REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2560** (CTA Case No. 9161)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ.*
ROBINSONS TOYS, INC., Respondent.	Promulgated: FEB 01 2024 11:42am

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution is petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "Motion for Reconsideration"[1] (**MR**) filed through registered mail on 04 August 2023[2], with respondent Robinsons Toys, Inc.'s (**respondent**'s/**RTI**'s) "Comment/Opposition (To Petitioner's Motion for Reconsideration dated 3 August 2023)"[3] (**Comment/Opposition**) filed on 09 October 2023.

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1 *Rollo*, pp. 173-203.
2 Received by the Court on 11 August 2023.
3 *Rollo*, pp. 211-214.

The MR assails the Court *En Banc*'s Decision[4] promulgated on 13 July 2023 (**assailed Decision**). The dispositive portion of which reads:

> ...
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> **WHEREFORE**, in view of the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 02 February 2022 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 02 September 2020 and Resolution dated 11 December 2021, respectively, of the Third Division in CTA Case No. 9161 entitled *Robinsons Toys, Inc. v. Commissioner of Internal Revenue,* are hereby **AFFIRMED**.
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> Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes assessed against respondent Robinsons Toys, Inc. as provided in the Final Decision on Disputed Assessment dated 03 September 2015 in the total amount of ₱286,445,331.49, representing deficiency income tax, value-added tax, withholding tax on compensation, expanded withholding tax, final and documentary stamp tax, inclusive of increments; and the Final Decision on Disputed Assessment (Part II) of even date for the payment of compromise penalty in the amount of ₱438,500.00 for taxable year 2009.
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> **SO ORDERED.**
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> ...

In the MR, petitioner reiterates all the arguments he or she has previously raised in the Petition for Review filed before the Court *En Banc*.

To recapitulate, petitioner asserts that the Court *En Banc* erred in ruling on issues which respondent neither raised in the original petition nor during the pre-trial conference. Thus, he or she was deprived of the opportunity to counter those issues which, in turn, violates his or her constitutional right to due process. Although this Court may rule upon issues that are necessary to resolve a case, it can only limit itself to the issues that can be derived from the pleadings.

Petitioner adds that the assessment against respondent was validly executed pursuant to an Letter of Authority (**LOA**) duly authorizing revenue officers to conduct an examination and

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4 Id., pp. 135-161.

investigation of respondent's books of account for taxable year (**TY**) 2009. Petitioner avers that the Court *En Banc* misinterpreted the provisions of Revenue Memorandum Order (**RMO**) Nos. 62-2010[5] and 69-2010[6] as the two (2) regulations sanction the replacement of revenue officers only through the issuance of an Memorandum of Assignment (**MOA**).

Petitioner also insists that this Court erred in relying heavily on the principles enunciated in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[7] (**Fitness by Design**). According to petitioner, the said case is not an interpretation of the law but merely a reiteration of a previous ruling made in *Commissioner of Internal Revenue v. Dominador Menguito*[8] which was resolved on a very dissimilar issue from that of *Fitness by Design*. Petitioner thus maintains that respondent is liable to pay the deficiency taxes in the aggregate amount of ₱286,445,331.49, together with the compromise penalty of ₱438,500.00.

Respondent, on the other hand, counters that petitioner's MR is a mere rehash of the arguments that were already considered and passed upon in assailed Decision of 13 July 2023. Being a *pro forma* motion, the MR should be denied for lack of merit.

We resolve.

After an examination of the pleadings, We are constrained to deny petitioner's MR on two grounds: (1) it was filed out of time; and, (2) assuming it was timely filed, it lacks merit.

Section 1, Rule 15 of the Revised Rules of Court of Tax Appeals[9] (**RRCTA**) provides that an aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen (15) days from the date he or she received the notice of the decision, resolution, or order of the Court in question.

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5 Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures.
6 Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices and Memoranda of Assignment.
7 G.R. No. 215957, 09 November 2016.
8 G.R. No. 167560, 17 September 2008.
9 A.M. No. 05-11-07-CTA.

In the instant case, the Office of the Solicitor General (**OSG**), through the Compliance[10] filed *via* registered mail on 25 July 2023, manifested that it received the assailed Decision of 13 July 2023 on **19 July 2023**. Counting 15 days therefrom, petitioner had until **03 August 2023** to file his or her MR. However, the latter filed the MR on 04 August 2023, or one (1) day late. Clearly, it was filed out of time.

It bears stressing that an MR must necessarily be filed within the period to appeal. When filed beyond such period, the MR *ipso facto* forecloses the right to appeal.[11] Simply stated, a party who fails to assail an adverse decision through the proper remedy within the period prescribed by law for the purpose loses the right to do so; thus, the decision becomes final and binding as to such party.[12] Consequently, in herein case, the assailed Decision of 13 July 2023 is now final and binding to the parties.

Additionally, this Court cannot accept petitioner's allegation that he or she received the assailed Decision on 20 July 2023.[13] In *National Power Corporation v. National Labor Relations Commission, et al.*[14], it was already settled that although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel. Therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive. Thus, the proper basis for computing the reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG.

Assuming that the MR was filed on time, it must be emphasized that petitioner failed to raise any new argument or present novel matter which the Court *En Banc* has not previously scrutinized, studied, and discussed.

A simple reading of the instant MR would readily yield that the same contains the very identical arguments earlier raised in petitioner's Petition for Review[15] filed before the Court *En Banc*. In *Licomcen*

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10 *Rollo*, pp. 168-169.
11 *Barrio Fiesta Restaurant, et al. v. Helen C. Beronia*, G.R. No. 206690, 11 July 2016.
12 *Lopez v. Court of Appeals*, G.R. No. 163959 (Resolution), 01 August 2018.
13 See first paragraph of the Motion for Reconsideration, supra at note 1.
14 G.R. Nos. 90933-61, 29 May 1997.
15 *Rollo*, pp. 7-46.

Incorporated v. Foundation Specialists, Inc.[16], the Supreme Court, citing *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[17], held that:

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> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, x x x deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
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> ...

WHEREFORE, in view of the foregoing, petitioner Commissioner of Internal Revenue's "Motion for Reconsideration" filed on 04 August 2023 is **DENIED** for being filed out of time.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

16 G.R. No. 167022, 31 August 2007.
17 G.R. No. 109645, 04 March 1996.

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WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice