REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1860** (CTA Case No. 8664)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
DRUGMAKER'S BIOTECH RESEARCH LABORATORIES, INC. (through its representative Drugmaker's Laboratories, Inc.), *Respondent.*	Promulgated: SEP 26 2019 3:52 p.m.

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by the Commissioner of Internal Revenue (CIR) on June 8, 2018 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2], which prays for the reversal and setting aside of the January 5, 2018 *Decision*[3] and May 3, 2018 *Resolution*[4] promulgated by the First Division of the Court of Tax Appeals (CTA) in CTA Case No. 8664 entitled "*Drugmaker's Biotech Research Laboratories, Inc. (Through Its Representative Drugmaker's Laboratories, Inc. vs.*

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[1] *Rollo*, CTA EB No. 1860, pp. 7-29.

[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

[3] *Rollo*, pp. 35-72.

[4] *Rollo*, pp. 78-86.

The Hon. Commissioner of Internal Revenue" and the rendition of a new one instead.

The dispositive portions of the assailed *Decision* and *Resolution* read:

Decision[5] dated January 5, 2018:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the assessment for deficiency income tax and VAT and the Warrant of Distraint and/or Levy issued against petitioner for taxable year 2007 is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

Resolution[6] dated May 3, 2018:

> "**WHEREFORE**, in light of the foregoing considerations, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED**."

The Facts

As culled from the assailed decision, petitioner as the head of the Bureau of Internal Revenue (BIR), is authorized and tasked under existing laws and implementing administrative regulations to perform the duties of the said office, including, among others, the power to act upon the withdrawal and/or cancellation of any tax assessment, warrant of distraint/levy, and notice of seizure. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[7]

On the other hand, respondent Drugmaker's Biotech Research Laboratories, Inc. (DBRLI) is a domestic corporation duly organized and existing under Philippine laws, with principal office at E & E Industrial Complex, Narra Road, San

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.
[7] *Rollo*, CTA EB No. 1860, Decision dated January 5, 2018, p. 36.

Pedro, Laguna. It is registered with the BIR with Tax Identification Number (TIN) 204-482-474-000.[8]

On March 29, 2007, the Securities and Exchange Commission (SEC) approved the Plan of Merger dated June 1, 2005 and the Supplemental to the Plan of Merger dated November 20, 2006 executed by and among Drugmaker's Laboratories, Inc. (DLI), as surviving corporation, and respondent and Biotech Research Laboratories, Inc., as absorbed corporations, whereby the entire assets and liabilities of the latter be absorbed by the former.[9]

On July 13, 2009, respondent received the Letter Notice No. 057-RLF-07 -00-000157 issued by then Commissioner Sixto Esquivias IV. Thereafter, respondent received the Letter of Authority (LOA) No. LOA2009-000168158 dated April 30, 2010 issued by the BIR, through its Deputy Commissioner-Operations Group, Nelson Aspe, authorizing the examination of respondent's books of accounts and other accounting records for taxable year 2007.[10]

Thereafter, a Preliminary Assessment Notice (PAN) dated July 27, 2010, with attached Details of Discrepancies was issued by petitioner.[11]

On January 31, 2011, respondent sent a letter addressed to Salina Marinduque, Team Head LN Task Force of the BIR, stating that it has ceased operation as a result of the merger with DLI effective January 6, 2005.[12]

Thereafter, petitioner issued an Amended PAN with attached Details of Discrepancies on April 11, 2011. On May 13, 2011, petitioner, thru Deputy Commissioner Nelson M. Aspe, issued a Final Assessment Notice (FAN) with attached Assessment Notice Nos. F-057-LNTF-07-VT-068 and F-057-LNTF-07-IT-068, for deficiency value-added tax (VAT), and deficiency income tax, respectively.[13]

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[8] *Rollo*, CTA EB No. 1860, Decision dated January 5, 2018, p. 36.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.* at 37.

Respondent, however, denies receipt of the PAN, Amended PAN, and FAN.[14]

On November 28, 2011, petitioner issued a Preliminary Collection Letter to respondent. Thereafter, a Final Notice Before Seizure was issued by petitioner on January 23, 2013.[15]

Subsequently, on April 23, 2013, the BIR, through Revenue District Officer Julio Alcasabas, served a Warrant of Distraint and/or Levy (WDL) to the respondent.[16]

Respondent filed its Petition for Review (PFR) on June 24, 2013. Respondent filed an Amended PFR on January 30, 2014. [17]

After the trial, the Court in Division ruled in favor of the respondent, hence, petitioner moved for the reconsideration of the assailed decision.

However, the Court in Division denied said motion. Thus, petitioner filed the instant PFR before the Court *En Banc* on June 8, 2018.

On June 29, 2018, this Court ordered[18] the respondent to file its comment[19] on the said petition which the latter submitted on August 22, 2018.

On October 18, 2018,[20] in view of the submission of said comment, this Court deemed the case submitted for decision.

The Issue

Whether or not this Court has jurisdiction to render a decision on the instant case.

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[14] *Rollo*, Decision dated January 5, 2018, p. 37.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Rollo*, Resolution dated June 29, 2018, pp. 85-86.
[19] *Rollo*, Comment/Opposition to Petition for Review, pp. 87-102.
[20] *Rollo*, Resolution dated October 18, 2018, pp. 105-106.

Arguments of Petitioner[21]

Petitioner CIR argues that this Court has no jurisdiction over the instant case as the subject assessment had already become final, executory, and demandable because there was no valid protest and that the petition was filed beyond the 30-day period to appeal under Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282.

Petitioner also alleged that the Court in Division erred in declaring the assessments void for failure to prove the service of the PAN, Amended PAN, and FAN.

Arguments of Respondent[22]

Respondent DBRLI, in its comment, argues that this Court has jurisdiction on said petition and that the receipt of the WDL as fruit of a void assessment may be appealed beyond the 30-day period from receipt thereof.

Respondent further argues that it is not estopped from denying receipt of said notices just because it admitted receiving the previous letters from the petitioner and that the latter cannot avail of the presumption of regularity to prove the receipt of the mail as there was no witness who had personal knowledge about the fact of mailing the PAN, Amended PAN, and FAN and there were discrepancies in the Registry Return Receipts of the mails.

Ruling of the Court *En Banc*

The petition was filed beyond the 30-day period to appeal, hence, the Court has no jurisdiction on the case

The jurisdiction of the CTA regarding internal revenue taxes is provided under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:

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[21] *Supra*, Note 1.
[22] *Supra*, Note 21.

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue** or other laws administered by the Bureau of Internal Revenue;" (*Emphasis supplied*)

Similarly, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue;" (*Emphasis supplied*)

The factual antecedents of the case reveal that the petition was grounded on respondent's receipt of the WDL.

In *Commissioner of Internal Revenue v. Algue, Inc. et al.*,[23] the Supreme ruled that the receipt of the WDL is the proof of the finality of the assessment, hence, tantamount to a decision by the petitioner on the subject assessment, to wit:

"...It is true that as a rule the warrant of distraint and levy is "proof of the finality of the assessment" and "renders hopeless a request for reconsideration," being "tantamount to an outright denial thereof and makes the said request deemed rejected..."

In *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*,[24] the Supreme Court ruled that this

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[23] G.R. No. L-28896, February 17, 1988.
[24] G.R. No. 169225, November 17, 2010.

Court may acquire jurisdiction on other matters arising under the 1997 National Internal Revenue Code (NIRC), as amended, to wit:

> "Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled that the assessment had become final and unappealable. Citing *Protector's Services, Inc. v. Court of Appeals*, the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide "other matters" related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over "other matters," it presupposes that the tax assessment has not become final and unappealable.
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> We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:
>
> Section 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –
>
> 1. Decisions of the Commissioner 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 as part of law administered by the Bureau of Internal Revenue**. (Emphasis supplied.)
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> Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.
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> Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part

> of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR)."

Thus, considering that the WDL is one among those "other matters" in the 1997 NIRC, the Court may acquire jurisdiction over the instant case.

However, the question that should be answered is whether the petition before the Court in Division was filed within the reglementary period.

Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, otherwise known as "An Act Creating The Court of Tax Appeals, provides:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> "Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon...." (*Emphasis supplied*)

Similarly, Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) **A party adversely affected by a decision, ruling** or the inaction **of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed

> by Jaw for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review with in the two-year period prescribed by law from payment or collection of the taxes. (*Emphasis supplied*)

A scrutiny of the records of this case reveals that nowhere in the PFR and the amended PFR did respondent categorically state the exact date when it received the subject WDL but it only described the facts of how it came to have knowledge of the same.

In paragraph 12 of PFR,[25] petitioner states that:

> "12. After more than two (2) years of waiting for the BIR to respond to his letter dated January 31, 2011, DBRLI's former President, Eliezer V. Del Mundo, was all of a sudden surprised to learn that a Warrant of Distraint and/or Levy had been issued by the BRI against DBRLI without the BIR giving DBRLI a chance to dispute or protest whatever assessment had presumably been made which assessment should have served as the basis for the distraint and levy. The warrant was sent on 23 April 2013, again, at DBRLI's former office. Based on this warrant, the BIR is collecting from DBRLI the amount of ₱29,328,569.20 allegedly in the form of unpaid deficiency Income Tax for the period 2007 and the amount of ₱10,376,497.87 in form of unpaid deficiency Value Added Tax also for 2007. Attached herewith as **Annex "I"** is a copy of the Warrant of Distraint and/or Levy."

Such was also the tenor in paragraph 13 of the Amended PFR,[26] petitioner, to wit:

> "13. After more than two (2) years of waiting for the BIR to respond to his letter dated January 31, 2011, DBRLI's former President, Eliezer V. Del Mundo, was all of a sudden surprised to learn that a Warrant of Distraint and/or Levy had been issued against DBRLI without the BIR giving DBRLI a chance to dispute or protest whatever assessment was made which should serve as the basis for the distraint and levy. The warrant was sent on 23 April 2013, again, at DBRLI's former office. Based on this warrant, the BIR is collecting from DBRLI the amount of ₱29,328,569.20 allegedly in the form of unpaid deficiency Income Tax for the period 2007 and the amount of ₱10,376,497.87 in form of

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[25] Docket, CTA Case No. 8664, Vol. I, Petition for Review, p. 9.
[26] *Id.* at p. 476.

> unpaid deficiency Value Added Tax also for 2007. Attached herewith as **Annex "I"** is a copy of the Warrant of Distraint and/or Levy."

The same allegation was also stated in respondent's Memorandum without a categorical statement as to the exact date of receipt of said WDL.[27]

However, in its Formal Offer of Evidence,[28] respondent stated that it "has adopted the copy of the Warrant of Distraint and Levy which is found on Page 148 of the BIR Records."

In the said WDL,[29] a certain "Fernando C. Rey" whose signature appears above such name had received the subject WDL on April 23, 2013. Nowhere in the records of this case was the identity and authority of such person to receive said WDL on the said date refuted or assailed by the respondent.

Considering that respondent did not refute nor assail the above facts and the adoption of the subject WDL as its own evidence, the date for respondent's receipt of said WDL shall be reckoned on April 23, 2013.

Respondent had 30 days from April 23, 2013 or until May 23, 2013 to file the PFR to this Court. However, respondent only filed said PFR on June 24, 2013 which is beyond the reglementary period provided by law, rules and regulations.

Hence, this Court had no jurisdiction to decide on the instant case.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction

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[27] Docket, CTA Case No. 8664, Vol. XI, Petitioner's Memorandum, pp. 7798-7799.
[28] *Id.* at 7450.
[29] *Id.*, Annex "I" of Petition for Review, p. 128.

over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[30]

This Court, even if vested with special jurisdiction, like courts of general jurisdiction, can only take cognizance of such matters as are clearly within its statutory authority. Relative thereto, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[31]

The petition should had been dismissed due to its failure to state a material fact

As discussed above, respondent failed to categorically state or indicate in the PFR filed in the Court in Division the date when it received the subject WDL.

Second paragraph of Section 11 of RA No. 1125, as amended, provides that the controlling procedure of the appeal is Rule 42 of Rules of Civil Procedure of the Rules of Court, to wit:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – xxx xxx xxx
>
> "Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon...." (*Emphasis supplied*)

Sections 2 and 3 of Rule 42 provide the form and contents of an appeal and the effect on non-compliance with such requirements, to wit:

> "SEC. 2. *Form and contents.* — The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) **indicate the**

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[30] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.
[31] *Id.*

> **specific material dates showing that it was filed on time**; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition..."
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> xxx xxx xxx
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> "SEC. 3. *Effect of failure to comply with requirements.* — **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and **the contents of** and the documents which should accompany **the petition shall be sufficient ground for the dismissal thereof**." (*Emphasis supplied*)

Similarly, Section 2, Rule 6 of the RRCTA provides that the PFR to be filed with this Court should comply with the requisites under Section 3, Rule 46 of the Rules of Court, otherwise, non-compliance thereto shall be sufficient ground for the dismissal of the petition, to wit:

> SEC 3. Contents and filing of petition; effect of noncompliance with requirements. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.
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> In actions filed under Rule 65, **the petition shall further indicate the material dates showing when notice** of the judgment or final order or resolution subject thereof **was received**, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.
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> It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the

> court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.
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> The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.
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> The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.
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> **The failure of the petitioner to comply any of the requirements shall be sufficient ground for the dismissal of the petition**. (*Emphasis supplied*)

As shown above, these specific provisions mandatorily require the petitioner to specifically state or indicate the material dates of its receipt of the notice of ruling which is the basis for such appeal before this Court.

In *Bethel Realty and Development Corporation v. Housing and Land Use Regulatory Board et al.*,[32] the Supreme Court explains the importance of Section 3, Rule 46 of the Rules of Court, to wit:

> To ensure compliance with the prescribed period, Section 3, Rule 46 of the Rules of Court provides that the petition shall indicate the date when "notice of the judgment or final order or resolution subject thereof was received" failure of which shall warrant the dismissal of the petition.
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> Applying the aforesaid provision, the Court of Appeals, in its assailed Amended Decision, ruled:
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>> In this Petition, Petitioner failed to indicate the first date, the date when the notice of the assailed decision was received. Instead, on page 4 of the petition, [Petitioner alleged that,] the assailed decision of the Public Respondent

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[32] G.R. No. 184482, July 04, 2012.

> HLURB "*was never served upon petitioner Bethel Realty & Development Corporation*" but was only informed by one Atty. Carbon of the existence of the decision and the writs of execution. **Still, Petitioner failed to mention when was it informed of the decision. As explicitly stated in the aforementioned Rule, failure to indicate the material dates shall be sufficient ground for the dismissal of the petition.** (Emphasis supplied)
>
> We are thus confronted with the issue of whether or not the allegation that petitioner was never served a copy of the judgment sought to be reviewed excuses compliance with the express requirement that the date of receipt of the notice of the judgment or final order should be indicated in the petition. We rule in the negative.

In *Dr. Joseph L. Malixi et al. v. Dr. Glory V. Baltazar*,[33] the Supreme Court emphasizes the importance of the material date in the petition, to wit:

> On the first procedural rule that petitioners allegedly failed to comply with, this Court explained the rationale of the requisite material dates in *Lapid v. Judge Laurea*:
>
> > There are three material dates that must be stated in a petition for *certiorari* brought under Rule 65. *First*, the date when notice of the judgment or final order or resolution was received; *second*, the date when a motion for new trial or for reconsideration was filed; and *third*, the date when notice of the denial thereof was received ... As explicitly stated in the aforementioned Rule, failure to comply with any of the requirements shall be sufficient ground for the dismissal of the petition.
> >
> > The rationale for this strict provision of the Rules of Court is not difficult to appreciate. As stated in *Santos vs. Court of Appeals*, the requirement is for purpose of determining the timeliness of the petition, thus:
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> > > The requirement of setting forth the three (3) dates in a petition for *certiorari* under Rule 65 is for the purpose of determining its timeliness. Such a petition is required to be filed not later than sixty (60) days from notice of the

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[33] G.R. No. 208224, November 22, 2017.

> judgment, order or *Resolution* sought to be assailed. Therefore, that the petition for *certiorari* was filed forty-one (41) days from receipt of the denial of the motion for reconsideration is hardly relevant. *The Court of Appeals was not in any position to determine when this period commenced to run and whether the motion for reconsideration itself was filed on time since the material dates were not stated...*

> Moreover, as reiterated in *Mabuhay vs. NLRC*, ... "As a rule, the perfection of an appeal in the manner and within the period prescribed by law is jurisdictional and failure to perfect an appeal as required by law renders the judgment final and executory." (Emphasis in the original, citations omitted)

Petitioner should be reminded that procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law is important in insuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed, to provide for a system under which suitors may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge. The other alternative is the settlement of their conflict through the barrel of a gun.[34]

Technical rules serve a purpose. They are not made to discourage litigants from pursuing their case nor are they fabricated out of thin air. Every section in the Rules of Court and every issuance of this Court with respect to procedural rules are promulgated with the objective of a more efficient judicial system.[35]

The failure of the respondent to state or indicate the material date of its receipt of the subject WDL in its PFR filed before the Court in Division is tantamount to a failure to perfect an appeal because such PFR violated Section 2, Rule 42 in relation to Section 3, Rule 46 of the Rules of Court, as amended. Hence, the Court in Division had no jurisdiction to

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[34] *Supra*, Note 33; *Nicanor T. Santos v. Court of Appeals et al.*, G.R. No. 92862, July 4, 1991.

[35] *Supra*, Note 33.

rule on the case and should have dismissed the same at the outset.

Considering that this Court has no jurisdiction on the instant case, other issues raised by both parties will not anymore be discussed.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assailed January 5, 2018 *Decision*[36] and May 3, 2018 *Resolution*[37] are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(with Separate Opinion)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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
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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1860** (CTA Case No. 8664)
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- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
DRUGMAKER'S BIOTECH RESEARCH LABORATORIES, INC. (through its representative Drugmaker's Laboratories, Inc.), Respondent.	***Promulgated:*** **SEP 26 2019** 3:52 p.m.

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SEPARATE OPINION

UY, *J.*:

With all due respect to the learned ponente and my other colleagues, this is to express my separate concurring opinion to the Decision reached by the Court *En Banc*.

In the present case, it was never disputed that petitioner failed to prove that the subject assessment notices were served by registered mail to respondent. As a result thereof, the subject deficiency tax assessments issued against the latter for taxable year 2007 are, in fact, void, for having been issued in violation of the due process requirements under the law and Revenue Regulations (RR) No. 12-99, as the Court *a quo* ruled. As such, the said deficiency tax assessments bear no valid fruit, and can not be used as legal basis for petitioner to demand payment or to collect the subject deficiency taxes from respondent.

Nevertheless, after taking a second hard look at the issue of whether or not the Court *a quo* has jurisdiction, vis-à-vis the clear factual milieu relevant to the filing of respondent's *Petition for Review* in CTA Case No. 8664, I humbly reconsider my position in the assailed Decision and Resolution.

Indeed, it has already been settled that the 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[1]

Relative thereto, the general rule is that the perfection of an appeal in the manner and within the period prescribed by law is, not only mandatory, but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable. **By way of exception, unintended lapses are disregarded so as to give due course to appeals filed beyond the reglementary period on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof.** The purpose behind the limitation of the period of appeal is **to avoid an unreasonable delay** in the administration of justice and to put an end to controversies.[2]

In this case, notwithstanding the nullity of the subject tax assessments for having been issued in violation of the due process requirements under the law and RR No. 12-99, it is clearly apparent that respondent failed to observe the 30-day period to appeal before this Court the *Warrant of Distraint and/or Levy*, which the Bureau of Internal Revenue served to respondent on April 23, 2013. Considering that respondent filed its *Petition for Review* only on June 24, 2013, it is undeniable that it waited for sixty-two (62) days from receipt of the said *Warrant of Distraint and/or Levy* before appealing the same before this Court.

In addition, respondent offered this Court no clear and convincing explanation or strong and compelling reasons as to why it had to wait for a period of 62 days before filing its *Petition for Review* in the Court *a quo*, so as to justify that its case falls under the exception to the strict general rule that an appeal must be perfected

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[1] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

[2] *Republic Cement Corporation vs. Guinmapang*, G.R. No. 168910, August 24, 2009.

in the manner and within the period prescribed by law.

Evidently, considering that respondent's *Petition for Review* in CTA Case No. 8664 was filed beyond the 30-day period of appeal, the Court *a quo* is clearly without jurisdiction, and should have dismissed the same.

In view thereof, I vote: (1) to grant the instant *Petition for Review*; and correspondingly, (2) to reverse and set aside the Decision dated January 5, 2018, and Resolution dated May 3, 2018, rendered by First Division of this Court in CTA Case No. 8664.

ERLINDA P. UY
Associate Justice