement, this Court has held as early as the case of J.M. Tuason & Co., Inc. v. Jaramillo, et al. **that "if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of certiorari, in aid of its appellate jurisdiction**." This principle was affirmed in De Jesus v. Court of Appeals, where the Court stated that "a court may issue a writ of certiorari in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error,

[22] Department of Agrarian Reform Adjudication Board ("DARAB") of the Department of Agrarian Reform ("DAR") v. Lubrica, G.R. No. 159145, 29 April 2005.
[23] G.R. No. 175723, 4 February 2014.

> the final orders or decisions of the lower court." The rulings in J.M. Tuason and De Jesus were reiterated in the more recent cases of Galang, Jr. v. Geronimo and Bulilis v. Nuez."[24]

In line with the ***Grecia-Cuerdo Case***, the Court *En Banc* in recent cases has ruled to take cognizance of Petitions for *Certiorari* questioning the propriety of the Court in Division's decisions and resolutions, one of which is the case of ***Commissioner of Internal Revenue v. The Court of Tax Appeals-Special Third Division, et. al.***,[25] where this Court, similar to this case, resolved a Petition for *Certiorari* questioning the Resolution issued by the Court in Division denying the Petition for Relief from Judgment filed by the Commissioner of Internal Revenue. The Court *En Banc* ruled in this light:

> "**Section 6 of Rule 135 of the Revised Rules of Court** is clear when it provides that when by **law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect, may be employed by such court or officer, and this includes the issuance of writs of certiorari. <u>The CTA *En Banc* exercises appellate jurisdiction over the decisions or resolutions on motions for reconsideration or new trial issued by the CTA Divisions and with it comes the authority or jurisdiction on petitions for certiorari relative to the decisions and resolutions issued by the latter</u>**. xxx"[26]

The Court *En Banc* is not unaware of the ruling in ***CIR v. Kepco Ilijan Corporations (hereinafter referred to as the "Kepco Case")***.[27] However, a perusal of the same leads this Court to rule that it is not applicable herein.

The ***Kepco Case*** has a different factual milieu as compared to this case. The former deals with the issue of whether the Court *En Banc* has jurisdiction over a petition for annulment of judgment filed to annul a decision promulgated by the CTA Court in Division. Meanwhile, this case delves on the issue of whether this Court has jurisdiction to entertain a Petition for *Certiorari* questioning the decision of the Court in Division.

Furthermore, the Court *En Banc* finds the rationale in ***Kepco Case*** incompatible with the Revised Rules of the Court of Tax Appeals ("RRCTA"). In the ***Kepco Case***, it was rationalized that this Court, as a collegial body, may not reverse, annul, or void a final decision rendered by its division. However, this is not the case in the CTA considering that ***Section 2 of the RRCTA***[28] specifically confers to the Court *En Banc* jurisdiction to review the decisions or resolutions promulgated by the Court in Division, to wit:

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[24] Emphasis supplied.
[25] CTA *EB* Case No. 2060, 7 December 2020.
[26] Emphasis supplied.
[27] G.R. No. 199422, 21 June 2016.
[28] A.M. No. 05-11-07-CTA, 22 November 2005.

"RULE 4
JURISDICTION OF THE COURT

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 Divisions 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, Department of Agriculture;

xxx"[29]

Considering that the Court *En Banc* has appellate jurisdiction over decisions and resolutions of the Court in Division, then it follows that this Court also has the power to issue all auxiliary writs in the exercise of said jurisdiction consistent with the mandate of ***Section 6, Rule 135 of the Rules of Court***, which provides:

"SEC. 6. Means to carry jurisdiction into effect. - **When by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer**; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules."[30]

Hence, based on the foregoing discussions, the Court *En Banc* rules that it has jurisdiction over Petitions for *Certiorari* filed against decisions and resolutions of the Court in Division. Given the same, this Court deems it proper to take cognizance of the instant case.

The instant Petition was timely filed.

As for the timeliness of the filing of the instant Petition for *Certiorari*, ***Section 4, Rule 65 of the Rules of Court*** provides that "the petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution." In case a motion for reconsideration was filed, the said period shall be counted from the notice of the denial of said motion.

[29] Emphasis supplied.
[30] Emphasis supplied.

In this case, petitioner received the second assailed Resolution, dated 7 March 2019, denying his Motion for Reconsideration on 14 March 2019. Hence, he had 60 days from the said date or until 13 May 2019 to file his Petition for *Certiorari*. However, since 13 May 2019 was a special (non-working) holiday,[31] the period was extended until 14 May 2019. Since he was able to file the instant Petition on 14 May 2019, the same was timely filed in accordance with the Rules of Court.

The Court in Division did not commit grave abuse of discretion in denying petitioner's Petition for Relief from Judgment since it was filed out of time.

In order to successfully prosecute a Petition for *Certiorari*, petitioner must be able to allege in the said pleading that respondent court committed grave abuse of discretion amounting to lack or excess of jurisdiction in its issuance of the questioned decision, resolution, or order. What constitutes "grave abuse of discretion" was discussed by the Supreme Court in the case of ***Tan v. Sps. Antazo***,[32] to wit:

> "xxx it is well-settled that a petition for certiorari against a court which has jurisdiction over a case **will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility**".[33]

In this case, petitioner posits that the Court in Division acted arbitrarily when it denied his Petition for Relief from Judgment. He opines that it should have relaxed the application of the technical rules of procedure considering the excusable negligence of his former handling counsel.

The Court *En Banc* is not persuaded.

In ***Lasam v. Philippine National Bank, et. al.***,[34] the Supreme Court discussed the nature of a Petition for Relief from Judgment, to wit:

[31] Proclamation No. 719, 8 May 2019
[32] G.R. No. 187208, 23 February 2011.
[33] Emphasis supplied.
[34] G.R. No. 207433, 5 December 2018.

> "**A petition for relief from judgment, order, or other proceedings is an equitable remedy which is allowed only in exceptional circumstances. The petition is the proper remedy of a party seeking to set aside a judgment rendered against him by a court whenever he was unjustly deprived of a hearing, was prevented from taking an appeal, or a judgment or final order entered because of fraud, accident, mistake or excusable negligence**."[35]

Corollary thereto, ***Section 3, Rule 38 of the Rules of Court*** provides for the periods on when a Petition for Relief from Judgment must be filed in court, as follows:

> "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 sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months 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."[36]

Under the said rule, the Petition for Relief from Judgment must be filed within (1) **60 days from the time petitioner learns of the judgment, order or other proceeding to be set aside**; but not more than (2) **6 months from the entry of such judgment, order or other proceeding** (collectively hereinafter referred to as "double period rule"). The double period rule must both be satisfied. It could never be extended or interrupted as ruled by the Supreme Court in the case of ***Madarang et. al., v. Sps. Morales***,[37] to wit:

> "**The double period required under Section 3, Rule 38 is jurisdictional and should be strictly complied with. A petition for relief from judgment filed beyond the reglementary period is dismissed outright. This is because a petition for relief from judgment is an exception to the public policy of immutability of final judgments.**
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> xxx xxx xxx
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> This court set aside the order granting the petition for relief from judgment for having been filed beyond the double period required under Section 3, Rule 38 of the 1997 Rules of Civil Procedure. This court explained:
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> **A party filing a petition for relief from judgment must strictly comply with two (2) reglementary periods: (a) the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and (b) within a fixed period of six (6) months from entry of such judgment, order or other proceeding. Strict compliance with these periods is required because provision for a petition for relief from judgment is a final act of liberality on the part**

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[35] Emphasis supplied.
[36] Emphasis supplied.
[37] G.R. No. 199283, 9 June 2014.

of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order at last to put an end to litigation. In Turqueza v. Hernando, this Court stressed once more that:

> . . . the doctrine of finality of judgments is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error, the judgments of courts must become final at some definite date fixed by law. **The law gives an exception or 'last chance' of a timely petition for relief from judgment within the reglementary period (within 60 days from knowledge and 6 months from entry of judgment) under Rule 38, supra, but such grave period must be taken as 'absolutely fixed, in extendible, never interrupted and cannot be subjected to any condition or contingency.** Because the period fixed is itself devised to meet a condition or contingency (fraud, accident, mistake or excusable neglect), the equitable remedy is an act of grace, as it were, designed to give the aggrieved party another and last chance' and failure to avail of such last chance within the grace period fixed by the statute or Rules of Court is fatal . . . ."[38]

Applying the foregoing in the case at bar, the Court in Division correctly denied petitioner's Petition for Relief from judgment on the ground that the same was filed out of time.

The dates relevant in this case are as follows:

DATE	ACTION
3 August 2017	Court in Division promulgated the Original Decision granting private respondent's Petition for Review nullifying the FDDA.
4 August 2017	Petitioner's receipt of the Original Decision
22 August 2017[39]	Petitioner filed his Motion for Reconsideration
12 December 2017	Court in Division promulgated the Original Resolution denying petitioner's Motion for Reconsideration
27 December 2017	BIR Litigation Division's receipt of the Original Resolution.
24 January 2018	Original Decision become final and executory and was recorded in the Book of Entries of Judgment.

[38] Emphasis supplied.
[39] 19 August 2017 fell on a Saturday, while 21 August 2017 is Ninoy Aquino Day.

2 May 2018	Former handling counsel received the Entry of Judgment and date when she learned of the existence of the Original Resolution of the Court in Division denying petitioner's Motion for Reconsideration.

In this case, petitioner alleged that his former handling counsel only came to know of the Court in Division's Original Resolution, dated 12 December 2017, on **2 May 2018** when the former handling counsel received a copy of the case's Entry of Judgment which was issued on **24 January 2018**.

However, consistent with the ruling in ***City of Dagupan vs. Maramba***,[40] this Court holds that the reckoning of the 60-day period should be counted from the actual receipt of the assailed Resolution by the BIR Litigation Division which in this case is on **27 December 2017**. At any rate, even if the Court were to tack the commencement of the 60-day period from the date when the former handling counsel allegedly learned of the Original Resolution, his argument still bears no weight.

To illustrate, the end of the 60-day period from 2 May 2018 or the period when petitioner's former handling counsel learned of the Original Resolution is **2 July 2018**. Meanwhile, the end of the 6-month period commencing from the date of the Entry of Judgment on 24 January 2018 is **24 July 2018**. Clearly, when petitioner filed his Petition for Relief from Judgment on **5 November 2018**, the same was already filed way beyond the double period rule under the Rules of Court.

Since strict compliance with the relevant periods was not observed, the Court in Division was correct in denying petitioner's Petition for Relief from Judgment. At the time the said Petition was filed, the reglementary periods under Rule 38 had already long expired. Consequently, the Court in Division had lost all jurisdiction to entertain the same. Thus, no grave abuse of discretion could be attributed to the Court in Division when it dismissed the petitioner's Petition for Relief from Judgment outright.

Petitioner's former handling counsel exhibited inexcusable negligence in handling CTA Case No. 8830.

Settled is the rule that the Petition for Relief from Judgment cannot be used to revive a party's right to appeal which had been lost through the inexcusable negligence of his counsel. The Supreme Court case of ***Purcon Jr., v. MRM Philippines, Inc., et. al.***,[41] elucidates this point, to wit:

[40] G.R. No. 174411, 2 July 2014.
[41] G.R. No. 182718, 26 September 2008.

> **"The relief afforded by Rule 38 <u>will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy of law was due to his own negligence</u>, or mistaken mode of procedure for that matter; <u>otherwise the petition for relief will be tantamount to reviving the right of appeal which has already been lost, either because of inexcusable negligence or due to a mistake of procedure by counsel</u>."**[42]

Here, there is no denying that petitioner's former handling counsel in numerous instances had squandered the various opportunities available to her to avail of the remedies under the Rules of Court. Not only did she fail to file a timely appeal of both the Original Decision and Resolution to the Court *En Banc*, she likewise failed to file the Petition for Relief from Judgment within the double period as provided for under ***Section 3, Rule 38 of the Rules of Court.***

There can be no denying that the action of petitioner's former handling counsel constitutes inexcusable negligence. As found in the case of ***Hernandez v. Agoncillo***–[43]

> "Time and again, this Court has cautioned lawyers to handle only as many cases as they can efficiently handle. The zeal and fidelity demanded of a lawyer to his client's cause require that not only should he be qualified to handle a legal matter, he must also prepare adequately and give appropriate attention to his legal work. Since a client is, as a rule, bound by the acts of his counsel, a lawyer, once he agrees to take a case, should undertake the task with dedication and care. This Court frowns upon a lawyer's practice of repeatedly seeking extensions of time to file pleadings and thereafter simply letting the period lapse without submitting any pleading or even any explanation or manifestation for his omission. **<u>Failure of a lawyer to seasonably file a pleading constitutes inexcusable negligence on his part</u>**."[44]

Accordingly, the Court in Division was correct in denying petitioner's Petition for Relief from Judgment.

<u>The Court in Division correctly nullified the FDDA for lack of authority of the revenue officers who conducted private respondent's audit.</u>

Even if the Court *En Banc* were to give due course to the instant Petition for *Certiorari* and allow petitioner to appeal the Original Decision and Resolution in CTA Case No. 8830, the case will still not prosper.

[42] Emphasis supplied.
[43] G.R. No. 194122, 11 October 2012.
[44] Emphasis supplied.

Petitioner, himself, had already admitted that no LOA was issued authorizing any revenue officer to conduct the audit investigation of private respondent but only an MOA duly signed by Ms. Edralin M. Silario, OIC-Chief of Large Taxpayer Regular Audit Division I.

The Supreme Court, in the case of ***Commissioner of Internal Revenue v. Sony Philippines, Inc.***,[45] could not be any clearer that the issuance of an LOA is required before any revenue officer can conduct the audit examination of a taxpayer. The pertinent provision is hereby quoted, to wit:

> "Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.** The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> xxx xxx xxx
>
> **Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**."[46]

This was also echoed in the case of ***Medicard Philippines, Inc. v. CIR***,[47] to wit:

> "Based on the afore-quoted provision, **it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken**. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority**.

As ruled by the Supreme Court in aforementioned cases, the audit examination and assessment against a taxpayer should be pursuant to an LOA. Absent a valid LOA, any assessment is void.

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[45] G.R. No. 178697, 17 November 2010.
[46] Emphasis supplied.
[47] G.R. No. 222743, 5 April 2017.

Therefore, guided by the foregoing, it is erroneous for the petitioner to hold out the MOA as the source of authority of the investigating revenue officers. To reiterate, the issuance of an LOA is indispensable in the audit of a taxpayer.

However, assuming we ascribe to petitioner's argument and consider the MOA as a valid source of authority given to revenue officers to audit private respondent, the same will not hold since the MOA in this case was not signed by the CIR or his duly authorized representative.

Here, the MOA was only signed by the OIC-Chief of Large Taxpayer Regular Audit Division I, which, as ruled in ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.***,[48] is not one of the authorized representatives of the petitioner, to wit:

> "In the instant case, the Memorandum of Assignment was only signed by Cesar D. Escalada, Chief, Regular LT Audit Division 1. Therefore, RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Pefia were without authority to continue the audit."

In light of the above disquisitions, the assailed Resolutions cannot be characterized as having been issued "arbitrarily" or despotically" by the Court in Division. Hence, the Court *En Banc* sees it fit to deny the present Petition.

WHEREFORE, premises considered, the instant Petition for *Certiorari* filed by petitioner on 14 May 2020 is hereby **DENIED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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[48] CTA EB No. 1880, 6 August 2019.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With due respect, please see Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2062** (CTA CASE NO. 8830)
	Present:
- **versus** -	**DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO, *JJ.***
THE COURT OF TAX APPEALS-SECOND DIVISION and EDS MANUFACTURING, INC., Respondents.	Promulgated: FEB 16 2021 4:16 p.m.

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the denial of petitioner Commissioner of Internal Revenue's (**CIR's**) present Petition for *Certiorari* reached in the *ponencia* of my esteemed colleague, Hon. Justice Maria Rowena Modesto-San Pedro. However, I am constrained to register my dissent from the *ponencia*'s disquisition on the Court *En Banc*'s jurisdiction over a petition for *certiorari* under Rule 65 of the Rules of Court (**ROC**) involving its *own* division.

Citing the case *City of Manila, et al. v. Hon. Grecia-Cuerdo, et al.*[1] (**Grecia-Cuerdo**), the *ponencia* declared that this Court, by constitutional mandate, has the power to issue writs of *certiorari*, specifically, under Article VIII of the 1987 Constitution. The grant of said power is, likewise, found to be consistent and deemed necessarily included with the Court of Tax Appeal's (**CTA's**) appellate jurisdiction over appealed tax cases from the Bureau of Internal Revenue (**BIR**).[2]

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[1] G.R. No. 175723, 04 February 2014.
[2] Decision, page 7.

Further, the *ponencia* went on to state that the ruling in *Commissioner of Internal Revenue v. Kepco Ilijan Corporation*[3] (**Kepco**) (*i.e.*, this Court, as a collegial body, may not reverse, annul, or void a final decision rendered by its division) is not applicable because the *Kepco* case has a different factual milieu as compared to herein case and, considering that Section 2, Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) specifically confers to the Court *En Banc* jurisdiction to review the decisions or resolutions promulgated by the Court in Division, it follows that the Court *En Banc* has the power to issue auxiliary writs consistent with the mandate of Section 6, Rule 135 of the ROC.[4]

I respectfully beg to differ.

The controversy in *Grecia-Cuerdo* stemmed from an order of the Regional Trial Court (**RTC**) of Manila, granting a writ of injunction against therein petitioner, City of Manila. *Grecia-Cuerdo* confirmed the CTA's authority to issue a writ of *certiorari* against a lower court, that is, the RTC in cases appealable to it. With due respect, it is my opinion that the said case does not concern or even suggest that the CTA *En Banc* enjoys the same authority over its *own* divisions. Obviously, the different CTA divisions are *not* the CTA's inferior courts.

At first blush, the unique appellate jurisdiction of the CTA over its own divisions, when read together with the ruling in *Grecia-Cuerdo* (*i.e.*, a court may issue a writ of *certiorari* in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court), may convey the impression that the CTA *En Banc* has jurisdiction to issue a writ of *certiorari* against the orders of any of its divisions. However, as will be explained below, such an interpretation is problematic.

***First*, to entertain this present petition for *certiorari* under Rule 65 of the ROC places the Court in a very peculiar situation where it is both respondent and judge of itself; that is, in matters where its actions are alleged to be tainted with grave abuse of discretion.** Thus, to grant the relief prayed for by petitioner would be tantamount to the Court acknowledging that its actions were arbitrary and that there was an oppressive exercise of judicial power.

***Second*, the grant of the unique appellate jurisdiction to the CTA did not result in the splitting of the court into two (2) separate entities, namely, the Court *En Banc* and the Court in its divisions.** The *sui generis* appellate jurisdiction of the Court *En Banc* merely conferred upon the latter a special yet limited jurisdiction over cases previously settled by its divisions.

While it can be argued that the power to issue the writ of *certiorari* was not expressly granted in either Republic Act (**RA**) 1125[5] or RA 9282[6], the Supreme

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[3] G.R. No. 199422, 21 June 2016.
[4] Decision, page 8.
[5] AN ACT CREATING THE COURT OF TAX APPEALS.

Court, applying the principle of necessary implication, filled the gaps in the law in order to give it full force and effect. **Nevertheless, as stated earlier, this authority is "in aid of its appellate jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court".**[7] These are the clear wordings of the Supreme Court in *Grecia-Cuerdo*. In a later case, the Supreme Court also declared that a petition for *certiorari* under Rule 65 of the ROC is **"a remedy specifically [aimed] to keep lower courts and tribunals within the bounds of their jurisdiction".**[8]

Thus, absent any legal basis or precedent declaring the CTA divisions to be lower courts relative to the CTA *En Banc*, I humbly submit that it is not proper to similarly apply the *Grecia-Cuerdo* ruling in respect of final orders or decisions of the lower courts to those of the CTA divisions.

***Third*, the CTA is a collegiate court and, whether it acts by way of one of its divisions or *en banc*, it is nevertheless deemed as acting as a whole or as one and the same body.**

In *Land Bank of the Philippines v. Federico Suntay*[9] (**Land Bank**), the Supreme Court declared that "**the actions taken and the decisions rendered by any of the divisions are those of the Court itself, considering that the divisions are not considered separate and distinct courts but as divisions of one and the same court**".[10] This means that there is no hierarchy of courts within the Supreme Court, which remains as one court notwithstanding that it also works in divisions.

Likewise, in *Kepco*, the Supreme Court explained that the foregoing principle is applicable to other collegiate courts such as the Court of Appeals *viz*:

> ...
> **Thus, it appears contrary to these features that a collegial court, sitting *en banc*, may be called upon to annul a decision of one of its divisions which had become final and executory, for it is tantamount to allowing a court to annul its own judgment and acknowledging that a hierarchy exists within such court.** In the process, it also betrays the principle that judgments must, at some point, attain finality. A court that can revisit its own final judgments leaves the door open to possible

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6 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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

7 Emphasis and underscoring supplied.

8 *Marvin Cruz, et al. v. People*, G.R. No. 224974, 03 July 2017.

9 G.R. No. 188376, 14 December 2011.

10 Emphasis and underscoring supplied.

endless reversals or modifications which is anathema to a stable legal system.

Thus, the **Revised Rules of the CTA and even the Rules of Court[,] which apply suppletorily thereto[,] provide for no instance in which the *en banc* may reverse, annul or void a *final* decision of a division.**[11]

...

It bears stressing that, in amending RA 1125, RA 9282 elevated the CTA's rank to the level of a collegiate court with special jurisdiction. As a collegiate court akin to the Supreme Court and the Court of Appeals, Section 2[12] of RA 1125, as amended by RA 9503[13], gives the CTA the discretion to sit either *en banc* or in three (3) Divisions and, while the CTA *En Banc* has appellate jurisdiction over decisions or resolutions on motions for reconsideration or new trial of the CTA in Division, the principle remains that the CTA in Division is not a separate and distinct court *vis-à-vis* the CTA *En Banc*.

Notably, there is no judicial pronouncement that treats the CTA in Division as a separate court from, if not a lower court, of the CTA *En Banc*. Moreover, no judicial pronouncement ordains the prior filing of a petition for *certiorari* under Rule 65 of the ROC with the CTA *En Banc* (against the CTA in Division's orders or resolutions) before proceeding directly to the Supreme Court under the doctrine of hierarchy of courts. But, on the contrary, the Supreme Court has entertained and acted upon a special civil action for *certiorari* to assail the resolution(s) of the CTA in Division.[14]

Incidentally, while it is correct that adherence to the doctrine of hierarchy of courts is an effective tool to filter cases before the Supreme Court, its application to the CTA's own divisions may not be justified as there appears no legal anchor to sustain a conclusion that the CTA divisions are lower or inferior courts of the CTA *En Banc*. Moreover, as stated above **"a collegial court, sitting *en banc*, may [not] be called upon to annul a decision of one of its divisions which had become**

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[11] Id.; Citations omitted, emphasis and underscoring supplied.

[12] **SEC. 2.** *Sitting En Banc or Division; Quorum; Proceedings.* — The CTA may sit *en banc* or in three (3) Divisions, each Division consisting of three (3) Justices.

Five (5) Justices shall constitute a quorum for sessions *en banc* and two (2) Justices for sessions of a Division. *Provided*, That when the required quorum cannot be constituted due to any vacancy, disqualification, inhibition, disability, or any other lawful cause, the Presiding Justice shall designate any Justice of other Divisions of the Court to sit temporarily therein.

The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division Level.

[13] AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[14] *Tridharma Marketing Corporation v. Court of Tax Appeals-Second Division, et al.*, G.R. No. 215950, 20 June 2016; *Spouses Pacquiao v. Court of Tax Appeals-First Division, et al.*, G.R. No. 213394, 06 April 2016; *Commissioner of Internal Revenue v. Court of Tax Appeals and CBK Power Company Limited*, G.R. Nos. 203054-55, 29 July 2015.

final and executory, for it is tantamount to allowing a court to annul its own judgment and acknowledging that a hierarchy exists within such court".

Lastly, the Supreme Court has made clear in *Commissioner of Internal Revenue v. Court of Tax Appeals and CBK Power Company Limited*[15] (**CBK**) that the filing of a petition for *certiorari* under Rule 65 of the ROC directly to the Supreme Court to assail the CTA in Division's interlocutory orders is proper. Conversely put, therein petitioner correctly filed its petition for *certiorari* under Rule 65 of the ROC before the Supreme Court and not before the CTA *En Banc* (as therein respondent insisted), in conformity with Rule 41[16] of the ROC.

In light of the above disquisitions, I maintain my position that the CTA *En Banc* has no jurisdiction over a petition for *certiorari* under Rule 65 of the ROC involving its own division. This is undeniable given the Supreme Court's declaration in *CBK* and taking into account the rulings in *Land Bank* and *Kepco* since, if the Court *En Banc* is not superior to any of its divisions and a petition for *certiorari* seeks the rectification of a lower court's mistake, logic and reason dictate that **the CTA *En Banc* has no jurisdiction to issue a writ of *certiorari* against the resolution of its own divisions.**

With the above, I vote for the dismissal of the present Petition for *Certiorari* for lack of jurisdiction.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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15 G.R. Nos. 203054-55, 29 July 2015.

16
RULE 41
APPEAL FROM THE REGIONAL TRIAL COURTS

SECTION 1. *Subject of appeal.* An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) **An order denying a petition for relief** or **any similar motion seeking relief from judgment**;

(b) An interlocutory order;

(c) An order disallowing or dismissing an appeal;

(d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(e) An order of execution;

(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(g) An order dismissing an action without prejudice.

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action provided in Rule 65.