REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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MINDANAO I GEOTHERMAL PARTNERSHIP, Petitioner,	**CTA EB No. 1075** (CTA Case No.8250)
	Present:
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 13 2015 3:20 p.m.

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RESOLUTION

UY, *J.*:

This resolves petitioner's **"Manifestation and Motion to Withdraw Petition"**[1] filed on October 16, 2014, without respondent's Comment despite due notice.[2] In the said motion, petitioner prays of this Court that its Petition for Review in the above-captioned case be considered withdrawn and the case be considered closed and terminated.

In support of its motion, petitioner states as follows:

1. On September 3, 2014, the present case (CTA Case No. 1075) was deemed submitted for decision.

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[1] Docket, pp. 393 to 417.

[2] As per Records Verification dated December 2, 2014, Docket, p. 421.

2. On May 31, 2013, petitioner was assessed by the Bureau of Internal Revenue (BIR) for deficiency income tax, expanded withholding tax and value-added tax for the year 2009. Petitioner filed its protest for the said assessment.

3. On February 14, 2014, petitioner opted to pay the assessed amounts representing deficiency value-added tax, income tax and expanded withholding tax for the year 2009 as evidenced by the BIR Tax payment Deposit Slips and Payment Form (BIR Form No. 0605) all dated February 14, 2014 in the amounts of ₱2,252,276.86, ₱1,678,836.99, ₱682,221.31, copies of which are hereto attached and made integral parts hereof as Annexes "A", "A-1", "B", "B-1" and "C", "C-1". The payment was made prior to the actual receipt of the Final Decision on Disputed Assessment (FDDA) on March 11, 2014. A copy of the FDDA is hereto attached and made an integral part hereof as Annex "D".

4. It appears from the FDDA that the amount of ₱19,968,719.00 which the BIR recognized as the Creditable Income Tax Refund includes the amount of ₱16,343,159.00, subject matter of CTA Case No. 8093 and ₱3,625,560.75, subject matter of CTA Case No. 8250.

5. In view of the foregoing development rendering moot and academic the present petition, petitioner respectfully prays that it be allowed to withdraw its petition in the above-captioned case.

THE COURT *EN BANC'S* RULING

We grant the instant Motion.

While the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, the applicable rule in the instant case, does not mention any rule pertaining to the dismissal of an appeal, Section 3, Rule 1 thereof provides that "The Rules of Court in the Philippines shall apply suppletorily to these Rules" (referring to the RRCTA).

Relevantly, Section 3, Rule 50 of the 1997 Rules of Civil Procedure, states as follows:

"**RULE 50**

DISMISSAL OF APPEAL

> SECTION 3. *Withdrawal of appeal.* – An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court."

Applying the foregoing legal provision by analogy, an appeal before this Court may be withdrawn, as a matter of right, at any time before the filing of a Comment on the Petition for Review. In this case, respondent filed her Comment (Re: Petitioner's Petition for Review) on March 13, 2014[3] and her Memorandum on July 22, 2014[4] and the case was considered submitted for decision on September 3, 2014[5]. Thus, petitioner can no longer withdraw its appeal as a matter of right and the grant of the instant Motion now rests on the sound discretion of this Court.

Taking into consideration petitioner's manifestation that the present claim for refund of unutilized creditable withholding tax for CYs 2008 and 2009 in the amount of ₱3,625,560.76 has been recognized by the BIR as Creditable Income Tax Refund in the FDDA issued against petitioner on March 11, 2014, and there being no opposition filed by respondent on the subject Motion within the prescribed period, the Court *En Banc* is inclined to grant petitioner's *Motion to Withdraw Petition.*

WHEREFORE, in view of the foregoing considerations, petitioner's **"Motion to Withdraw Petition"** filed on October 16, 2014 is hereby **GRANTED**.

Accordingly, the Petition for Review filed on November 6, 2013, docketed as CTA EB No. 1075 is deemed **WITHDRAWN**, and the case is hereby declared **CLOSED** and **TERMINATED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[3] Docket, pp. 331 to 342.
[4] Docket, pp. 372 to 387.
[5] Resolution dated, Docket, pp. 391 to 392.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

KABALIKAT PARA SA MAUNLAD NA BUHAY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1238
(CTA Case No. 8336)

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

KABALIKAT PARA SA MAUNLAD NA BUHAY, INC.
Respondent.

CTA EB NO. 1239
(CTA Case No. 8336)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

JAN 13 2015 3:16 p.m.

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RESOLUTION

UY, ***J.*:**

In **CTA EB No. 1238**, records show that, on October 17, 2014, petitioner Kabalikat Para Sa Maunlad Na Buhay, Inc. (Kabalikat) filed with the Court *En Banc* a Petition for Review against respondent Commissioner of Internal Revenue (CIR), assailing the Decision dated June 20, 2014 and Resolution dated October 1, 2014, both promulgated by the Second Division of this Court in CTA Case No. 8336.[1]

Subsequently, on November 3, 2014, in **CTA EB No. 1239**, petitioner CIR filed her Petition for Review against respondent Kabalikat, seeking to set aside and reverse the same Decision and Resolution.[2]

Considering that both cases are appeals from the same Decision and Resolution, CTA EB No. 1239 was consolidated with CTA EB No. 1238 in the Resolution dated November 12, 2014.[3]

However, upon careful perusal of the respective Petitions in CTA EB No. 1238 and CTA EB No. 1239, this Court is constrained to dismiss the instant consolidated Petitions.

In **CTA EB No. 1238**, Kabalikat failed to include in its Petition for Review a concise and direct statement of complete facts and to attach therewith either clearly legible duplicate originals or certified true copies of the Decision and/or Resolution appealed from in violation of Section 2, Rule 6, of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended.[4]

In the case of *Philippine National Bank vs. Commissioner of Internal Revenue*[5], the Supreme Court reiterated the mandatory character of attaching duplicate originals or certified true copies of the assailed decision to a petition for review.[6] Failure to comply with this requirement is a sufficient ground for the dismissal of the petition.[7]

On the other hand, in **CTA EB No. 1239**, the CIR failed to attach a Verification and Certification against Forum Shopping as required

[1] Docket (CTA EB No. 1238), pp. 8 to 23.
[2] Docket (CTA EB No. 1239), pp.
[3] Docket (CTA EB No. 1238), pp. 24 to 25.
[4] **RULE 6. SEC. 2.** *Petition for review; contents.* – The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition. *(Underscoring supplied.)*
[5] G.R. No. 172458, December 14, 2011.
[6] Supra citing *Spouses Lim v. Uni-Tan Marketing Corporation,* G.R. No. 147328. February 20, 2002. See also *Kalayaan Arts and Crafts, Inc. vs. Manuel Anglo and Jorge Yanson,* G.R. No. 143467. July 21, 2003.
[7] *Abapo et al. vs. Court of Appeals and San Miguel Corporation,* G.R. No. 142405, September 30, 2004.

under Section 2, Rule 6, of the RRCTA[8], in relation to Section 3, Rule 46 of the 1997 Revised Rules of Civil Procedure.[9]

On November 4, 2014, the CIR filed a **"MANIFESTATION WITH MOTION TO ADMIT VERIFICATION"**[10], attaching thereto the Verification and Certification Against Forum-Shopping executed by Mr. Gerardo R. Florendo dated November 3, 2014.

However, this Court finds said Verification and Certification insufficient to cure the aforesaid formal defect in the CIR's Petition for Review because while said Verification and Certification states that Mr. Florendo is authorized to sign the same, the CIR failed to show proof of such authority.

In the case of *Republic of The Philippines vs. Coalbrine International Philippines, Inc. and Shiela F. Neri*[11], the Supreme Court ruled that while the requirement regarding verification is merely formal and does not render the pleading fatally defective, the lack of certification against non-forum shopping is generally not curable by the submission thereof after filing the petition; more so, when the said certification is unaccompanied by proof that said signatory is authorized to file the petition on behalf of the party. Failure to provide a certificate of non-forum shopping is sufficient ground to dismiss the petition. Likewise, the petition is subject to dismissal if a certification was submitted unaccompanied by proof of signatory's authority.[12]

[8] **RULE 6. SEC. 2.** *Petition for review; contents.* – The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition. *(Underscoring supplied.)*

[9] **RULE 46. SEC. 3.** *Contents and filing of petition; effect of non-compliance with requirements.* -

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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 failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. *(Underscoring supplied).*

[10] Docket (CTA EB No. 1239), pp.

[11] G.R. No. 161838, April 7, 2010.

[12] Supra citing *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines (FASAP),* G.R. No. 143088, January 24, 2006.

The Court notes that this is not the only procedural rule that the CIR failed to satisfy. The CIR likewise failed to serve a copy of her Petition to the respondent's counsel of record or to show proof of service thereof.

Section 5, Rule 43 of the 1997 Rules of Civil Procedure, as amended, in relation to Section 4(b), Rule 8 of the RRCTA[13], requires that the petition must be filed "with proof of service of a copy thereof on the adverse party"[14]. As proof of service, Section 13, Rule 13 of the same rules states that if service is made by registered mail, proof shall be made by the affidavit of the party serving and the registry receipt issued by the mailing office.[15]

In the present case, although the CIR served a copy of her Petition for Review on the law firm of Salvador & Associates, as evidenced by registry receipt number 5763, the latter was not respondent's counsel of record when the assailed Decision and Resolution was promulgated by the Second Division of this Court. Hence, service to said law firm did not amount to service on Kabalikat.

In line with the constitutional mandate of due process and for the orderly administration of justice, service of the petition upon the adverse party is mandatory. Failure to do so subjects the petition to outright dismissal.[16]

At this juncture, it bears to underscore that procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure

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[13] **RULE 8. SEC. 4** *Where to appeal; mode of appeal.* – xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

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[14] **RULE 43. Section 5.** *How appeal taken.* — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

[15] **RULE 13. Section 13.** *Proof of Service.* — Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

[16] See *Ferrer vs. Villanueva,* G.R. No. 155025, August 24, 2007 and *Ang Biat Huan Sons Industries, Inc. vs. Court of Appeals, et al.,* G.R. No. 154837, March 22, 2007.

to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice.[17]

Accordingly, pursuant to Section 7, Rule 43 of the 1997 Rules of Civil Procedure[18], the above procedural flaws warrant the outright dismissal of the instant consolidated Petitions.

WHEREFORE, in the light of the foregoing considerations, the Petition for Review dated October 17, 2014, filed by Kabalikat Para Sa Maunlad Na Buhay, Inc., and the Petition for Review dated October 31, 2014, filed by the Commissioner of Internal Revenue are hereby **DENIED DUE COURSE** and accordingly, **DISMISSED** for being insufficient in form.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[17] *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue,* G.R. No. 157594, March 9, 2010.

[18] **RULE 43. Sec. 7.** *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. (*Underscoring supplied.*)

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice