REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MACQUARIE OFFSHORE SERVICES PTY LTD. PHILIPPINE BRANCH,
Respondent.

CTA EB NO. 1877
(CTA Case Nos. 8936, 8994 & 9040)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

AUG 28 2019 4:20 pm

X---X

DECISION

RINGPIS-LIBAN, *J*.:

Before the Court *en banc* is a Petition for Review[1] against the respondent Macquarie Offshore Services Pty Ltd. Philippine Branch seeking the reversal of the Decision dated March 27, 2018[2] (Assailed Decision) rendered by the Second Division of this Court in CTA Case Nos. 8936, 8994 and 9040, as well as the Resolution dated May 22, 2018[3] (Assailed Resolution) denying its motion for reconsideration.

The dispositive portion of the Assailed Decision reads, as follows:

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[1] *Rollo*, pp. 5-14, with Annexes "A" to "C", pp. 15-71.
[2] *Id.*, pp. 16-59.
[3] *Id.*, pp. 61-65.

> "**WHEREFORE,** premises considered, the instant consolidated Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **THIRTY-TWO MILLION EIGHT HUNDRED TWENTY-ONE THOUSAND FOUR HUNDRED SIXTY- THREE AND 15/100 PESOS (₱32,821,463.15),** representing petitioner's unutilized input VAT attributable to its zero-rated sales for FY ended March 31, 2013.
>
> **SO ORDERED."**[4]

The Assailed Resolution, on the other hand, in its dispositive portion, provides the following:

> "**WHEREFORE,** in view of the foregoing and finding no cogent reason to disturb the ruling in the assailed Decision, respondent's **Motion for Reconsideration (Re: Decision dated 27 March 2018)** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**[5]

The Parties

Petitioner is the Commissioner of the Bureau of Internal Revenue (CIR) duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Macquarie Offshore Services Pty Ltd.-Philippine Branch (Macquarie) is a foreign corporation organized and existing under and by virtue of the laws of Australia. It is duly licensed to do business in the Philippines thru its Regional Operating Headquarters (ROHQ) in the Philippines by virtue of a License to Do Business issued by the Securities and Exchange Commission (SEC) on April 10, 2008.

As a licensed ROHQ, it is authorized to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing

[4] *Id.*, p. 58.
[5] *Id.*, p. 64.

control and sales promotion; training and personnel management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication; and business development[6].

The office of the respondent is located at the 29th Floor, Tower 1, The Enterprise Center, Ayala Avenue, Makati City. Respondent is also a VAT-registered entity as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 9RC0000330527.[7]

The Facts[8]

For fiscal year 2013, Macquarie allegedly generated VAT zero- rated sales in the total amount of ₱2,170,342,876.99 from its sole foreign non-resident client, Macquarie Financial Holdings Limited (MFHL), as indicated in its Quarterly VAT Returns for the following periods:

PERIOD (FY 2013)	ZERO-RATED SALES
1st Quarter	₱ 612,279,246.59
2nd Quarter	549,754,294.35
3rd Quarter	550,935,948.89
4th Quarter	457,373,387.16
TOTAL	**₱ 2,170,342,876.99**

Macquarie claims that its sales of services were rendered exclusively to MFHL during FY 2013 pursuant to a Service Agreement[9] executed on April 1, 2009. MFHL is an Australian company registered under the laws of Australia.[10] Its business address is located at Level 7, 1 Martin Place, Sydney, New South Wales, Australia. It is not registered with the SEC as evidenced by the Certificate of Non-Registration issued by the SEC.[11]

Macquarie filed three administrative claims for refund or issuance of tax credit certificate with the BIR Revenue District Office (RDO) No. 47 on the following dates:

[6] Docket, p. 899, Exhibit "P-1".
[7] Docket, p. 918, Exhibit "P-2".
[8] As found by the Second Division and as culled from the records of the case.
[9] *Id.* at Note 6, pp. 1332-1348, Exhibit "P-36".
[10] *Id.*, pp. 1349-1350, Exhibits "P-37" and "P-38".
[11] *Id.*, p.1331, Exhibit "P-35".

Taxable Quarter of FY 2013	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim
1st Quarter	June 30, 2012	June 30, 2014	June 30, 2014
2nd Quarter	September 30, 2012	September 30, 2014	September 26, 2014
3rd Quarter	December 31, 2012	December 31, 2014	December 12, 2014
4th Quarter	March 31, 2013	March 31, 2015	

Alleging inaction on the part of the CIR on its administrative application for refund or tax credit, Macquarie filed several Petitions for Review[12] with this Court on the following dates with the corresponding amounts of the input VAT claimed:

CTA CASE NO.	DATE OF FILING	PERIOD COVERED	INPUT VAT CLAIM
8936	November 25, 2014	April 1 to June 30, 2012	₱ 5,425,861.12
8994	February 23, 2015	July 1 to September 30, 2012	6,995,075.09
9040	May 8, 2015	October 1 to December 31, 2012	24,309,844.41
		January 1 to March 31, 2013	
TOTAL			**₱36,730,780.62**

In the CIR's Answers[13] to the above petitions, he argued that the claim for refund or issuance of TCC is still subject to administrative routinary investigation/examination and taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable. He further argued that Macquarie's sales of goods and services to its alleged client do not qualify as effectively zero-rated VAT transactions; that the burden of proof is on the taxpayer to establish its right to claim for refund and Macquarie failed to comply with the conditions/requirements under Section 112 of the National Internal Revenue Code of 1997, as amended (Tax Code).

Moreover, the CIR contended that it is incumbent upon Macquarie to show that it has complied with Section 204(c) in relation to Section 229 of the Tax Code. Its failure to prove the same is fatal to its claim. The CIR also pointed out that claims for refund are construed strictly against the taxpayer since the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

Macquarie filed Motions for Consolidation in each of the three cases. On June 26, 2015, the Court in Division issued a Resolution granting the Motions for Consolidation. Accordingly, CTA Case Nos. 8936 and 9040 were consolidated

[12] CTA Case Nos. 8936, 8994 and 9040.
[13] CTA Case No. 8936, Docket, vol. I, pp. 47-50; CTA Case No. 8994, Docket, pp. 87-89; CTA Case No. 9040, Docket, pp. 77-80.

by the Court's Second Division.[14]

On July 24, 2015, the Second Division issued a Resolution which acknowledged the Resolution[15] issued by the Court's Third Division, consolidating CTA Case No. 8994 with CTA Case Nos. 8936 and 9040. In the same Resolution dated July 24, 2015, the case was scheduled for pre-trial on September 3, 2015.

The parties filed their Consolidated Joint Stipulation of Facts and Issues[16] on September 22, 2015.

On October 2, 2015, the Pre-Trial Order[17] for the consolidated cases was issued, approving and adopting the Consolidated Joint Stipulation of Facts and Issues and terminating the pre-trial proceedings.

On October 14, 2015, the Court in Division granted the commissioning of Ms. Katherine O. Constantino, partner at Constantino Guadalquiver & Co., as the Independent Certified Public Accountant (ICPA) for the case.[18] Ms. Constantino submitted her Independent CPA Report on November 13, 2015.[19]

Macquarie presented Mr. Tim Mulvihill, Ms. Ailyn Perocho, and Ms. Katherine O. Constantino as its witnesses.[20]

Subsequently, Macquarie filed its Formal Offer of Evidence[21] on February 3, 2016, consisting of Exhibits "P-1" to "P-3973", inclusive of sub-markings.

On March 29, 2016, the Court in Division issued a Resolution[22] admitting all the formally offered exhibits of Macquarie, except for Exhibits "P-2-a", "P-2-b", "P-17-b", "P-17-c", "P-24-c through P-24-v", "P-25-s", "P-25-t", "P-53", "P-149", "P-1740", "P-1800", "P-2003", "P-2424", "P-2759", "P-2760", "P-3860", and "P-3972".

As a result, Macquarie filed a Motion (Re: 1. Reconsideration of Resolution dated 29 March 2016; 2. Recall of witnesses)[23] on April 11, 2016

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[14] *Id.* at Note 6, pp. 185-186.
[15] *Id.*, pp. 191-192.
[16] *Id.*, pp. 236-247.
[17] *Id.*, pp. 250-261.
[18] *Id.*, p. 327.
[19] *Id.*, p. 358.
[20] *Id.*, p. 876, Minutes of the January 20, 2016 hearing.
[21] *Id.*, pp. 877-898.
[22] *Id.*, pp. 1388-1390.
[23] *Id.*, pp. 1398-1402.

praying that the Court in Division set aside its Resolution dated March 29, 2016 and allowing it to recall its witness and the Court-commissioned Independent CPA.

Meanwhile, the CIR filed a Very Urgent Manifestation through registered mail on March 30, 2016 and received by the Court in Division on April 8, 2016, stating that he will no longer present evidence. The same was duly noted by the Court in Division in an Order[24] dated April 12, 2016.

On October 10, 2016, Ms. Ailyn Perocho and Independent CPA Ms. Katherine O. Constantino were recalled as Macquarie's witnesses. Thereafter, on November 11, 2016, Macquarie filed its Supplemental Formal Offer of Evidence[25]

In a Resolution[26] dated February 17, 2017, the Court in Division granted Macquarie's Motion for Reconsideration, admitting Exhibits "P-2-a", "P-2-b", "P-17-b", "P-17-c", "P-24-c through P-24-v", "P-25-s", "P-25-t", "P-53", "P-55-b", "P-55-c", "P-56-b", "P-56-c", "P-149", "P-1740", "P-1800", "P-2003", "P-2424", "P-2759", "P-2760", "P-3860", and "P-3972", all offered by Macquarie in its Supplemental Formal Offer of Evidence.

The Court in Division declared the case submitted for decision via Resolution[27] issued on April 3, 2017 noting that Macquarie already filed its Memorandum[28] on March 23, 2017, while the CIR failed to file his Memorandum as per Records Verification[29] issued by the Court's Judicial Records Division.

On March 27, 2018, the Court in Division promulgated the Assailed Decision partially granting Macquarie's Petition and ordering a refund or issuance of a tax credit certificate in the amount of ₱32,821,463.15 representing Macquarie's unutilized input VAT attributable to its zero-rated sales for FY ended March 31, 2013.[30]

On April 17, 2018, the CIR filed his Motion for Reconsideration thereof through registered mail, praying for the reversal of the Assailed Decision, to which Macquarie filed its Comment/Opposition (Re: Motion for Reconsideration dated 10 April 2018) on May 3, 2018.

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[24] *Id.*, p. 1403.
[25] *Id.*, pp. 1482-1489.
[26] *Id.*, pp. 1528-1530.
[27] *Id.*, p. 1554.
[28] *Id.*, pp. 1531-1552.
[29] *Id.*, p. 1553.
[30] *Id.* at Note 3.

On May 22, 2018, the Court in Division issued the Assailed Resolution denying the motion for lack of merit.[31]

Within an extended period granted by the Court *en banc*[32], the CIR filed his appeal via Petition for Review through registered mail on June 20, 2018 which the Court received on June 27, 2018.

On July 11, 2018, Macquarie was directed to file Comment thereto.[33]

On September 10, 2018, Macquarie filed its Comment (Re: BIR's Petition for Review dated 18 June 2018).[34]

On October 4, 2018, the Court *en banc* issued a Resolution giving due course to the Petition for Review and resolved to submit the case for decision.[35]

The Assignments of Errors

The CIR did not indicate in his Petition the assignment of errors in the assailed Decision and Resolution.

The Arguments of the Parties

The CIR argues that Macquarie is undeserving of the partial refund granted because the Court in Division failed to recognize or take into consideration that some of the VAT invoices and receipts submitted by Macquarie failed to comply with the requirements of Section 113 (A) and (B) of the Tax Code in that: a) the VAT was not separately indicated in some of the VAT official receipts and invoices; b) some of the invoices/receipts in support of the claimed input taxes do not indicate the quantity, unit cost and description of the goods or properties or nature of the service; and c) some of the invoices/receipts had no TIN and address of Macquarie.

The CIR further argues that the Court in Division failed to exclude input taxes that were not directly attributable to Macquarie's zero-rated sales pursuant to the requirement of Section 112 (A) of the Tax Code.

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[31] *Id.* at Note 3.
[32] *Id.* at Note 1, pp. 3-4.
[33] *Id.*, pp. 75-76.
[34] *Id.*, pp. 77-88.
[35] *Id.*, pp. 90-91.

Finally, the CIR discredits the testimonies of Macquarie's three witnesses claiming hearsay. According to the CIR, they were neither the signatories of the documents presented in evidence nor did they cause the preparation thereof. Therefore, giving credence to their testimonies opposes the principle that tax refunds ought to be strictly construed against the taxpayer.

On the other hand, Macquarie counters that it has complied with the invoicing requirements under the law and BIR Regulations. In fact, the Court in Division already conducted an exhaustive review of the documents submitted and, as a result of the winnowing process, disallowed invoices that were deficient.

As regards the CIR's contention that Macquarie's input VAT for FY 2013 is not attributable to its zero-rated sales, Macquarie claims that this argument lacks legal basis. During trial, Macquarie presented evidence to show that it did not have any taxable sales, hence, it had zero output VAT. Following Sections 110(B), 110(C), and 112(A) of the Tax Code, Macquarie had no output VAT against which to offset its input VAT for FY 2013. No allocation of input VAT was required.

On the CIR's hearsay allegation, Macquarie argues that it presented competent and admissible evidence to prove its claim for refund. Aside from the testimonies of their witnesses, the documents it presented as evidence were public documents which are admissible in evidence even without further proof of their due execution and genuineness.

The Ruling of the Court

We deny the Petition for lack of compelling ground to merit the reversal of the assailed Decision and Resolution.

It is obvious from a plain reading of the Petition of the CIR that it is a ***verbatim quote*** of its Motion for Reconsideration filed on April 17, 2018 which the Court in Division already resolved in the assailed Resolution dated May 22, 2018. The arguments the CIR raises in his Petition are the very same arguments which have been amply considered and exhaustively discussed by the Court in Division in the assailed Decision and Resolution, and to discuss them anew is superfluity.

Indubitably, the arguments put forward in this appeal is merely his own interpretation of the facts and the law of the case as the CIR failed to specify the error in the ruling of the Court in Division.

Section 8, Rule 51 of the 1997 Rules of Civil Procedure provides:

> Sec. 8. *Questions that may be decided.* -- No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court pass upon plain errors and clerical errors.

In *De Liano vs. Court of Appeals*[36], the Supreme Court emphasized the importance of the assignment of errors in an appellant's brief, thus:

> "An assignment of errors in appellate procedure is **an enumeration by appellant or plaintiff in error of the errors alleged to have been committed by the court below in the trial of the case upon which he seeks to obtain a reversal of the judgment or decree**; it is in the nature of a pleading, and performs in the appellate court the same office as a declaration or complaint in a court of original jurisdiction. Such an assignment is appellant's complaint, or pleading, in the appellate court, and takes the place of a declaration or bill; **an appeal without an assignment of errors would be similar to a suit without a complaint, bill, or declaration**. The assignment is appellant's declaration or complaint against the trial judge, charging harmful error, and proof vel non of assignment is within the record on appeal.
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> xxx xxx xxx
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> **The object of such pleadings is to point out the specific errors claimed to have been committed by the court below, in order to enable the reviewing court and the opposing party to see on what points appellant or plaintiff in error intends to ask a reversal of the judgment or decree, and to limit discussion to those points**. The office of an assignment of errors is not to point out legal contentions, but only to inform the appellate court that appellant assigns as erroneous certain named rulings; the function of the assignment is to group and bring forward such of the exceptions previously noted in the case on appeal as appellant desires to preserve and present to the appellant.[37]" *(Emphasis supplied)*

[36] G.R. No. 142316, November 22, 2001.
[37] *Id.* citing 5 C.J.S. Appeal and Error § 1217.

The importance of specifying an "assignment of errors" in the appellant's Petition cannot be underestimated. The appellant has to specify in what aspect of the law or the facts that the trial court erred. There is long standing precedent that a general assignment of errors is unacceptable under the rules. In fact, a statement of the following tenor: that "the Court of First Instance of this City incurred error in rendering the judgment appealed from, for it is contrary to law and the weight of the evidence," was deemed insufficient.[38] An appellant, therefore, must carefully formulate his assignment of errors.

As observed by the Court *en banc* above, not only does the CIR's Petition not have a section on his "assignment of errors" or even issues, for that matter, but also, the Petition is a verbatim replication of his Motion for Reconsideration of the assailed Decision.

The CIR's general assertions that the VAT was not separately indicated in some of Macquarie's VAT official receipts and invoices; some of the invoices/receipts in support of its claimed input taxes did not indicate the quantity, unit cost and description of the goods or properties or nature of the service; some of its invoices/receipts had no TIN and address or that there were some input taxes included that were not directly attributable to its zero-rated sales **without specifying which invoices/receipts that the Court in Division erred in considering when partially granting the claim is <u>simply unacceptable</u>**.

These general assertions are in stark contrast to the comprehensive and exhaustive discussion of the Court in Division in the 44-page assailed Decision which scrutinized in detail Macquarie's evidence consisting of around 3,972 separate exhibits presented during trial.

In fact, the Court in Division only partially granted Macquarie's claim because it disallowed the amount of ₱1,910,759.89 for not being properly substantiated by VAT invoices/receipts[39]; the amount of ₱25,580.55 for failing to meet the substantiation requirements where the supporting documents were either VAT official receipts which did not bear Macquarie's TIN or were not supported with the proper VAT official receipts[40]; and the amount of ₱1,972,976.92 for not being supported or substantiated by VAT invoices.[41]

The CIR has given *Us* no reason persuasive enough to disturb the findings of the Court in Division on this score.

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[38] *Santiago v. Felix*, 24 Phil. 378, 384 (1913).
[39] *Id.* at Note 1, p. 37.
[40] *Id.*, p. 54.
[41] *Id.*, pp. 55-56.

As regards the CIR's contention that the testimonies of Macquarie's three witnesses are hearsay, this deserves scant consideration as well.

The SEC Certificate of Non-Registration of Company issued to Macquarie is a public document, having been issued by the Securities and Exchange Commission, a government agency. The Service Agreement between Macquarie and MFHL, the Certificate of Registration on Change of Name in the name of MFHL, the Constitution of MFHL, and the Australian Securities and Investment Commission (ASIC) Company Extract in the name of MFCL are likewise public documents because they bear consular certificates of authentication issued by a consular official of the Philippine Embassy in Australia.

The Rules of Court on authentication and proof of documents, specifically in Section 24, Rule 132 thereof, provides:

> "SECTION 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. **If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.**" *(Emphasis supplied)*

Appreciated in conjunction with Section 23 of the same rule which states that "[a]ll other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter"[42], the Court in Division did not err in giving probative value to testimonies of Macquarie's witnesses.

Furthermore, as pointed out by Macquarie, during the hearing held on January 20, 2016, the CIR manifested that he had no cross-examination questions to ask Macquarie's witnesses. The CIR also did not raise any objections to the testimony of Macquarie's witnesses when he was given an opportunity to file his Comment to Macquarie's Formal Offer of Evidence which he failed to file

[42] Rule 132, SECTION 23. Public documents as evidence. — Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

despite due notice. To acknowledge the CIR's belated objections now would be anathema to due process and fair play.

Accordingly, the Court *En Banc* upholds the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. The assailed Decision dated March 27, 2018 and the Resolution dated May 22, 2018 of the Second Division in CTA Case Nos. 8936, 8994, and 9040 are **AFFIRMED.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

With Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1877** (CTA Case Nos. 8936, 8994 & 9040)
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-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
MACQUARIE OFFSHORE SERVICES PTY LTD. PHILIPPINE BRANCH, *Respondent.*	Promulgated: AUG 28 2019 4:20 pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review and affirming the assailed Decision and Resolution of the Court in Division.

Considering, however, that the present Petition for Review was filed following the procedure provided for in Rule 43 of the Rules of Court,[1] the contents of the Petition for Review shall be as indicated under Section 6, Rule 43 of the Rules of Court, *viz.*:

> "**Section 6.** *Contents of the petition.* — The petition for review shall (a) state the full names of the parties to the case,

[1] Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals.

> without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein."

Thus, I submit that an appeal filed by way of a Petition for Review under Rule 43 of the Rules of Court does not require the petitioner to make an assignment of error. Stated otherwise, the lack of assignment of error in the Petition for Review filed pursuant to Rule 43 of the Rules of Court is not fatal *per se* or is not in itself sufficient to warrant the outright dismissal thereof.

At any rate, as aptly found by the *ponencia*, the grounds raised by petitioner in its Petition for Review are mere verbatim reproduction of the grounds stated in its Motion for Reconsideration filed on April 17, 2018 which have been sufficiently considered and passed upon by the Court in Division in the assailed Resolution. Hence, I find no compelling reason that will justify the grant of the Petition for Review and the modification, much more the reversal, of the assailed Decision and Resolution.

All told, I CONCUR in the result.

ROMAN G. DEL ROSARIO
Presiding Justice