

En Banc

Petitioner,

**RINGPIS-LIBAN, P.J.,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES,
ANGELES,
TESTON, *and*
CENTENO-DIJAMCO, JJ.**

-versus-

Respondent. Promulgated:

SEP 30 2026

X

3

MODESTO-SAN PEDRO, J.:

Before the Court *En Banc* is a Petition for Review,¹ filed on June 9, 2025, seeking the reversal and setting aside of the Decision² (“Assailed Decision”), promulgated on January 16, 2025, and the Resolution³ (“Assailed Resolution”), dated May 6, 2025, both issued by the Court’s First Division (“Court in Division”); and praying for the issuance of a new decision denying respondent’s petition for review and ordering it to pay deficiency taxes, plus interest, surcharge and penalties, pursuant to *Sections 248 and 249 of the National Internal Revenue Code of 1997 (“Tax Code”)*, as amended by *Tax Reform for Acceleration and Inclusion (“TRAIN”)*.⁴

⁴ See Prayer, Petition for Review, *id.*, p. 26.

The Parties

Petitioner Commissioner of Internal Revenue (“CIR” or “petitioner”) is the duly appointed Commissioner of the Bureau of Internal Revenue (“BIR”) who is vested with the authority to act as such, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.⁵

On the other hand, respondent James Fausto Corp. (“respondent”) is a corporation duly organized and existing under Philippine laws. Its principal place of business is located at Waterfront Road, Central Business District, Subic Bay Freeport Zone.⁶

The Facts

On July 1, 2019, respondent received Letter of Authority (“LOA”) No. eLA201600028938/LOA-019-2019-00000067 dated June 14, 2019, authorizing the examination of respondent’s books of accounts and other accounting records for all internal revenue taxes covering the taxable year (“TY”) 2018.⁷

After submitting the requested documents to petitioner on July 22, 2019 and July 31, 2019,⁸ respondent received the Notice of Informal Conference (“NIC”) on November 21, 2019.⁹ Instead of attending the informal conference, respondent submitted a position paper on December 20, 2019.

On October 16, 2020,¹⁰ petitioner served the Preliminary Assessment Notice (“PAN”) dated September 17, 2020,¹¹ assessing respondent for deficiency income tax, value-added tax, fringe benefits tax, and penalties in the aggregate amount of ₱25,852,154.05. Respondent filed a reply thereto on November 4, 2020.¹²

⁵ See Par.1, Parties, Petition for Review, *id.* at 10; see also Par. 2, The Parties, Assailed Decision, *id.* at 38.

⁶ See Par. 2, Parties, Petition for Review, *id.*; see also Par. 1, The Parties, Assailed Decision, *id.* at 37.

⁷ Exhibit “P-3”, Division Docket, p. 451.

⁸ Exhibits “P-4” and “P-4-A”, *id.* at 33-34.

⁹ Exhibit “P-5”, *id.* at 454-458.

¹⁰ BIR Records, p. 282.

¹¹ Exhibit “P-7”, Division Docket, pp. 55-56.

¹² BIR Records, pp. 289-290.

On February 23, 2021, petitioner served the Formal Letter of Demand (“FLD”) dated January 19, 2021,¹³ reiterating the alleged deficiency taxes. In response thereto, respondent filed a request for reinvestigation on March 25, 2021.¹⁴

On August 19, 2021, respondent received the Final Decision on Disputed Assessment (“FDDA”) dated July 5, 2021,¹⁵ signed by Regional Director Joseph M. Catapia of Revenue Region No. 4, City of San Fernando, Pampanga, finding it liable for tax liabilities in the aggregate amount of ₱27,447,891.95.

Respondent then filed a Motion for Reconsideration¹⁶ of the FDDA before the office of the CIR on September 20, 2021.

However, pending resolution of the said Motion for Reconsideration, respondent received the Warrant of Dstraint and/or Levy (“WDL”) dated January 18, 2022,¹⁷ on January 21, 2022. Aggrieved, respondent filed the original petition for review before the Court in Division on February 18, 2022.¹⁸

After a full-blown trial, the Court in Division rendered the Assailed Decision, dated January 16, 2025,¹⁹ granting respondent’s original petition for review, the dispositive portion of which states:

WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED**. Accordingly, the Formal Letter of Demand with Final Assessment Notices dated January 19, 2021, and the Warrant of Dstraint and/or Levy No. WDL-2021-RR4-AMS-000198 dated January 18, 2022, are **CANCELLED** and **SET ASIDE**. The Final Decision on Disputed Assessment dated July 5, 2021, assessing petition for deficiency income tax, value-added tax, fringe benefits tax, and administrative fines and penalties for taxable year 2018, is **REVERSED** and **SET ASIDE**.

Furthermore, respondent is **ENJOINED** and **PROHIBITED** from enforcing the collection of the subject deficiency taxes against petitioner.

SO ORDERED.

¹³ Exhibit “P-9”, Division Docket, pp. 459-460.

¹⁴ Exhibit “P-10”, *id.* at 68-70.

¹⁵ Exhibit “P-11”, *id.* at 467-469.

¹⁶ Exhibit “P-12”, *id.* at 75-86.

¹⁷ Exhibit “P-2”, *id.* at 27.

¹⁸ *Id.* at 6-21.

¹⁹ *Supra* note 2.

Unsatisfied, petitioner filed a Motion for Reconsideration (“MR”) on February 4, 2025.²⁰ However, the Court in Division dismissed such motion after finding that the same was filed out of time and for lack of merit. The dispositive portion of the Assailed Resolution, dated May 6, 2025,²¹ states:

WHEREFORE, premised considered, respondent Commissioner of Internal Revenue’s Motion for Reconsideration [re: Decision dated 16 January 2015] is hereby **DISMISSED** for having been filed out of time and for lack of merit.

SO ORDERED.

This led to the filing of the current Petition for Review on June 9, 2025²² after having been granted an extended period of until June 13, 2025 within which to elevate an appeal to the Court *En Banc*.²³

Respondent, on the other hand, submitted its Comment on July 17, 2025.²⁴

In view thereof, the Court submitted the instant case for decision on December 1, 2025.²⁵

The Issues

The issues, as raised by petitioner, are as follows:

I.

WHETHER THE COURT IN DIVISION ERRED IN CONSIDERING THE RECEIPT OF THE OFFICE OF THE SOLICITOR GENERAL (“OSG”) AS THE RECKONING PERIOD TO APPEAL, NOT UPON THE RECEIPT OF THE BIR LITIGATION DIVISION.

II.

WHETHER THE COURT IN DIVISION ERRED IN RULING ON THE ISSUE OF SERVICE OF THE PRELIMINARY ASSESSMENT NOTICE.

✓

²⁰ Division Docket pp. 606-627.

²¹ *Supra* note 3.

²² *Supra* note 1.

²³ See Motion for Extension to File Petition for Review, *Rollo*, pp. 1-4; see also CTA En Banc Notice dated May 28, 2025, *Rollo*, p. 8.

²⁴ Comment/Opposition (Re: Respondent’s Petition for Review dated 06 June 2025), *id.* at 77-88.

²⁵ See Notice dated December 1, 2025, *id.* at 93.

III.
WHETHER RESPONDENT WAS ACCORDED DUE
PROCESS.²⁶

The Arguments

In its Petition for Review,²⁷ petitioner argues that the Court in Division erred in reckoning the period to file a MR from the date of receipt of the OSG. He insists that the counsel for BIR representing the CIR before the Court of Tax Appeals is the Litigation Division or Legal Division, pursuant to the Memorandum of Agreement (“MOA”) executed between OSG and the BIR. According to petitioner, being the counsel responsible for all pleadings and other papers/documents before the CTA, it follows that all resolutions and processes of CTA must be served to BIR lawyers, in this case, the lawyers from the Litigation Division. Hence, as further advanced by petitioner, it is not expected that said lawyers depend on the OSG as to the receipt of the resolutions and other processes from the CTA.

Moreover, petitioner posits that assuming *arguendo* that the MR was filed out of time, the courts, including the Court of Tax Appeals, are still allowed to relax the rules of procedure to best serve the interest of justice and fair play.

Meanwhile, as regards the merits of the case, petitioner raises that respondent is estopped from assailing the service of the PAN. He emphasizes that despite ample remedies provided by law and pertinent regulations, such matter regarding the service of notice was never raised by petitioner; it must thus be considered an undisputed issue.

Finally, petitioner argues that even assuming without conceding that respondent may belatedly raise this issue, respondent was still accorded its right to due process as the PAN was properly served and the reply to PAN was considered in arriving at the FLD.

On the other hand, respondent, in its Comment²⁸ counters that the OSG remains to be the principal counsel of petitioner and as such, the Solicitor General is the party entitled to be furnished copies of the orders, notices and decisions of the Court. It advances that being merely a surrogate of the Solicitor General, the deputation of the BIR lawyer did not relieve the OSG remains as the primary legal representative of petitioner.

²⁶ See Assignment of Errors, Petition for Review, *id.* at 11-12.

²⁷ *Supra* note 1.

²⁸ *Supra* note 24.

In addition, respondent argues that Court *En Banc* cannot apply the relaxation of procedural rules in this case as the Assailed Decision was based on the merits of the case and not merely based on technicalities.

Moreover, respondent insists that it is not estopped from assailing the service of PAN and that it was not accorded due process as petitioner failed to answer or even acknowledge the defenses of respondent in its reply to PAN.

The Ruling of the Court

The period to file a motion for reconsideration must be reckoned from the date of receipt of the OSG; thus, petitioner's MR was properly dismissed by the Court in Division.

Before delving into the merits of the present case, it is crucial to first look into the questioned untimely filing of the MR of the Assailed Decision, as found by the Court in Division, which led to the dismissal of the motion.

In the Assailed Resolution, the Court in Division found that:

... [T]he records show that respondent received a copy of the assailed Decision through the Office of the Solicitor General on January 17, 2025. Under the *Rules*, respondent had fifteen (15) days from said date, or until February 1, 2025, to file a motion for reconsideration. Since February 1, 2025 fell on a Saturday, the deadline was extended to the next working day, February 3, 2025.

However, respondent filed the *Motion for Reconsideration* only on February 4, 2025. Thus, the assailed Decision had already attained finality by then, rendering the motion dismissible for being filed out of time.

Petitioner, however, insists that the Court in Division should have reckoned the deadline of filing of the MR from the date of receipt of the BIR Litigation Division on January 20, 2025, not from the date of receipt of the OSG on January 17, 2025.

Petitioner highlights that as the counsel of numerous government agencies, the OSG could not be expected to give equal attention and resources to all the cases it handles, thus the deputation of legal officers of the government departments, bureaus, and agencies. Relative thereto, petitioner emphasizes the existence of a MOA between the OSG and the BIR, where the

former has deputized the lawyers of the latter in handling cases appealed to the CTA *En Banc*.

According to petitioner, being the counsel responsible for all pleadings and other papers/documents before the CTA, it follows that all resolutions and processes of the CTA must be served to the BIR lawyers. Hence, petitioner further argues, that it is not expected that said lawyers depend on the OSG as to the receipt of such resolutions and processes from the Court, taking into consideration that the BIR handling lawyer will prepare all the necessary papers in connection with the case.

The foregoing arguments must fail.

Under *Section 18 of RA No. 1125, as amended by RA 9282*, it is required, albeit implicitly, that a party files a MR before elevating a case on appeal to the Court *En Banc*, thus:

Section 18. Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc.
(Emphasis and italics supplied)

Consistent thereto, *Section 2(a)(1), Rule 4, in relation to Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals*²⁹ ("RRCTA") categorically provides that a timely motion for reconsideration must precede cases appealed before the Court *En Banc*, which include decisions of the Court in Division involving cases arising from administrative agencies like the BIR. These provisions respectively provide:

RULE 4 JURISDICTION OF THE COURT

...

Section. 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:

1

²⁹ A.M. No. 05-11-07-CTA, 22 November 2005.

(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;*

...

RULE 8 PROCEDURE IN CIVIL CASES

Section 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, ***the petition for review of a decision*** or resolution of the Court in Division must be ***preceded*** by the filing of ***a timely motion for reconsideration or new trial with the Division.***

(Emphasis and italics supplied)

The mandatory nature of filing a ***timely*** motion for reconsideration and the consequences of failure to do so has been clarified by the Supreme Court in the case of *City of Manila v. Cosmos Bottling Corp*³⁰ (“*City of Manila case*”), which it was stated that:

Clear it is from the cited rule that the filing of ***a motion for reconsideration*** or new trial is ***mandatory — not merely directory*** — as indicated by the word ***"must."***

Thus, in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue (Asiatrust)*, we declared that ***a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution in order for the CTA En Banc to take cognizance of an appeal via a petition for review. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory.*** In *Commissioner of Customs v. Marina Sales, Inc. (Marina Sales)*, which was cited in *Asiatrust*, we held:

The rules are clear. Before the CTA En Banc could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division. Procedural rules are not to be trifled with or be excused simply because their noncompliance may have resulted in prejudicing a party's substantive rights. Rules are meant to be followed. They may be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules.

³⁰ G.R. No. 196681, June 27, 2018.

(Emphasis and italics supplied; citations omitted)

Gleaning from the foregoing, when there is *failure to timely file a motion for reconsideration* or new trial before elevating an appeal with the Court *En Banc*, assailing a decision of the Court in Division, the *petition necessarily becomes dismissible* for lack of jurisdiction due to failure to comply with the rules.

In this case, the issue is not centered on whether a motion for reconsideration was filed but rather zooms in on whether the MR filed by petitioner must be considered “timely” done considering the different dates of receipt of the OSG and the BIR Litigation Division.

Under *Section 1, Rule 15* of the RRCTA, the aggrieved party has 15 days to file a motion for reconsideration, counting from the date of receipt of the notice of decision, to wit:

RULE 15
MOTION FOR RECONSIDERATION OR NEW TRIAL

Section 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a motion for reconsideration or new trial ***within fifteen days from the date he received notice of the decision, resolution or order of the Court in question.***

(Emphasis and italics supplied)

Here, while the notice of decision was received by the BIR on January 20, 2025, records show that copy of the same was received by the OSG on an earlier date, January 17, 2025.³¹ If the 15 days would be counted from the OSG’s date of receipt, petitioner originally had until February 1, 2025 within which to file the MR. However, since this fell on a Saturday, the deadline is moved to the next working day, February 3, 2025. Nevertheless, as the MR was filed only on February 4, 2025, the Court in Division found that the same was not timely filed. On the flip side, if the 15-day period would be reckoned from the BIR’s receipt on January 20, 2025, the deadline is February 4, 2025, thus the timely filing of the MR.

As early as the case of *National Power Corp. v. National Labor Relations Commission* (“*NAPOCOR case*”),³² the Supreme Court has already clarified that despite having deputized the lawyers of National Power Corporation as “special attorney-OSG,” the OSG remains as the principal counsel of the said agency. More importantly, it was further held that the

³¹ See Notice of Decision stamped received the OSG on January 17, 2025 and by the BIR Litigation Division on January 20, 2025, Division Docket, p. 572.

³² G.R. Nos. 90933-61, May 29, 1997.

reckoning of period to appeal and for determining whether a decision had attained finality is from the service on the OSG, to wit:

Pursuant to Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987, the Office of the Solicitor General represents the government of the Philippines, its agencies and instrumentalities. *Headed by the Solicitor General, the "principal law officer and legal defender of the Government," the OSG possesses the unequivocal mandate to appear for the Government in legal proceedings.* When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. Under number 8 of the same section, *the OSG is empowered to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases."*

The fact that the OSG is petitioner's counsel is unchallenged, the former having entered its appearance on September 15, 1986. *The lawyer deputized and designated as "special attorney-OSG" is a mere representative of the OSG and the latter retains supervision and control over the deputized lawyer. The OSG continues to be the principal counsel for the National Power Corporation,* and as such, the Solicitor General is the party entitled to be furnished copies of orders, notices and decisions. The deputized special attorney has no legal authority to decide whether or not an appeal should be made.

As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter. We have likewise consistently held that *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.* In the present controversy, only the special attorney was served with a copy of the decision of the Labor Arbiter. Since service of said decision was never made on the OSG, the period to appeal the decision to the NLRC did not commence to run. Hence, the appeal memorandum filed by the OSG on July 17, 1989 was not filed belatedly.
(Emphasis and italics supplied)

It was further clarified in the case of *Republic of the Philippines vs. Viaje, et al. ("Viaje case")*³³ that the OSG retains its obligation to oversee the efficient handling of cases of its deputized counsels and that the service of court order or notices will only be binding once actually received by the OSG, thus:

The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of

³³ G.R. No. 180993, January 27, 2016.

government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." But it is likewise settled that the OSG's deputized counsel is "***no more than the 'surrogate' of the Solicitor General in any particular proceeding***" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions

...

... [T]he OSG also pointed out that it specifically requested the RTC to likewise furnish its deputized counsel with a copy of its notices. *Records show that the deputized counsel also requested that copies of notices and pleadings be furnished to him.* Despite these requests, it was only the OSG that the RTC furnished with copies of its notices. *It would have been more prudent for the RTC to have furnished the deputized counsel of its notices. All the same, doing so does not necessarily clear the OSG from its obligation to oversee the efficient handling of the case. And even if the deputized counsel was served with copies of the court's notices, orders and decisions, these will not be binding until they are actually received by the OSG.* More so in this case where the OSG's Notice of Appearance and its Letter deputizing the LRA even contained the caveat that it is only notices of orders, resolutions and decisions served on the OSG that will bind the Republic, the entity, agency and/or official represented. In fact, ***the proper basis for computing a reglementary period and for determining whether a decision had attained finality is service on the OSG.*** As was stated in *National Power Corporation v. National Labor Relations Commission*:

The underlying justification for compelling service of pleadings, orders, notices and decisions on the OSG as principal counsel is one and the same. As the lawyer for the government or the government corporation involved, the OSG is entitled to the service of said pleadings and decisions, whether the case is before the courts or before a quasi-judicial agency such as respondent commission. Needless to say, a uniform rule for all cases handled by the OSG simplifies procedure, prevents confusion and thus facilitates the orderly administration of justice.

(Emphasis and italics supplied)

More instructive in resolving the matter at hand is the case of *Baldovino-Torres v. Torres* ("*Torres case*"),³⁴ where the Supreme Court, after citing the *NAPOCOR case*, had the opportunity to rule on the issue of the start of the prescriptive period to appeal when the RTC decision therein was received by the OSG and the public prosecutor deputized by the OSG to appear on its behalf, on different dates. The High Court ruled that:

↑

³⁴ G.R. No. 248675, July 20, 2022.

The Court finds no merit in the contention that the OSG filed its Motion for Reconsideration out of time in the RTC. Admittedly, the public prosecutor in charge of the case, who was deputized by the OSG to appear on its behalf, received a copy of the RTC Decision on March 20, 2017. On the other hand, the OSG received its copy only on April 4, 2017.

In the case of *National Power Corporation v. National Labor Relations Commission* (NAPOCOR), the Court held that the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG. In holding so, the Court emphasized that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer. As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.

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

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

(Emphasis and italics supplied)

Applying the NAPOCOR, *Viaje*, and *Torres* cases, it is clear that even without the OSG's entry of appearance and despite the BIR Litigation Division's request to be served notice, orders, and decisions of the CTA, the OSG is not stripped of the obligation to stand as the primary lawyer of the government. This remains true notwithstanding the MOA between the OSG and the BIR deputizing the lawyers of the BIR Litigation Division to appear and handle cases before the CTA. As principal counsel of the government, the OSG still exercises supervision and control over the deputized BIR lawyers, who merely assist the Solicitor General and appear before the courts, in cases involving their respective government offices.

Accordingly, the period to file the MR must be reckoned from the service of the notice of decision to the OSG on January 17, 2025. As such, the Court in Division properly dismissed the MR, filed on February 4, 2025, for being submitted out of time. No valid MR being

filed against the assailed Decision, the same has become final and executory. We consequently lack jurisdiction over the instant Petition for Review.

Relaxation of procedural rules will not apply in this case as the Assailed Decision was based on the merits and not merely based on technicalities and procedural imperfections.

The CIR also appeals to the Court *En Banc* for the relaxation of the rules. However, We cannot lend to the petitioners the benefit of liberal application of the procedural mandates.

As ruled by the Supreme Court in the *City of Manila case*, the rules may be relaxed only in interest of justice and to benefit the deserving. In other words, they may be applied liberally when to do so would afford a litigant substantial justice.

Here, the Assailed Decision was rendered based on the merits of the case, particularly due to the violation of respondent's right to due process. Hence, even assuming the MR was to be given due course, the arguments presented therein have already been fully addressed and ruled by the Court in Division, as mentioned in the Assailed Resolution, thus:

At any rate, even assuming the Motion was timely filed, it would nonetheless be ***denied*** for lack of merit. A careful perusal of the *Motion* reveals that, except for the issue regarding the Court's authority to rule on matters not raised by the parties, all other arguments have already been extensively discussed and resolved in the assailed Decision. Rehashing the same arguments serves no purpose and unduly burdens the Court.
(Emphasis and italics in the original)

All told, petitioner failed to impress the Court *En Banc* with cogent arguments to justify the reversal and setting aside of the Assailed Decision and Assailed Resolution.

ACCORDINGLY, premises considered, the instant Petition for Review, filed on June 9, 2025, is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:



MA. BELEN M. RINGPIS-LIBAN

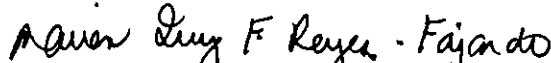
Presiding Justice



With Separate Opinion.

JEAN MARIE A. BACORRO-VILLENA

Associate Justice



MARIAN IVY F. REYES-FAJARDO

Associate Justice



LANEE S. CUI-DAVID

Associate Justice



With due respect, I join Justice Bacorro-Villena's Separate Opinion

CORAZON G. FERRER-FLORES

Associate Justice



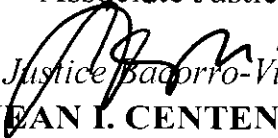
HENRY S. ANGELES

Associate Justice



PAOLO S. TESTON

Associate Justice



With due respect, I join Justice Bacorro-Villena's Separate Opinion

DEBBIE JEAN I. CENTENO-DIAMCO

Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



MA. BELEN M. RINGPIS-LIBAN

Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB No. 3162
(CTA Case No. 10775)

Present:

RINGPIS-LIBAN, P.J.,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES,
ANGELES,
TESTON, *and*
CENTENO-DIJAMCO, II.

- versus -

JAMES FAUSTO CORP.,
Respondent.

Promulgated:

SEP 30 2026

x ----- x

SEPARATE OPINION

BACORRO-VILLENA, J.:

The *ponencia* of my esteemed colleague, Hon. Maria Rowena Modesto-San Pedro, dismissed the instant Petition for Review for lack of jurisdiction. The *ponencia* found that the First Division properly dismissed petitioner's Motion for Reconsideration (**MR**) rationalizing that the period to file an MR must be reckoned from the Office of the Solicitor General's (**OSG's**) date of receipt of a Court in Division's decision. Consequently, the *ponencia* held that since no valid MR was filed against the First Division's Decision promulgated on 16 January 2025, the same has already become final and executory.

I am not unaware of my previous concurrence in the First Division's Resolution which dismissed petitioner Commissioner of Internal Revenue's (**petitioner's/CIR's**) MR for lack of jurisdiction as it was filed out of time *and* for lack of merit. However, upon a second hard look at the case records, I respectfully submit that petitioner's MR assailing the First Division's Decision was timely filed.

SEPARATE OPINION

CTA EB No. **3162** (CTA Case No. 10775)

Commissioner of Internal Revenue v. James Fausto Corp.

Page 2 of 8

x ----- x

The pivotal issue in determining the timeliness of petitioner's MR is the proper reckoning point of the reglementary period for its filing. Specifically, whether the period should be counted from the receipt of the notice of a Court in Division's decision by the OSG or from the receipt thereof by the legal officers of the Bureau of Internal Revenue (**BIR**). It is my considered view that the period shall be reckoned from the latter.

Section 220 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provides that civil and criminal actions and proceedings instituted in behalf of the Government under the authority of the NIRC (**internal revenue tax cases**) shall be conducted by legal officers of the BIR, to wit:

Sec.220. Form and Mode of Proceeding in Actions Arising under this Code. - Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue **shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue** but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.¹

In *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*² (**La Suerte**), the Supreme Court clarified that the above provision applies only to the institution or commencement before a proper court of internal revenue tax cases, but not to appellate proceedings, viz.:

...
The **institution or commencement** before a proper court of civil and criminal actions and proceedings arising under the Tax Reform Act which "shall be conducted by legal officers of the Bureau of Internal Revenue" is not in dispute. **An appeal from such court, however, is not a matter of right. Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic. This Court continues to maintain that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.** This pronouncement finds justification in the various laws defining the Office of the Solicitor General, beginning with Act No. 135, which took effect on 16 June 1901, up to the present Administrative Code of 1987. Section 35, Chapter 12, Title III, Book IV, of the said Code outlines the powers and functions of the Office of the Solicitor General which includes, but not limited to, its duty to -



¹ Italics in the original and emphasis supplied.

² G.R. No. 144942, 04 July 2002.

SEPARATE OPINION

CTA EB No. **3162** (CTA Case No. 10775)
Commissioner of Internal Revenue v. James Fausto Corp.
Page 3 of 8
X ----- X

- (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.
- ...
- (3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court.³
- ...

In view of the Supreme Court’s pronouncement in *La Suerte*, the OSG and the BIR entered into a Memorandum of Agreement (MOA)⁴ where their responsibilities in handling internal revenue tax cases were defined, as follows:

Cases of first instance before the CTA Divisions, MTCs, MeTCs, MCTCs, RTCs, DOJ and other administrative agencies	Cases appealed before the RTCs, CA, and the CTA <i>En Banc</i>
a. The BIR handling lawyers shall be the lead lawyer. As lead lawyer, he/she shall have the following responsibilities[:] i. To appear before the Courts; and ii. To prepare all pleadings, motions, orders, decisions, resolutions, communications and other papers/documents in connection with the case b. Upon assignment of the case, the BIR handling lawyer shall ensure that the OSG shall be furnished with a copy of pleadings filed in relation to the case through registered mail.	a. The OSG hereby deputizes BIR handling lawyers to: i. Appear before the Courts; and ii. Continue the prosecution/litigation of appealed tax cases before the RTC, CA, and the CTA <i>En Banc</i>. The BIR handling lawyer shall have the following responsibilities: i. To appear before courts; and ii. To prepare all pleadings, motions, orders, decisions, resolutions, communications and other papers/documents in connection with the case. b. The BIR shall periodically submit a list of handling lawyers to the OSG for purposes of deputation.

Evidently, for internal revenue tax cases of first instance before the Court in Division, the BIR legal officers, and *not* the OSG, shall serve as the Government’s primary counsel. This extends to the filing of the MR, considering that an MR is merely a continuation of the proceedings in the Court in Division and does not commence a new action. Consequently, the BIR legal officers remain as counsels on record upon the filing of the MR. 

³ Citations omitted and emphasis in the original text.
⁴ Published through RMC No. 25-2010.

SEPARATE OPINION

CTA EB No. **3162** (CTA Case No. 10775)

Commissioner of Internal Revenue v. James Fausto Corp.

Page 4 of 8

X ----- X

To be clear, the BIR legal officers representing the Government (or the CIR in his or her official capacity) in internal revenue tax cases of first instance before the Court in Division are authorized to do so **not by virtue of the OSG's deputization, but by virtue of Section 220 of the NIRC of 1997, as amended**. Notably, in the above-cited MOA between the OSG and the CIR, the OSG deputized BIR handling lawyers to appear on behalf of the Government **only in appealed internal revenue tax cases before the Court En Banc and not in internal revenue tax cases instituted before the Court in Division.**

In support of the holding that the reckoning point of the reglementary period for the filing of the MR must be counted from the OSG's receipt of the notice of decision, the *ponencia* relied on the cases of *National Power Corporation v. National Labor Relations Commission, et al.*⁵ (**NAPOCOR**), *Republic of the Philippines, represented by the Land Registration Authority v. Raymundo Viaje, et al.*⁶ (**Viaje**), and *Claudine Monette Baldovino-Torres v. Jasper A. Torres and the Republic of the Philippines*⁷ (**Baldovino-Torres**).

In *NAPOCOR*, the High Court ruled that the OSG continues to be the principal counsel for *NAPOCOR* notwithstanding the OSG's *deputization* of a lawyer from *NAPOCOR*. Accordingly, the Solicitor General is the party entitled to be furnished copies of orders, notices and decisions.

Citing *NAPOCOR*, the Supreme Court ruled in *Baldovino-Torres* that the period to file an MR should be counted from the receipt by the OSG of a copy of the RTC Decision and not from the receipt thereof by the public prosecutor in charge of the case, who was *deputized* by the OSG to appear on its behalf.

Similarly, in *Viaje*, the Supreme Court declared that even if the *deputized* counsel was served with copies of the court's notices, orders and decisions, these will not be binding until they are actually received by the OSG.

With due respect, I find that the present case is materially distinct from the afore-cited cases as it does not involve a counsel *deputized* by the OSG. **As earlier explained, the authority of the BIR legal officers to represent the CIR before the Court in Division emanated not from an OSG deputation, but from Section 220 of the NIRC of 1997, as amended.** 

⁵ G.R. No. 90933-61, 29 May 1997.

⁶ G.R. No. 180993, 27 January 2016.

⁷ G.R. No. 248675, 20 July 2022.

Further, a juxtaposition of Section 220 of the NIRC of 1997, as amended, against its counterpart in the NIRC of 1977, as amended, reveals that with the amendment introduced in the present Tax Code, the Congress intended to confine the conduct of internal revenue cases instituted in behalf of the Government to the legal officers of the BIR, to the exclusion of the Solicitor General:

1977 Tax Code, as amended	1997 Tax Code, as amended
SEC. 294. <i>Form and mode of proceeding in actions arising under this Code.</i> — Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and <u>shall be conducted by the provincial or city fiscal, or the Solicitor General, or by the legal officers of the Bureau of Internal Revenue deputized by the Secretary of Justice</u> , but no civil and criminal actions for the recovery of taxes or the enforcement of any fine, penalty, or forfeiture under this Code shall be begun without the approval of the Commissioner.	SEC. 220. <i>Form and Mode of Proceeding in Actions Arising under this Code.</i> — Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and <u>shall be conducted by legal officers of the Bureau of Internal Revenue</u> but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

Settled is the rule that an amendment through the deletion of certain words or phrases in a statute implies that the legislature intended to change the meaning of the statute.⁸ The deletion of a phrase in the amendatory law covering the same subject as the previous law evinces a legislative intent to remove and discontinue a grant that was expressly provided for in an earlier law.⁹

Accordingly, the deletion of “provincial or city fiscal, or the Solicitor General” from the provision means that the conduct of civil and criminal actions instituted in behalf of the Government under the authority of the NIRC of 1997, as amended, is now confined solely to **BIR legal officers**. Moreover, the further deletion of the phrase “deputized by the Secretary of Justice” denotes that a deputation from the Secretary of Justice is no longer necessary for BIR legal officers to validly represent the Government of the Philippines (or the CIR) in internal revenue tax cases.¹⁰

⁸ *Elroy John M. Hagedorn v. House of Representatives of the Philippines, et al.*, G.R. No. 275800, 22 April 2025.
⁹ *Id.*, citing *Hon. Ricardo T. Gloria v. Court of Appeals, et al.*, G.R. No. 131012, 21 April 1999.
¹⁰ RA 10071 or the Prosecution Service Act of 2020, which provides that the National Prosecution Service, under the supervision of the Secretary of Justice shall be primarily responsible for the preliminary investigation and prosecution of all cases involving *violations of penal laws*, was later passed. Thus, currently, *criminal cases* arising from violations of the NIRC of 1997, as amended,

SEPARATE OPINION

CTA EB No. **3162** (CTA Case No. 10775)

Commissioner of Internal Revenue v. James Fausto Corp.

Page 6 of 8

X ----- X

In the case at bar, while the OSG was also furnished with copies of notices, orders, decisions, and resolutions by the First Division, such was only for the purpose of apprising the OSG of the status of the case for purposes of appeal.

As discussed above, once a case is appealed to the CTA En Banc, BIR legal officers are authorized to represent the CIR only by virtue of the OSG's deputation. Thus, before the CTA *En Banc*, the BIR legal officers are under the OSG's direct supervision and control.¹¹ Consequently, the counting of the reglementary period for the filing of a petition for review before the CTA *En Banc* shall be from the OSG's date of receipt of the assailed decision or resolution of CTA in Division.¹² Absent service of the Court in Division's decision and resolution to the OSG, the reglementary period for the filing of a petition for review before the CTA *En Banc* does not commence to run, there being no service from which the period may be reckoned from.

Even if we consider the OSG as among the counsels on record of the CIR before the Court in Division, the date and time of its receipt of the assailed Resolution cannot be the reckoning date for purposes of counting reglementary periods since the BIR handling lawyer is the lead counsel¹³ before the CTA in Division.

Section 2, Rule 13¹⁴ of the 2019 Revised Rules of Civil Procedure provides:

...
Sec. 2 *Filing and service, defined.* – ...

Where several counsels appear for one party, such party shall be entitled to only one copy of any pleading or paper to be served upon the lead counsel if one is designated, or upon any one of them if there is no designation of a lead counsel.

The Supreme Court explained the effect of this addition to Section 2 of Rule 13 in *Western Sales Trading Company, Inc., et al. v. 7D Food International, Inc.*¹⁵ in this wise:

may only be prosecuted by BIR legal officers who are duly authorized/deputized by the National Prosecution Service under the DOJ.

¹¹ See *National Power Corporation v. National Labor Relations Commission, et al.*, supra at note 5.

¹² See *Claudine Monette Baldovino-Torres v. Jasper A. Torres and the Republic of the Philippines*, supra at note 7.

¹³ As provided in the MOA between the OSG and the BIR, supra at note 4.

¹⁴ Adopted by the CTA through *En Banc* Resolution No. 9-2020 dated 07 August 2020.

¹⁵ G.R. No. 233852, 15 September 2021; Citations omitted, italics in the original text and emphasis supplied.

SEPARATE OPINION

CTA EB No. **3162** (CTA Case No. 10775)

Commissioner of Internal Revenue v. James Fausto Corp.

Page 7 of 8

X ----- X

...

Under Section 2, Rule 13 of the 2019 Revised Rules, a party represented by several counsel shall be entitled to only one copy of any pleading or paper which shall be served upon the lead counsel, if one is designated, or upon any of them, if none was designated. When a party is represented by a counsel of record, service of notices and orders shall be made upon said attorney.

Before this amendment took effect, the Rules did not specify that service should be made to the designated lead counsel in case a party is represented by several counsels, viz.:

SECTION 2. *Filing and Service, Defined.* — Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

As far as the present case is concerned, the old Rules will apply considering that the RTC Order dated April 10, 2013 was served upon 7D's counsel prior to the amendment. **Under the former Rules, receipt of a copy of the order or decision by one of several counsels of record is notice to all, and the period to appeal commences on such date even if the other counsel has not yet received a copy of the decision.**

...

Therefore, since the current Rules specify that service should be made to the designated lead counsel, in case a party is represented by several counsels, the period to appeal commences only upon the lead counsel's receipt of a copy of the decision or resolution sought to be appealed or reconsidered.

Based on the above disquisitions, since the BIR legal officers served as the CIR's primary counsel in the case before the First Division, the reglementary period for the filing of an MR should be reckoned from their receipt of the Notice of Decision. Accordingly, petitioner's MR, filed on 04 February 2025, was timely filed, having been submitted within fifteen (15) days from the BIR legal officers' receipt of the Notice of Decision on 20 January 2025. Consequently, the Court *En Banc* has jurisdiction over the present Petition for Review.

Nonetheless, I submit that petitioner's Petition for Review shall be denied for lack of merit.



SEPARATE OPINION

CTA EB No. **3162** (CTA Case No. 10775)

Commissioner of Internal Revenue v. James Fausto Corp.

Page 8 of 8

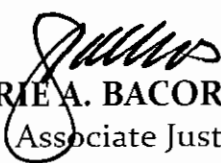
X ----- X

In his or her Petition for Review, petitioner claims that respondent is already estopped from assailing (1) the improper service of the Preliminary Assessment Notice (**PAN**) and (2) petitioner's failure to consider its arguments raised in the Reply to the PAN in the issuance of the Formal Letter of Demand with Final Assessment Notices (**FLD/FAN**) since these issues were never raised by respondent in any of its administrative protests.

I am of the view that the doctrine of estoppel does not find applicability in this case. The doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right.¹⁶ As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond the requirements of the transactions in which they originate.

As exhaustively discussed in the assailed Decision, petitioner failed to comply with his or her own rules in the service of the PAN and in the issuance of the FLD/FAN, which are essential parts of administrative due process in tax assessments. Thus, petitioner cannot hide behind the doctrine of estoppel to cover his or her failure to comply with the standards of due process.

In light of the foregoing, I vote to **DENY** the instant Petition for Review for lack of *merit*.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

¹⁶ *Commissioner of Internal Revenue v. Kudos Metal Corporation*, G.R. No. 178087, 05 May 2010.