REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

QATAR AIRWAYS COMPANY WITH LIMITED LIABILITY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1468
(CTA Case No. 8816)

Present:

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

Promulgated:

SEP 05 2017 3:38 p.m.

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DECISION

Fabon-Victorino, J.:

This Petition for Review [1] filed by Qatar Airways Company with Limited Liability on June 10, 2016, seeks to reverse and set aside: (1) the Decision[2] dated January 22, 2016 rendered by the Court in Division in CTA Case No. 8816, denying its Petition for Review on jurisdictional ground; and (2) the Resolution[3] dated May 25, 2016, which denied its Motion for Reconsideration of the aforesaid Decision.

[1] En Banc docket, pp. 1-20.
[2] En Banc docket, pp. 23-38.
[3] En Banc docket, pp. 40-47.

THE FACTS AND THE PROCEEDINGS

The pertinent facts, as culled from the record, are as follows:

Petitioner Qatar Airways Company with Limited Liability is a foreign corporation organized and existing under the laws of Qatar, and was licensed[4] by the Securities and Exchange Commission (SEC) to establish a branch office in the Philippines to engage in air transportation services for passengers and cargo, among others.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), with authority to decide, approve and grant claims for refund or tax credit of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On November 30, 2011, petitioner, through the BIR's Electronic Filing and Payment System (*e*FPS), filed its Quarterly Income Tax Return[5] (BIR Form No. 1702Q) for the second quarter of fiscal year (FY) ending March 31, 2012, and paid[6] the corresponding tax due thereon amounting to ₱29,540,836.00.

Aware that the filing of such Quarterly Income Tax Return was a day delayed, petitioner sent a letter[7] to respondent on April 11, 2012, requesting for the abatement of surcharge amounting to ₱7,385,208.89.00. Attached to the letter-request were three (3) copies of accomplished *Application for Abatement or Cancellation of Tax, Penalties and/or Interest Under Rev. Reg. No. 13-01* (BIR Form No. 2110).

On May 18, 2012, respondent issued Assessment Notice No. QA-12-000135[8], assessing petitioner of surcharge amounting to ₱7,385,209.00, interest amounting to

[4] Exhibit P-4, Rollo, p. 125.
[5] Exhibit P-39, Rollo, pp. 290-291.
[6] Exhibits P-40 and P-41, Rollo, pp. 292-293.
[7] BIR Record, pp. 8-13.
[8] BIR Record, p. 23.

₱16,186.76, and compromise penalty amounting ₱50,000.00, for the late filing of cited Quarterly Income Tax Return.

On July 3, 2012, petitioner paid only the assessed interest and compromise penalty in the aggregate amount of ₱66,186.76.

On July 5, 2012, petitioner filed a Supplemental Letter[9] to its Letter dated April 11, 2012, requesting for the abatement of the assessed surcharge amounting to ₱7,385,209.00.

On March 7, 2013, petitioner wrote to Officer-in-Charge Assistant Commissioner (OIC-ACIR) Alfredo Misajon [10] reiterating its request for abatement of surcharge. A similar request was made by petitioner, through counsel, via a letter[11] dated September 4, 2013.

In a Letter[12] dated October 3, 2013, OIC-ACIR Misajon informed petitioner that its application for abatement was denied for lack of legal basis and demanded payment of the surcharge of ₱7,385,209.00 within ten (10) days from notice, lest the BIR would enforce collection through administrative summary remedies provided for by law.

Petitioner moved for a reconsideration of the said adverse ruling, however, the same was denied on February 10, 2014.[13] A letter[14] of the same tenor was sent by petitioner to OIC-ACIR Misajon on February 19, 2014 but it suffered the same fate as indicated in respondent's letter dated April 3, 2014[15], which petitioner received on April 8, 2014.

This prompted petitioner to elevate the matter *via* a Petition for Review[16] filed with the Court in Division on May 8, 2014.

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[9] Exhibit P-9, Rollo, pp. 131-133.
[10] Exhibit P-13, Rollo, pp. 134-138.
[11] Exhibit P-16, Rollo, pp. 139-143.
[12] BIR Record, p. 80.
[13] Exhibit P-18, BIR Record, p. 100.
[14] Exhibit P-19, Rollo, pp. 145-147.
[15] Exhibit P-22, Rollo, pp. 148-149.
[16] Rollo, pp. 1-12.

In his Answer[17] filed on July 25, 2014, respondent assailed the Court's jurisdiction over the case arguing that tax abatement is within his discretion subject only to the review by the Committee on Ways and Means of both the Senate and House of Representatives for reasonableness. Assuming that the Court has jurisdiction, petitioner's filing of several motions for reconsideration of the denial of its application for abatement is not sanctioned by any law, rules or regulations. Finally, the denial of petitioner's request for abatement of surcharge for late filing of its Quarterly Income Tax Return for the second quarter of FY ending March 31, 2012, was in accordance with law, jurisprudence and relevant administrative issuances.

During the trial, only petitioner presented evidence in support of its case.

On January 22, 2016, the Court in Division denied petitioner's Petition for Review for having been filed out of time. The Court in Division explained that although the letters dated October 3, 2013 and February 10, 2014 did not explicitly state that the denial was respondent's final determination on the matter, it was clear from the tenor of the letters that such was the intention. Thus, when respondent denied petitioner's request for reconsideration of the letter dated October 3, 2013 on February 10, 2014, the 30-day period to appeal started to run. Therefore, the Petition for Review was filed out of time on May 8, 2014, depriving the Court of authority to entertain the same.

Petitioner's motion for reconsideration was denied in the equally assailed Resolution of May 25, 2016.

Hence, the instant *Petition for Review* raising the following issues for the resolution of the Court *En Banc*, to wit:

I. Whether the Court in Division erred in issuing the assailed Decision dated January 22, 2016 and Resolution dated May 25, 2016 to the

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[17] Rollo, pp. 76-90.

effect that petitioner's petition for review was filed out of time.

II. Whether the imposition of surcharge amounting to ₱7,385,209.00 for petitioner's one-day late filing of return and payment of tax is unjust and excessive.

Petitioner asserts that the 30-day period to file a Petition for Review before the CTA should be reckoned from its receipt of respondent's letter dated April 3, 2014 on April 8, 2014, given that the power to abate or cancel tax liability exclusively belongs to respondent CIR and the same cannot be delegated. The previous denials of its request for abatement by OIC-ACIR Misajon, through the letters dated October 3, 2013 and February 10, 2014, are inconsequential as he did not have the power to abate or cancel any tax liability by express provision of law. For petitioner, respondent's letter dated April 3, 2014 is the final determination on its application for abatement of surcharge as expressly indicated therein that the "denial is final and that no further request or motion or pleading will be entertained".

Petitioner also questions the alleged retroactive application of Revenue Regulations (RR) No. 4-2012[18], which deleted the provision "*one day late filing and remittance due to failure to beat bank cut-off time*" found in RR No. 13-2001. According to petitioner, when it filed its request for abatement of surcharge on April 11, 2012, the prevailing RR implementing Section 204(B) of the NIRC, as amended, was RR No. 13-2001, which allowed the one-day late filing and remittance of tax due to failure to beat bank cut-off time as a meritorious ground to grant a taxpayer's request for abatement. Petitioner posits that the retroactive application of the amendatory regulation to its application for abatement is erroneous and in violation of the express provision of Section 246[19] of the NIRC of 1997, as amended.

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[18] Took effect on April 15, 2012.

[19] SEC. 246. *Non-Retroactivity of Rulings.* — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases: (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue; (b) Where the

Lastly, petitioner submits that the imposition of the surcharge amounting to ₱7,385,209.00 is unjust and excessive as it had no intention to evade the filing and payment of its quarterly income tax. The delay in filing of its Quarterly Income Tax Return was unintentional and was due to the difficulty encountered in interpreting the correct Gross Philippine Billings computation for income tax purposes under RR No. 11-2011. The confusion caused by the newly issued regulation and the faulty internet connection were circumstances beyond its control, also contributed to the delay for which it should not be unjustly and excessively penalized.

Respondent failed to file his Comment to the Petition for Review despite due notice. Hence, on September 5, 2016, the instant petition was submitted for decision.

RULING OF THE COURT *EN BANC*

Petitioner mainly submits that (1) the Court in Division erred in finding that the Petition for Review was filed out of time; and (2) respondent gravely erred in denying its application for abatement of surcharge.

Central to the resolution of the issues submitted by petitioner are Section 204(B) and Section 7(C) of the NIRC of 1997, as amended, to wit:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (B) Abate or cancel a tax liability, when:
>
> (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or

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facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) Where the taxpayer acted in bad faith.

(2) The administration and collection costs involved do not justify the collection of the amount due.

All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud.

xxx xxx xxx

SEC. 7. *Authority of the Commissioner to Delegate Power.* — The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any of such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That **the following powers of the Commissioner shall not be delegated**:

xxx xxx xxx

(c) **The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability**: *Provided, however,* That the assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer

> having jurisdiction over the taxpayer, as members:

Thus, under the law, respondent CIR has the sole authority to abate or cancel the whole or any unpaid portion of a tax liability, inclusive of increments, under the following circumstances, namely, (1) its assessment is excessive or erroneous, or (2) if the administration costs involved do not justify the collection of the amount due.

With that in mind, we shall now determine whether the CTA has jurisdiction over the subject of the present case.

As succinctly pointed out by the Court in Division, the CTA has jurisdiction over the present case as it falls within the purview of Section 7 (a) (1) of Republic Act (RA) No. 1125,[20] as amended by RA No. 9282 and RA No. 9503 under other matters arising under the NIRC or other laws administered by the BIR. The provision reads:

> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> > (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**; (*Emphasis supplied*)

The Supreme Court, in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,*[21] clarified that:

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[20] An Act Creating the Court of Tax Appeals
[21] G.R. No. 162852, December 16, 2004.

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue..."

Unarguably, respondent's letter dated April 3, 2014 is the final determination of the petitioner's application for abatement of surcharge.

Thus, considering that the denial of petitioner's application for abatement of surcharge involves the interpretation and application of Section 204 (B) of the NIRC of 1997, as amended, it clearly falls under the phrase "other matters arising under the NIRC", pursuant to Section 7 (a) (1) of R.A. No. 1125, as amended.

On the issue of whether the Petition for Review was timely filed with the Court in Division, Section 11 of RA No. 1125, as amended, states that any party adversely affected by a decision or ruling of the CIR may file an appeal with the CTA within thirty (30) days from receipt of such decision or ruling.[22]

Thus, the Court finds merit on petitioner's contention that it seasonably sought judicial intervention on May 8, 2014, or within the thirty (30)-day period to appeal respondent's denial of its request for abatement of surcharge, counted from April 8, 2014, the day it received respondent letter dated April 3, 2014.

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[22] SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

As earlier stated, under Section 204(B) of the NIRC of 1997, as amended, the authority to abate or cancel a tax liability exclusively belongs to respondent. In consonance with the foregoing is Section 7 of the NIRC of 1997, as amended, which specifically prohibits the delegation of this power. Thus, the Court agrees with petitioner's contention that letters dated October 3, 2013 and February 10, 2014, are of no moment albeit indication that the same are the final determination on petitioner's application for abatement mainly because they were signed by OIC-ACIR Misajon and not by respondent who has the sole authority to abate or cancel any tax liability.

The Court however cannot subscribe to petitioner's pretence that respondent erroneously applied retroactively RR No. 4-2012, which amended RR No. 13-2001, in denying its application for abatement of surcharge in violation of Section 246 of the NIRC of 1997, as amended.

The record shows that the Large Taxpayers Service - Sub-Technical Working Committee (LTS-STWC) already addressed petitioner's contention in its recommendation which respondent concurred and affirmed in his Memorandum dated June 28, 2013. The LTS-STWC recommendation reads as follows:

> Per letter dated March 7, 2013, the taxpayer requested for reconsideration and argued that RR No. 4-2012 should be applied prospectively pursuant to Section 246 of the NIRC (Non-Retroactivity of Rulings). The letter request for abatement dated April 11, 2012 was received by the Office of the Commissioner on the same date, which was before the effectivity of RR No. 4-2012.
>
> However, **evaluation of the request for abatement of surcharge using Section 2.6.1 of RR No. 13-2001 revealed that the taxpayer's failure to file the return due to faulty internet connection does not fall under the meritorious circumstances wherein one day late filing may be used as a ground**

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> **for abatement of penalties**. There was no advice on *e*FPS Unavailability on November 29, 2011, which means that no technical problems were encountered in *e*FPS on that day. **As such, the reason provided by the taxpayer for one day late filing is not acceptable given the circumstances**. (*Emphasis supplied*)

Clear from the foregoing that the LTS-STWC evaluated petitioner's request for abatement applying the provisions of RR No. 13-2001 and not RR No. 4-2012, contrary to petitioner's belief. In fact, the LTS-STWC already ruled that the ground relied upon by petitioner was not acceptable as it did not fall under the meritorious circumstances for the allowance of the one-day late as a ground for abatement of penalties. This finding was approved *en toto* by respondent when he affirmed the LTS-STWC's recommendation to deny petitioner's request for abatement. Thus, petitioner's claim that respondent retroactively applied RR No. 4-2012 in denying its application for abatement is bereft of any basis, if not misleading.

Also lacking in merit is petitioner's contention that the imposition of the surcharge amounting to ₱7,385,209.00 is unjust and excessive citing its difficulty in interpreting the correct Gross Philippine Billings Computation for income tax purposes under the newly issued RR No. 11-2011 and the technical problem encountered with its internet connection, which allegedly beyond its control.

The observation of respondent in his denial-letter dated April 3, 2014 is simply revealing, to wit:

> "xxx. There was no advice on eFPS unavailability on November 29, 2011, which means that no technical problems were encountered in eFPS on that day. Also, if you claimed that you had log-in problems on the night of November 29, 2011, filing the return should have been done on the first working hour of the following day. But as it was, the return was filed and paid only

on the following day, 30 November 2011, at 1:38 in the afternoon.

Further, you were given a period of sixty (60) days to file the return. You chose, however, to file it on the last day where you could have filed it any day before. An acceptable reason that may be advanced for failing to file the return on time is if there is a major natural catastrophe. This is not, however, the situation in the present case. To us, any other reason could have been avoided if the filing was made earlier or before the deadline."

Significantly, petitioner was not without recourse under the alleged prevailing circumstances. To avoid delay, petitioner could file a tentative quarterly income tax return if it was still unsure with the figures contained therein to avoid paying the twenty-five percent (25%) surcharge for late filing. Thereafter, it could modify, change, or amend the tentative return already filed if warranted, pursuant Section 6(A)[23] of the 1997 NIRC.

The imposition of the surcharge amounting to ₱7,385,209.00 for late filing of return and payment of tax may be harsh but surely not unjust or excessive for it is a mandate that should be observed under Section 248(A)(1)[24] of the NIRC of 1997, as amended.

[23] SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

(A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided*, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided*, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer.

[24] SECTION 248. *Civil Penalties.* —

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

Finally, since the sole authority to abate tax liability rests upon the sole discretion of respondent, this Court may not dip its finger into it in observance of the principle of separation powers among the three branches of the government. This is the ruling enunciated by the Supreme Court in the case of *Republic of the Philippines (Presidential Commission on Good Government) vs. The Hon. Sandiganbayan, et al.*,[25] thus:

> "It should be emphasized here, as again stressed by the Court in the recent case of *Republic, et al. v. De Los Angeles, et al.*, G.R. No. L-30240, March 25, 1988, that 'it is well-recognized principle that purely administrative and discretionary functions may not be interfered by the courts. This is generally true with respect to acts involving the exercise of judgment or discretion, and findings of fact. There should be no thought of disregarding the traditional line separating judicial and administrative competence, the former being entrusted with the determination of legal questions and the latter being limited as a result of its expertise to the ascertainment of the decisive facts.'"

WHEREFORE, the Petition for Review filed by Qatar Airways Company with Limited Liability on June 10, 2016 is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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[25] G.R. No. 88228, June 27, 1990.

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(With Concurring and Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

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

Ma. Belen
(With due respect, I join the Concurring and Dissenting Opinion of J. CAC)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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 among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

QATAR AIRWAYS COMPANY WITH LIMITED LIABILITY, Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB No. 1468** (CTA Case No. 8816) Present: **DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.* **Promulgated:** SEP 05 2017 3:38 p.m.

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CONCURRING AND DISSENTING OPINION

CASANOVA, *J.*:

With utmost respect to the *ponencia* of my esteemed colleague, the Honorable Justice Esperanza R. Fabon-Victorino, while I concur in the finding that petitioner has seasonably sought judicial intervention with this Court, I, however, dissent in the outright denial of petitioner's claim for abatement of surcharge in the amount of ₱7,385,209.00.

On the onset, I am not unaware of my stand during initial deliberation of the case in the court in Division. Nevertheless, after a second hard look at the evidence presented and re-evaluation of facts, I saw a different perspective on the matter at hand.

Verily, the instant case involves resolution of both procedural and substantive issues.

As to the procedural aspect of the case, the assailed Decision dated January 22, 2016, rendered by the court in Division, found that the letters dated October 3, 2013 and February 10, 2014 of the Bureau of Internal Revenue (BIR) sufficiently indicated the final nature of the determination made by respondent in a clear and unequivocal language. That is why, the Petition for Review filed with the court in Division on May 8, 2014 was denied for lack of jurisdiction.

I do not agree.

Generally, under Section 7 of the National Internal Revenue Code (NIRC) of 1997, as amended, the CIR may delegate the powers vested in him under the pertinent provisions of the Code. However, certain powers may not be delegated such as the power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability.[1] In the instant case, a simple peruse of the letters dated October 3, 2013 and February 10, 2014 would reveal that they were not issued by the Commissioner of Internal Revenue (CIR) but only by the Officer-in-Charge Assistant Commissioner of Internal Revenue (OIC-ACIR) Alfredo V. Misajon. As such, no tenor or clear intention would justify the foregoing letters as the final decision of respondent since it is clear from the cited statutory provision that the power to abate or cancel a tax liability is the exclusive and sole authority of respondent.

It is for this reason that the thirty-day reckoning period within which to seek judicial intervention with this Court, should be based on the letter-denial dated April 3, 2014, which was received by petitioner on April 8, 2014, for it is the letter that was actually signed by then CIR herself. Petitioner is correct in reckoning the thirty-day period to file a Petition for Review from receipt of the letter denial dated April 3, 2014. Thus, the Petition for Review filed on May 8, 2014 with the court in Division was timely filed.

With regard to the substantive aspect of the case, I cannot subscribe to the outright denial of the instant case.

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[1] Section 7(c)

As gleaned in the *ponencia*, the denial of petitioner's claim was based on the Memorandum dated June 28, 2013 of the BIR's Large Taxpayers Service - Sub-Technical Working Committee (LTS-STWC), which was adopted *en toto* by respondent in her letter-denial dated April 3, 2014, stating that "[e]valuation of the request for abatement of surcharge using Section 2.6.1 of RR No. 13-2001 revealed that the taxpayers failure to file the return due to faulty internet connection does not fall under the meritorious circumstances wherein one day late filing may be used as a ground for abatement of penalties. There was no advice on eFPS unavailability on November 29, 2011, which means that no technical problems were encountered in eFPS on that day. As such, the reason provided by the taxpayer for one day late filing is not acceptable."

Perforce, this was the sole reason for denying petitioner's claim. The *ponencia* unfortunately failed to consider the testimonial and documentary evidence offered by petitioner during trial in the court in Division. In fact, it is worth noting that during the hearing held on January 21, 2015, respondent, through counsel, manifested that she has no witness to present. This is why, in good conscience, I cannot affirm the outright dismissal of petitioner's claim.

Accordingly, in view of the foregoing, I vote to **PARTIALLY GRANT** the instant Petition for Review, and **REMAND** the instant case to the CTA Second Division for the proper determination of the refundable amount.

CAESAR A. CASANOVA
Associate Justice