

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CTA EB No. 2580
INTERNAL REVENUE, (CTA Case No. 10450)
Petitioner,

Present:

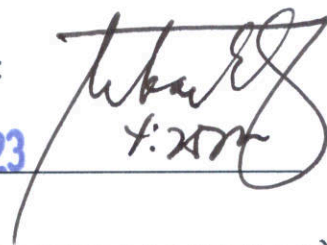
-versus-

DEL ROSARIO, PL,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.

THE COURT OF TAX
APPEALS – SECOND
DIVISION AND NIPPON
EXPRESS PHILIPPINES
CORPORATION,
Respondents.

Promulgated:

AUG 29 2023



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DECISION

REYES-FAJARDO, J.:

For disquisition is the Petition for Certiorari posted on February 2, 2022,¹ by the Commissioner of Internal Revenue, impugning the Resolutions dated July 21, 2021,² and November 17, 2021,³ issued by Second Division of the Court in CTA Case No. 10450. The impugned Resolutions allowed Nippon Express Philippines Corporation to present its evidence *ex parte*, for failure of the Commissioner of

¹ Rollo, pp. 1-23.

² *Id.* at p. 36.

³ *Id.* at pp. 37-40.



Internal Revenue to file a hard copy of his Answer on the Petition for Review in said case.

The facts follow.

Petitioner is the respondent in CTA Case No. 10450 entitled "*Nippon Express Philippine[s] Corporation v. Commissioner of Internal Revenue*." He is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code of 1997 (NIRC, as amended) and other tax laws, rules and regulations.⁴

Public respondent Court is the Honorable Court of Tax Appeals (CTA) - Second Division, impleaded as the court which promulgated the assailed Resolutions. Public respondent may be served with notices and other legal processes at the Second Division of the CTA, Agham Road, North Triangle, Quezon City.⁵

Private respondent Nippon Express Philippines Corporation is the petitioner in CTA Case No. 10450 entitled "*Nippon Express Philippine[s] Corporation v. Commissioner of Internal Revenue*." It is a domestic corporation duly organized under and by virtue of Philippine laws. It may be served with notices and other court processes through its counsel of record, Atty. Gian Carlo S. Cardino and Atty. Emmanuel C. Alcantara of Emmanuel C. Alcantara and Associates Law Offices, with office address at 5th Floor SGV I Building, 6760 Ayala Avenue, 1226 Makati City, Metro Manila.⁶

On January 15, 2021, private respondent filed a Petition for Review before public respondent, docketed as CTA Case No. 10450.⁷

On January 28, 2021, petitioner received the summons issued by public respondent with attached Petition for Review, directing

⁴ See page 4, Petition for Certiorari dated January 31, 2022. *Id.* at p. 4.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Annex "C." Petition for Certiorari dated January 31, 2022. *Id.* at pp. 41-82.

8

him to file an answer on said petition within thirty (30) days from notice.⁸

On March 1, 2021, petitioner filed before public respondent, a Motion for Extension of Time to File Answer, requesting for an additional period of thirty (30) days to file said Answer.⁹

On March 5, 2021, petitioner received public respondent's Order dated March 3, 2021, granting his Motion for Extension to File Answer, among others.¹⁰

On March 26, 2021, petitioner filed before public respondent, a Final Motion for Extension of Time to File Answer, requesting for an additional non-extendible period of ten (10) days, or until April 8, 2021, within which to file the required Answer. He reasoned that the Bureau of Internal Revenue (BIR)'s Litigation Division has not yet received the BIR Records in CTA Case No. 10450.¹¹

Through Order dated June 3, 2021, public respondent granted petitioner's Final Motion for Extension of Time to File Answer, giving him until April 8, 2021, to file the required Answer.¹²

On May 6, 2021, petitioner electronically filed and served his Answer. According to him, he had until May 24, 2021 to file said Answer, by reason of several extensions for the filing of pleadings issued by the Supreme Court.¹³

On July 23, 2021, petitioner received public respondent's Resolution dated July 21, 2021,¹⁴ which states:

Considering the Report of the Records Division that as of date [petitioner] has not filed the hard copy of his Answer to the Petition for Review. Let this case be set for the *ex-parte* presentation of [private respondent]'s evidence on September 8, 2021, at 9:00 a.m.

⁸ *Supra* note 5.

⁹ *Ibid.*

¹⁰ See page 5, Petition for Certiorari dated January 31, 2022. *Rollo*, p. 5.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ See page 6, Petition for Certiorari dated January 31, 2022. *Rollo*, p. 6.

¹⁴ *Supra* note 3.

2

SO ORDERED.

On October 25, 2021, petitioner filed a Motion for Reconsideration Re: Resolution dated 21 July 2021.¹⁵

In the Resolution dated November 17, 2021,¹⁶ public respondent denied petitioner's Motion for Reconsideration, in this wise:

WHEREFORE, premises considered, [petitioner]'s "Motion for Reconsideration Re: Resolution dated 21 July 2021" filed on October 25, 2021 is hereby **DENIED**.

Accordingly, the hearing set on 24 November 2021 at 9:00 in the morning via videoconference stands, for the presentation of [private respondent]'s evidence *ex parte*.

SO ORDERED.

In his Petition for Certiorari¹⁷ posted on February 2, 2022, petitioner puts forward the following grounds for our consideration:

I.

THE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION CONSIDERING THE CIRCUMSTANCES OF THE CASE WARRANT A RELAXATION OF THE RULES OF PROCEDURE.

II.

THE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION IN DECLARING PETITIONER IN DEFAULT DESPITE THE FAILURE TO FILE THE HARD COPY OF THE ANSWER WAS DUE TO EXCUSABLE NEGLIGENCE.

III.

PETITIONER HAS A MERITORIOUS DEFENSE TO PRIVATE RESPONDENT'S PETITION FOR REVIEW BEFORE RESPONDENT COURT.

¹⁵ Annex "E." Petition for Certiorari dated January 31, 2022. *Id.* at pp. 84-89.

¹⁶ *Supra* note 4.

¹⁷ *Supra* note 2.

On May 12, 2022, private respondent filed its Comment and Opposition (Re: Petition for Certiorari dated 31 January 2022),¹⁸ asserting that the Petition for Certiorari must be denied for lack of merit because: *first*, the CTA Second Division did not commit grave abuse of discretion in denying petitioner's Motion for Reconsideration and declaring him in default; and *second*, the negligence exhibited by petitioner's counsel is inexcusable; hence, said imprudence can be imputed to petitioner himself.

By Resolution dated August 30, 2022, this case is submitted for decision.

RULING

We dismiss the Petition.

Section 18 of Republic Act (RA) No. 1125,¹⁹ as amended by RA No. 9282, spells out the specific matters cognizable by the CTA *En Banc* with respect to the resolutions of the CTA in Division. It states:

SEC. 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.²⁰

*Commissioner of Internal Revenue v. Court of Tax Appeals (First Division) and Pilipinas Shell Petroleum Corporation (PSPC)*²¹ and *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc. (QLDI)*²² both clarified that the CTA *En Banc* only has jurisdiction over a *final* judgment or order, but *not* over an interlocutory order of the CTA in Division. *Santos v. People*²³

¹⁸ Rollo, pp. 125-132.

¹⁹ An Act Creating the Court of Tax Appeals

²⁰ Boldfacing supplied.

²¹ G.R. No. 210501, March 15, 2021.

²² G.R. No. 258947, March 29, 2022.

²³ G.R. No. 173176, August 26, 2008.

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demarcated a final judgment or order, from an interlocutory order, in this wise:

In other words, after a final order or judgment, the court should have nothing more to do in respect of the relative rights of the parties to the case. Conversely, an order that does not finally dispose of the case and does not end the Court's task of adjudicating the parties' contentions in determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is interlocutory.

Petitioner impugns the Resolutions dated July 21, 2021 and November 17, 2021, whereby public respondent: *first*, declared him in default, for failure to file a hard copy of his Answer; and *second*, allowed private respondent to present its evidence *ex parte*. The actions taken by public respondent impugned by petitioner do *not* constitute the final determination of the rights and obligations of the parties in CTA Case No. 10450; hence, the impugned resolutions are interlocutory orders. Following *PSPC* and *QLDI*, the CTA *En Banc* is devoid of jurisdiction over this case. Therefore, dismissal of CTA EB No. 2580 is warranted.

We, too, are mindful of the pronouncement in the recent case of *People of the Philippines v. Court of Tax Appeals – Third Division, Jacinto C. Ligot and Erlinda Y. Ligot (Ligot)*,²⁴ that the CTA *En Banc* has jurisdiction over a petition for certiorari under Rule 65 of the Rules of Court, over a judgment on acquittal rendered by the CTA in Division. The reason is easy to perceive—since the CTA *En Banc* has jurisdiction over the CTA in Division's *final* judgment or order on a motion for reconsideration or new trial, the CTA *En Banc* also has the authority to issue the auxiliary writ of certiorari under Rule 65 of the Rules of Court, if the rendition of said final judgment is attended with grave abuse of discretion, amounting to lack or excess of jurisdiction.

Contrasting this case from *Ligot*, the impugned Resolutions subject of the Petition for Certiorari here are *interlocutory orders* issued by the CTA in Division, over which, the CTA *En Banc* has no jurisdiction, as decreed in *PSPC* and *QLDI*.

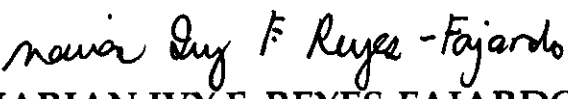
²⁴ G.R. Nos. 250736 and 250801-03, December 5, 2022.

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In the deliberation of CTA EB No. 2580, Associate Justices Marian Ivy F. Reyes-Fajardo, Jean Marie A. Bacorro-Villena,²⁵ Lane S. Cui-David,²⁶ and Corazon G. Ferrer-Flores²⁷ voted to dismiss said case, because the CTA *En Banc* lacks jurisdiction over a Petition for Certiorari under Rule 65 of the Rules of Court, as amended, challenging an interlocutory order of the CTA in Division. On the other hand, Presiding Justice Roman G. Del Rosario wrote a Dissenting Opinion. Joining in said Dissenting Opinion are Associate Justices Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, and Maria Rowena Modesto-San Pedro. Considering that the majority vote was not obtained, the Petition for Certiorari,²⁸ posted on February 2, 2022, by petitioner is dismissed, pursuant to Section 3,²⁹ Rule 2 of the Revised Rules of the Court of Tax Appeals.

WHEREFORE, the Petition for Certiorari, posted on February 2, 2022, by the Commissioner of Internal Revenue, in CTA EB No. 2580, is **DISMISSED**, pursuant to Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals.

SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

²⁵ Separate Concurring Opinion.

²⁶ Separate Concurring Opinion.

²⁷ Joined the Separate Concurring Opinion of Associate Justice Lane S. Cui-David.

²⁸ The Petition for Certiorari filed by the Commissioner of Internal Revenue under Rule 65 of the Rules of Court, as amended, is an original action, and *not* a mode of appeal. See *Paa v. The Hon. Court of Appeals, et al.*, G.R. No. 126560, December 4, 1997.

²⁹ Section 3. *Court en banc; quorum and voting.* — The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division... **Where the necessary majority vote cannot be had, the petition shall be dismissed;** in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied. (Boldfacing supplied)

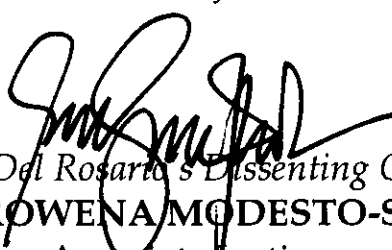
We Concur:


With Dissenting Opinion.
ROMAN G. DEL ROSARIO
Presiding Justice


I join PJ Del Rosario's Dissenting Opinion.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice


I join PJ Del Rosario's Dissenting Opinion.
CATHERINE T. MANAHAN
Associate Justice


With Separate Concurring Opinion.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice


I join PJ Del Rosario's Dissenting Opinion.
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


With Separate Concurring Opinion.
LANEE S. CUI-DAVID
Associate Justice


I join Justice Cui-David's Separate Concurring Opinion.
CORAZON G. FERRER-FLORES
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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EN BANC

COMMISSIONER
INTERNAL REVENUE,

OF

CTA EB NO. 2580

(CTA Case No. 10450)

Petitioner,

Present:

-versus-

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THE COURT OF TAX
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Respondents.

Promulgated:

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I submit that the Court *En Banc* has jurisdiction over the present Petition for Certiorari.

When Republic Act (RA) No. 1125 (CTA Charter) was amended by RA No. 9282 and RA No. 9503 -- which expanded the jurisdiction of the Court of Tax Appeals (CTA) -- the Supreme Court *En Banc* approved in A.M. No. 05-11-07-CTA the Revised Rules of the CTA (RRCTA). Interestingly, Section 2, Rule 4 of said RRCTA is plain and categorical in its language, particularly in recognizing the appellate jurisdiction of the CTA *En Banc* over decisions or resolutions on motions for reconsideration or new trial of the CTA Divisions. The provision reads:

“SEC. 2. Cases within the jurisdiction of the Court en banc. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

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DISSENTING OPINION

Commissioner of Internal Revenue vs. The Court of Tax Appeals – Second Division and Nippon Express Philippines Corporation

CTA EB No. 2580

CTA Case No. 10450

Page 2 of 7

(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;

(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and

(3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;

xxx.

(b) Xxx xxx xxx;

(d) **Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over tax collection cases;**

(e) Xxx xxx xxx;

(f) **Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs;**

(g) **Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over criminal offenses mentioned in the preceding subparagraph; and**

Xxx xxx xxx.” (Boldfacing and underscoring supplied)

Section 2, Rule 4 of the RRCTA clearly grants appellate jurisdiction to the CTA *En Banc* over decisions or resolutions of the CTA Divisions in several cases. **The CTA *En Banc* is called upon to review, affirm, reverse, or modify the decisions or resolutions of the CTA Divisions not as a matter of course, but only when brought before it under Rule 43 of the Rules of Court (which is a**



DISSENTING OPINION

Commissioner of Internal Revenue vs. The Court of Tax Appeals – Second Division and Nippon Express Philippines Corporation

CTA EB No. 2580

CTA Case No. 10450

Page 3 of 7

mode of appeal).¹ This shows that there exists a hierarchy between the CTA *En Banc* and the CTA Divisions. Having been granted appellate jurisdiction over decisions or resolutions of the CTA Divisions, CTA *En Banc* must necessarily possess the power to issue a writ of certiorari, when necessary, in aid of such appellate jurisdiction.

Noteworthy, neither the Constitution nor the law or jurisprudence grants appellate jurisdiction to the Court of Appeals *En Banc* over decisions of the Court of Appeals Divisions, and to the Sandiganbayan *En Banc* over decisions of the Sandiganbayan Divisions in the same vein that no appellate jurisdiction is granted to the Supreme Court *En Banc* over decisions of a Supreme Court Division. **The legal and procedural scenarios are totally different in the case of the CTA *En Banc*, which, as aforestated, is clearly vested with appellate jurisdiction over decisions of the CTA Division.**

The pronouncement of the Supreme Court in *The City of Manila vs. Hon. Grecia-Cuerdo*,² anent the CTA's jurisdiction to issue writs of certiorari, is clear, *viz.*:

“Indeed, in order for any appellate court, to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.

Xxx. This principle was affirmed in *De Jesus v. Court of Appeals*, where the Court stated that **‘a court may issue a writ of certiorari in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court.’** The rulings in *J.M. Tuason and De Jesus* were reiterated in the more recent cases of *Galang, Jr. v. Geronimo* and *Bulilis v. Nuez*.

¹ Section 4(b), Rule 9 of the RRCTA, as amended, reads:

“Sec. 4. *Where to appeal; mode of appeal.* –

(a) 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.**” (Boldfacing supplied)

² G.R. No. 175723, February 4, 2014.



DISSENTING OPINION

Commissioner of Internal Revenue vs. The Court of Tax Appeals – Second Division and Nippon Express Philippines Corporation

CTA EB No. 2580

CTA Case No. 10450

Page 4 of 7

Furthermore, Section 6, Rule 135 of the present Rules of Court provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer.

Xxx xxx xxx.

Xxx, the authority of the CTA to take cognizance of petitions for certiorari questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as **inherent in the exercise of its appellate jurisdiction.**”
(*Boldfacing and underscoring supplied*)

Banco De Oro vs. Rizal Commercial Banking Corporation,³ citing *Grecia-Cuerdo*, emphasized that the CTA's authority to issue writs of certiorari is inherent in the exercise of its appellate jurisdiction, viz.:

“This Court further explained that the Court of Tax Appeals' authority to issue writs of certiorari is inherent in the exercise of its appellate jurisdiction.

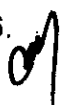
A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. **The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction.** For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of

³ G.R. No. 198756, August 16, 2016.



DISSENTING OPINION

Commissioner of Internal Revenue vs. The Court of Tax Appeals – Second Division and Nippon Express Philippines Corporation

CTA EB No. 2580

CTA Case No. 10450

Page 5 of 7

jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.” (Boldfacing supplied)

In *Philippine Ports Authority vs. The City of Davao, et al.*,⁴ the Supreme Court reiterated the doctrine laid down in *Grecia-Cuerdo*, viz.:

“In *City of Manila v. Grecia-Cuerdo*, this Court expressly recognized the **Court of Tax Appeals'** power to determine whether or not there has been grave abuse of discretion in cases falling within its **exclusive appellate jurisdiction** and its power to issue writs of *certiorari*.” (Boldfacing supplied)

Truth to tell, **the authority of the CTA *En Banc* to take cognizance of petitions for certiorari questioning interlocutory orders or resolutions issued by CTA Divisions is inherent in the exercise of its appellate jurisdiction over their decisions or resolutions.**

In *People of the Philippines vs. Court of Tax Appeals, Second Division and Joselito B. Yap*,⁵ petitioner therein assailed the decision and resolution of the CTA Second Division which acquitted private respondent by filing a Petition for Certiorari under Rule 65 of the Rules of Court before the Supreme Court. In dismissing the Petition, the Supreme Court held that the Bureau of Internal Revenue's direct recourse to the Supreme Court and its theory that the CTA *En Banc* has no certiorari jurisdiction were erroneous. Said the Supreme Court:

“The BIR's direct recourse to the [Supreme] Court is erroneous.

The BIR justifies by-passing the CTA *En Banc* and going directly before the Court with its theory that the CTA *En Banc* has no *certiorari* powers.

The Court rejects this reasoning.

⁴ G.R. No. 190324, June 6, 2018.

⁵ G.R. Nos. 254591 and 254675, January 30, 2023.



DISSENTING OPINION

Commissioner of Internal Revenue vs. The Court of Tax Appeals – Second Division and Nippon Express Philippines Corporation

CTA EB No. 2580

CTA Case No. 10450

Page 6 of 7

While *certiorari* is generally a proper remedy in questioning an order of acquittal, the BIR erred when it filed the present petition directly before the [Supreme] Court. **The correct recourse in this case would have been to initiate *certiorari* proceedings before the CTA *En Banc*.**

It is basic that the CTA *En Banc* has appellate jurisdiction over decisions, resolutions, or orders on motions for reconsideration or new trial rendered by a CTA Division in cases involving tax crimes. Consequently, **the CTA *En Banc* is also vested with the power to issue writs of *certiorari* when necessary, in aid of such appellate jurisdiction.** In other words, the Court has no power to take cognizance of the present petition taken **that jurisdiction over *certiorari* petitions assailed a CTA Division ruling is vested with the CTA *En Banc*.**

Thus, apart from the BIR's lack of authority, the present petition is also dismissible for lack of jurisdiction." (*Boldfacing supplied*)

In the more recent case of *People of the Philippines vs. Court of Tax Appeals – Third Division, Jacinto C. Ligot and Erlinda Y. Ligot*,⁶ the Supreme Court was categorical in recognizing that the CTA *En Banc* has jurisdiction in *certiorari* cases assailing the decision, resolution, or order of a CTA Division, *viz.*:

"In *CE Casecan Water and Energy Co., Inc. v. The Province of Nueva Ecija*, the Court stressed that the CTA has 'exclusive jurisdiction over a special civil action for *certiorari* assailing an **interlocutory order** issued by the [RTC] in a local tax case.'

Citing the case of *City of Manila*, the Court reiterated in *The Philippine American Life and General Insurance Co. v. Secretary of Finance*, that the CTA has the power of *certiorari* in cases within its appellate jurisdiction, *viz.*:

Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in the law, the CTA is deemed granted with powers of *certiorari* by implication. Moreover, *City of Manila* diametrically opposes *British American Tobacco* to the effect that it is now within the power of the CTA, through its power of *certiorari*, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based. (Emphases omitted.)

⁶ G.R. Nos. 250736 and 250801-03, March 16, 2023.



DISSENTING OPINION

Commissioner of Internal Revenue vs. The Court of Tax Appeals – Second Division and Nippon Express Philippines Corporation

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CTA Case No. 10450

Page 7 of 7

By analogy, the CTA En Banc's exclusive appellate jurisdiction over decisions, resolutions, or orders of a division of the CTA under Section 2(f) of the CTA Rules includes the authority to resolve petitions for certiorari assailing the decision, resolution, or order of a CTA division.

xxx

xxx

xxx”

(Citations omitted and *Boldfacing* and *underscoring* supplied)

The Supreme Court in *Ligot* declared, in no uncertain terms, that the CTA *En Banc*'s exclusive appellate jurisdiction over decisions, resolutions, or orders of a CTA Division includes the authority to resolve petitions for certiorari assailing the decision, resolution, or order of a CTA Division, **whether the decision, resolution or order of a CTA Division was rendered in a civil case or a criminal case.**

Also, in *Ligot*, the Supreme Court went on further to reiterate the principle on *hierarchy of courts*, thereby confirming that “[o]nly after the CTA *En Banc* had rendered its decision or resolution will a party adversely affected may appeal therefrom by filing with the [Supreme] Court a verified petition for review on *certiorari* under Rule 45 of the Rules of Court.”

In sum, I submit that the Court *En Banc* has jurisdiction to take cognizance of the present Petition for Certiorari which assails the interlocutory Resolutions of the CTA Second Division (which allowed private respondent Nippon Express Philippines Corporation to present its evidence *ex parte* for failure of petitioner Commissioner of Internal Revenue to file an Answer).

All told, I am of the view that Court *En Banc* has jurisdiction to take cognizance of the present Petition for Certiorari and it may thus proceed to resolve the same on the merits.


ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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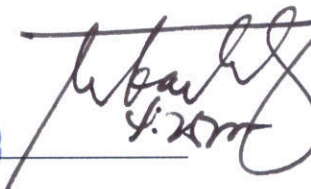
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THE COURT OF TAX APPEALS –
SECOND DIVISION AND
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CORPORATION,

Respondents.

Promulgated:

AUG 29 2023



X ----- X

SEPARATE CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the dismissal of the present Petition for *Certiorari* for lack of jurisdiction on the ground that the impugned Resolutions of the Court's Second Division subject of this case (that declared petitioner in default for failure to file a hard copy of his or her Answer and allowed respondent Nippon Express Philippines Corporation [NEPC] to present its evidence *ex parte*) are mere interlocutory orders.

Citing the Supreme Court's pronouncements in *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division) and Pilipinas Shell Petroleum Corporation*¹ (PSPC) and *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*² (QLDI), the

¹ G.R. No. 210501, 15 March 2021.

² G.R. No. 258947, 29 March 2022.

ponencia stated that the Court *En Banc* only has jurisdiction over a judgment or final order, but not over an interlocutory order of the Court in Division. The *ponencia* further held that the Supreme Court’s recent ruling in *People of the Philippines v. Court of Tax Appeals – Third Division, Jacinto C. Ligot and Erlinda Y. Ligot*³ (**Ligot**) is not applicable precisely because the impugned Resolution therein is not an interlocutory order but a judgment of acquittal rendered by the Court in Division.

On this score, I forward a different disquisition below.

As aptly held in *Commissioner of Internal Revenue v. Court of Tax Appeals and CBK Power Company Limited*⁴ (**CBK**), a resolution granting a motion to declare a party in default and allowing the other party to present its evidence *ex parte* is an interlocutory order as it did not finally dispose of the case on the merits. It thus follows that the party in default’s proper and only recourse would be to file a petition for *certiorari* under Rule 65 of the ROC directly to the Supreme Court (and not before the CTA *En Banc*), in conformity with Rule 41⁵ of the ROC. The pertinent portions of the Supreme Court’s ruling in *CBK* read as follows:

...
Given the differences between a final judgment and an interlocutory order, there is no doubt that the CTA Order dated December 23, 2011 granting private respondent’s motion to declare petitioner as in default and allowing respondent to present its evidence *ex parte*, is an interlocutory order as it did not finally dispose of the case on the merits but will proceed for the reception of the former’s evidence to determine its entitlement to its judicial claim for tax credit certificates. Even the CTA’s subsequent orders denying petitioner’s motion to lift order of default and denying

³ G.R. No. 250736, 05 December 2022.
⁴ G.R. Nos. 203054-55, 29 July 2015; Italics in the original text and emphasis supplied.

⁵ **RULE 41**
APPEAL FROM THE REGIONAL TRIAL COURTS
SECTION 1. Subject of appeal. An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
No appeal may be taken from:
(a) An order denying a petition for relief or any similar motion seeking relief from judgment;
(b) **An interlocutory order;**
(c) An order disallowing or dismissing an appeal;
(d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
(e) An order of execution;
(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
(g) An order dismissing an action without prejudice.
In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action provided in Rule 65.

SEPARATE CONCURRING OPINION

CTA EB No. **2580** (CTA CASE NO. 10450)

CIR v. THE COURT OF TAX APPEALS - SECOND DIVISION & NIPPON EXPRESS PHILIPPINES CORPORATION

Page 3 of 6

x-----x

reconsideration thereof are all interlocutory orders since they pertain to the order of default.

Since the CTA Orders are merely interlocutory, no appeal can be taken therefrom. Section 1, Rule 41 of the 1997 Rules of Civil Procedure, as amended, which applies suppletorily to proceedings before the Court of Tax Appeals, provides:

...

Hence, petitioner's filing of the instant petition for *certiorari* assailing the interlocutory orders issued by the CTA is in conformity with the abovequoted provision.

...

Relatedly, in *Commissioner of Internal Revenue v. Kepco Ilijan Corporation*⁶ (Kepco), the Supreme Court clarified that since a petition for *certiorari* is not a continuation of the appellate process but a separate action, it cannot be filed in the same tribunal whose actions are being assailed; instead, it is cognizable by a higher court, which, in the Court of Tax Appeals' (CTA's) case, is the Supreme Court, to wit:

...

Instead, **what remained as a remedy for the petitioner was to file a petition for *certiorari* under Rule 65, which could have been filed as an original action before this Court and not before the CTA *En Banc*.** *Certiorari* is available when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, such as in the case at bar. Since the petition below invoked the gross and palpable negligence of petitioner's counsel which is allegedly tantamount to its being deprived of due process and its day in court as party-litigant and, as it also invokes lack of jurisdiction of the CTA First Division to entertain the petition filed by private respondent since the same allegedly fails to comply with the reglementary periods for judicial remedies involving administrative claims for refund of excess unutilized input VAT under the National Internal Revenue Code (NIRC), which periods it claims to be jurisdictional, then the proper remedy that petitioner should have availed of was indeed a petition for *certiorari* under Rule 65, an original or independent action premised on the public respondent having acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. **However, since a *certiorari* petition is not a continuation of the appellate process borne out of the original case but is a separate action focused on actions that are in excess or wanting of jurisdiction, then it cannot be filed in the same tribunal whose actions are being assailed but is instead cognizable by a higher tribunal which, in the case of the CTA, is this Court.** In the case involving petitioner, the petition could have been filed directly with this Court, even without any need to file a motion for reconsideration with the CTA division or *En Banc*, as the case

SEPARATE CONCURRING OPINION

CTA EB No. **2580** (CTA CASE NO. 10450)

CIR v. THE COURT OF TAX APPEALS - SECOND DIVISION & NIPPON EXPRESS PHILIPPINES CORPORATION

Page 4 of 6

x-----x

appears to fall under one of the recognized exceptions to the rule requiring such a motion as a prerequisite to filing such petition.

...

Moreover, in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division) and Pilipinas Shell Petroleum Corporation⁷ (Shell)*, the Supreme Court reiterated that:

...

On the correctness of the BOC and the Collector's appeal to the CTA *En Banc* in G.R. No. 211294, the Court finds that the CTA *En Banc* correctly denied due course to their petition since, as per *Commissioner of Internal Revenue v. Court of Tax Appeals*, **it is already settled that "the CTA [*En Banc*] has jurisdiction over final order or judgment but not over interlocutory orders issued by the CTA in division."**

Indeed, the Resolution from which the BOC and the Collector appealed was the CTA Second Division's denial of their Omnibus Motion. This was undeniably an interlocutory order given that it did not finally dispose of the case. The BOC and the Collector cannot rely on the CTA *En Banc*'s Resolution granting their motion for extension to file their petition for review before it. Notably, motions for extension are normally granted without prejudice to the court's subsequent determination that the petition to be filed should be denied due course. **Ultimately, the BOC and the Collector availed of the wrong remedy in appealing an interlocutory order of the CTA's Second Division to the CTA *En Banc*.**

...

Clearly from the foregoing, the CTA *En Banc* has no jurisdiction over a petition for *certiorari* under Rule 65 of the ROC involving an interlocutory order of its own division. Thus, herein petitioner's proper recourse to assail the Second Division's interlocutory orders is to file the same Rule 65 petition directly with the Supreme Court.

I am not unaware of the ruling in *Ligot*, where the Supreme Court declared that "the CTA *En Banc*'s exclusive appellate jurisdiction over decisions, resolutions, or orders of a division of the CTA under Section 2(f) of the CTA Rules includes the authority to resolve petitions for *certiorari* assailing the decision, resolution, or order of a CTA division."

Notably, in *Ligot*, accused Jacinto C. Ligot and Erlinda Y. Ligot were acquitted by the CTA Division for charges of violation of Sections 254 and 255 of the National Internal Revenue Code (NIRC) of 1997, as amended. After the denial of its motion for reconsideration (MR), the prosecution

SEPARATE CONCURRING OPINION

CTA EB No. **2580** (CTA CASE NO. 10450)

CIR v. THE COURT OF TAX APPEALS - SECOND DIVISION & NIPPON EXPRESS PHILIPPINES CORPORATION

Page 5 of 6

X-----X

filed a petition for *certiorari* before the Supreme Court assailing the said acquittal on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction. However, the Supreme Court ruled that the same should have been filed with the CTA *En Banc* following the principle of hierarchy of courts.

Indeed, as correctly pointed out in the *ponencia*, the Supreme Court's recent ruling in *Ligot* is not applicable to this case because the impugned Resolution therein subject of the petition for *certiorari* is not an interlocutory order but a judgment of acquittal rendered by the Court in Division. Understandably so, since a judgment acquitting the accused is final and immediately executory upon its promulgation, and accordingly, the State may not seek its review without placing the accused in double jeopardy, the next recourse would be to file a petition for *certiorari* instead of an appeal before the CTA *En Banc*.

To my mind, however, the ruling in *Ligot* is contrary to the rationale enunciated in *Kepco* that since a *certiorari* petition is not a continuation of the appellate process but a separate action focused on actions that are in excess or wanting of jurisdiction, then it cannot be filed in the same tribunal whose actions are being assailed. Instead, it should be cognizable by a higher tribunal, which, in the Court's case, is the Supreme Court. To perpetuate *Ligot* would be to promote split jurisdiction between the CTA *En Banc* and Supreme Court (for *certiorari* petitions filed against interlocutory orders and final orders, respectively) and contribute to the confusion and instability of the judicial pronouncements.

Additionally, even as indeed the CTA has *certiorari* power over its own division, following the logic that is inherent in its exercise of jurisdiction as held in *City of Manila, et al. v. Hon. Grecia-Cuerdo, et al.*⁸ (**Grecia-Cuerdo**), the same is compatible only with the lower courts (like the Regional Trial Court [RTC] in the said case). It should be noted that the different divisions of the CTA are *not* the lower courts thereof. There is likewise no hierarchy within a collegial court.

Lastly, since the CTA is a collegial body, it is inconsistent and highly antithetical to the purpose of its creation as a collegial court if it, sitting *En Banc*, were to judge its own assailed actions through its divisions. If the Court, sitting *En Banc*, were to find grounds to issue a writ of *certiorari* against its own division, it would have found itself to have gravely abused its discretion in a manner that is wanton and oppressive. 

SEPARATE CONCURRING OPINION

CTA EB No. **2580** (CTA CASE NO. 10450)

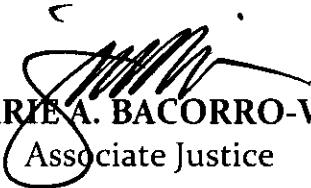
CIR v. THE COURT OF TAX APPEALS - SECOND DIVISION & NIPPON EXPRESS PHILIPPINES CORPORATION

Page 6 of 6

X-----X

Notwithstanding the foregoing considerations and perhaps in an attempt to harmonize *CBK*, *Kepeco* and *Shell*, on the one hand, and *Ligot*, on the other, the proper interpretation should be that the CTA *En Banc*'s jurisdiction over a petition for *certiorari* under Rule 65 of the ROC is limited to those involving a judgment or final order of the CTA Division that cannot be the subject of an appeal before the CTA *En Banc* such as a judgment of acquittal. By way of exception, the judgment of acquittal may still be reviewed by the CTA *En Banc* via special civil action for *certiorari* under Rule 65 of the ROC.

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


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

CTA EB NO. 2580
(CTA Case No. 10450)

Present:

- versus -

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, JJ.**

**THE COURT OF TAX APPEALS
– SECOND DIVISION and
NIPPON EXPRESS
PHILIPPINES CORPORATION,**
Respondents.

Promulgated:

AUG 29 2023

X -----X

SEPARATE CONCURRING OPINION

CUI-DAVID, J.:

I concur with the *ponencia* of my esteemed colleague Associate Justice Marian Ivy F. Reyes-Fajardo, and this *Separate Concurring Opinion* is to emphasize the basis of my concurrence that the **CTA *En Banc* only has jurisdiction over a final judgment or order, but not over an interlocutory order of the CTA in Division.**

The instant Petition for *Certiorari* assails the twin Resolutions of the Court in Division dated July 21, 2021 and November 17, 2021, respectively, allowing private respondent Nippon Express Philippines Corporation to present its evidence *ex parte* for the failure of petitioner to file a hard copy of his *Answer*.

CTA EB No. 2580 (CTA Case No. 10450)

$$\mathbf{X} \xrightarrow{\text{dashed arrow}} \mathbf{X}$$

In the case of *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division) and Pilipinas Shell Petroleum Corporation*,² the Supreme Court elucidated that the proper remedy against an interlocutory order issued by the CTA in Division is a Petition for *Certiorari* before the Supreme Court, not a *Petition for Review* before the CTA *En Banc*, to wit:

As held in *Santos*, an interlocutory order of the CTA acting in Division is unappealable. A party aggrieved by it, nevertheless, is not without recourse. *CIR v. CTA and CBK Power Company Limited*, which heavily quoted *Santos*, teaches that *certiorari* before this Court is the remedy against such interlocutory order, thus:

Since the CTA Orders are merely interlocutory, no appeal can be taken therefrom. Section 1, Rule 41 of the 1997 Rules of Civil Procedure, as amended, which applies suppletorily to proceedings before the Court of Tax Appeals, provides:

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

No appeal may be taken from:

XXX XXX XXX

(c) An interlocutory order

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

¹ G.R. Nos. 203054-55, July 29, 2015.

² G.R. Nos. 210501, 211294 & 212490, March 15, 2021.

SEPARATE CONCURRING OPINION

CTA EB No. 2580 (CTA Case No. 10450)

Commissioner of Internal Revenue v. The Court of Tax Appeals – Second Division, et al.
Page 3 of 5

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Hence, petitioner's filing of the instant petition for certiorari assailing the interlocutory orders issued by the CTA is in conformity with the abovequoted provision.

Certiorari before the CTA *En Banc* is improper. *CIR v. Kepco Ilijan Corporation* elucidates that **since a certiorari petition is not a continuation of the original case but a separate action focused on whether a tribunal acted in excess or want of jurisdiction, it cannot be filed in the same tribunal whose actions are being assailed. Instead, it is cognizable by a higher tribunal which, in the case of the CTA, is this Court.** As the Court illustrated:

x x x [T]he Supreme Court or the Court of Appeals may sit and adjudicate cases in divisions consisting of only a number of members, and such adjudication is already regarded as the decision of the Court itself. It is provided for in the Constitution, Article VIII, Section 4(1) and BP Blg. 129, Section 4, respectively. The divisions are not considered separate and distinct courts but are divisions of one and the same court; there is no hierarchy of courts within the Supreme Court and the Court of Appeals, for they each remain as one court notwithstanding that they also work in divisions. The Supreme Court sitting *en banc* is not an appellate court vis-à-vis its divisions, and it exercises no appellate jurisdiction over the latter. As for the Court of Appeals *en banc*, it sits as such only for the purpose of exercising administrative, ceremonial, or other non-adjudicatory functions.

In fine, the proper remedy against an interlocutory order issued by the CTA in Division is a Petition for Certiorari before this Court, not a Petition for Review before the CTA En Banc, as what was filed by the BOC and the Collector in Case No. 1047. Meanwhile, the CIR and PSPC correctly filed petitions for certiorari in G.R. Nos. 210501 and 212490 in assailing the interlocutory orders of the CTA First Division. (*Emphases added*)

And more recently, in the case of *MT Alpine Magnolia v. Commissioner of Bureau of Customs and District Collector of Bataan*,³ the Supreme Court declared that the CTA *En Banc* has no jurisdiction over interlocutory orders of one of its divisions, to wit:

³ G.R. No. 244723, April 27, 2022.

SEPARATE CONCURRING OPINION

CTA *EB* No. 2580 (CTA Case No. 10450)

Commissioner of Internal Revenue v. The Court of Tax Appeals – Second Division, et al.
Page 4 of 5

x-----x

The primary issue for this Court's resolution is whether or not the Court of Tax Appeals *En Banc* has jurisdiction over a petition for *certiorari* assailing an interlocutory order of the Court of Tax Appeals First Division

xxx xxx xxx

The nature of the Court of Tax Appeals is that of a collegial court, like this Court, the Court of Appeals, or the Sandiganbayan. Like other collegial courts, the Court of Tax Appeals function either in divisions consisting of three justices, or as an *En Banc* where all nine justices sit to adjudicate or exercise its other functions. However, whether a decision, resolution, or order is issued by the court sitting in as a division or as *En Banc*, such adjudication is regarded as one of the Court itself. What this Court in the prior rulings on the matter wish to emphasize is that the court acting in its divisions is not a separate and distinct court from its *En Banc*. **Verily, the same court may not be called upon to review and reverse a decision of one of its divisions. To do so would create a hierarchy between the division and the *En Banc* when no such hierarchy exists.**

xxx xxx xxx

..., it must be emphasized that the pronouncements in *Grecia-Cuerdo*, *Phil-am*, and *Banco De Oro* qualified that the Court of Tax Appeals' jurisdiction over petitions for writs of *certiorari* are restricted against the acts and omissions of a lower court or tribunal, that is, the Regional Trial Court, and quasi-judicial agencies. This was further emphasized in the recent case, *Mactel Corp. v. City Government of Makati*, where this Court specifically stated that the ruling in *Grecia-Cuerdo* only applied to cases of interlocutory orders issued by Regional Trial Courts in local tax cases.

Accordingly, in resolving similar petitions for *certiorari*, this Court puts much emphasis on where the assailed interlocutory order originated. **This Court, in promulgating the aforementioned cases did not intend to imply that the Court of Tax Appeals *En Banc* may take cognizance of questions of jurisdiction of its own division.** It has been established that a collegiate court whether sitting *En Banc* or in divisions, are not considered separate and distinct courts. That said, a hierarchy between the two does not exist. None of the cases above can be taken to imply that the divisions of a court are inferior to the same court sitting *En Banc*. The pronouncements made on the issues herein shall serve as guideposts to the bench, the bar, and the public in future analogous cases.

SEPARATE CONCURRING OPINION

CTA *EB* No. 2580 (CTA Case No. 10450)

Commissioner of Internal Revenue v. The Court of Tax Appeals – Second Division, et al.

Page 5 of 5

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Consistent with the foregoing doctrinal pronouncement, the instant Petition for *Certiorari* challenging the Court in Division's interlocutory order must necessarily be dismissed.

All told, I vote to **DISMISS** the instant Petition for *Certiorari*.


LANEE S. CUI-DAVID
Associate Justice