REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

FIRST PHILIPPINE UTILITIES CORPORATION, Petitioner,	**CTA EB No. 1659** (CTA Case No. 8993)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** SEP 04 2018 11:10 a.m.

x - x

DECISION

UY, *J.*:

Before the Court *En Banc* is an appeal by way of a *Petition for Review*[1] filed on June 9, 2017 by First Philippine Utilities Corporation, petitioner, assailing the Resolutions dated February 27, 2017[2] and May 4, 2017[3] issued by the Second Division of this Court (Court in Division) in CTA Case No. 8993, entitled *"First Philippine Utilities Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read as follows:

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[1] EB Docket, pp. 8 to 53.
[2] EB Docket, pp. 61 to 73.
[3] EB Docket, pp. 75 to 77.

<u>Resolution dated February 27, 2017</u>:

> "**WHEREFORE,** premises considered, petitioner's prayer in the **Omnibus Motion** to declare the deficiency tax as null and void, is hereby **DENIED**. Accordingly, set the presentation of petitioner's evidence on March 27, 2017 at 9:00 a.m.
>
> **SO ORDERED.**"

<u>Resolution dated May 4, 2017</u>:

> "**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration (Re: Resolution dated February 27, 2017) is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner First Philippine Utilities Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at 4th Floor Benpress Bldg., Exchange Road corner Meralco Ave., Pasig City.[4]

Respondent is the duly appointed Commissioner of Internal Revenue, with authority, among others, to collect all national internal revenue taxes, fees and to decide disputed assessments and refunds of internal revenue taxes, fees or other charges in relation thereto, with office address at the Bureau of Internal Revenue (BIR), National Office Building, Agham Road, Diliman, Quezon City.[5]

On February 23, 2015, petitioner filed a *Petition for Review* with the Court in Division entitled "*First Philippine Utilities Corporation, petitioner, v. Commissioner of Internal Revenue, respondent*", docketed as CTA Case No. 8993[6] assailing the Commissioner of Internal Revenue's tax assessments for deficiency income tax, DST and miscellaneous tax under the Formal Letter of Demand for taxable

[4] Par. 1, Facts Stipulated by the Parties, Joint Stipulation of Facts and Issues (JFSI), Division Docket – Vol. II (CTA Case No. 8993), p. 564.
[5] Par. 1, Summary of Admitted Facts, JSFI, Division Docket – Vol. II (CTA Case No. 8993), p. 563.
[6] Division Docket – Vol. I (CTA Case No, 8993), pp. 6 to 53.

year 2009 in the amount of P312,361,795.98 on the grounds of prescription, violation of due process and for utter lack of factual and legal basis. Said Petition for Review was filed due to respondent's alleged inaction over petitioner's Protest to Assessments/Request for Reconsideration dated July 28, 2014 (the "Protest") to the Formal Letter of Demand/Final Assessment Notice dated June 26, 2014 ("FLD-FAN").

Subsequently on April 29, 2015, petitioner filed a "*Motion for Leave to File and To Admit Attached Supplemental Petition for Review*" attaching thereto said "*Supplemental Petition for Review*" and Annexes,[7] alleging that after the filing of its Petition with the Court in Division, petitioner received a copy of the Final Decision on Disputed Assessment ("FDDA") on April 1, 2015 denying the Protest of petitioner and finding it liable for deficiency taxes, and their corresponding penalties, surcharges and interest in the total amount of P289,733,393.79.

On June 15, 2015, respondent filed his *Answer* in CTA Case No. 8993, through registered mail [8], praying for the dismissal of said Petition for lack of merit.

In the Resolution dated June 22, 2015, the Court in Division granted petitioner's "*Motion for Leave to File and To Admit Attached Supplemental Petition for Review*" and admitted petitioner's "*Supplemental Petition for Review*".

Pursuant to the Notice of Pre-Trial Conference set on July 23, 2015, petitioner filed on July 20, 2015, an "*Omnibus Motion*" [9] with the following prayers, to wit:

> (A) Allow petitioner to present first its evidence on the issue of whether or not the right of respondent to assess petitioner with deficiency taxes for taxable year 2009 has prescribed;
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> (B) Thereafter, render a decision/resolution on the issue of prescription;
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> (C) Should this Honorable Court, after presentation of evidence on this matter, find that the right of

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[7] Division Docket – Vol. I (CTA Case No. 8993) pp. 181 to 197
[8] Division Docket – Vol. I (CTA Case No. 8993), pp. 247 to 250.
[9] Division Docket – Vol. I (CTA Case No. 8993), pp. 277 to 281.

respondent to assess petitioner with deficiency taxes for taxable year 2009 has prescribed, a decision be rendered declaring as null and void the subject deficiency taxes under the Final Decision on Disputed Assessment (FDDA) in the total amount of Two Hundred Eighty Nine Million Seven Hundred Thirty Three Thousand Three Hundred Ninety Three Pesos and Seventy Nine Centavos (₱289,733,393.79); and

(D) On the other hand, should the Honorable Court find that prescription has not set in against respondent, conduct a full-blown trial to, among others, facilitate the reception of petitioner's evidence against the assessments under the Final Decision on Disputed Assessment (FDDA) in the total amount of Two Hundred Eighty Nine Million Seven Hundred Thirty Three Thousand Three Hundred Ninety Three Pesos and Seventy Nine Centavos (₱289,733,393.79).

Respondent was ordered to comment on petitioner's "*Omnibus Motion"* on July 24, 2015.[10] Despite due notice, respondent failed to file his comment thereto.[11]

In the Resolution dated August 28, 2015[12] said "*Omnibus Motion"* was granted with respect to petitioner's prayer to present first its evidence on the issue of whether or not the right of respondent to assess petitioner for taxable year 2009 has prescribed.

During the pre-trial conference held on September 3, 2015[13], both counsels agreed to submit their Joint Stipulation of Facts and Issues until September 23, 2015; to set the presentation of petitioner's witness on October 14, 2015 and respondent's witness on December 9, 2015 on the issue of prescription.

Within the extension period granted by the Court in Division, both counsels filed their Joint Stipulation of Facts and Issues on

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[10] Resolution dated July 24, 2015, Division Docket – Vol. I (CTA Case No. 8993), p. 283.
[11] Records Verification Report dated August 24, 2015 issued by the Judicial Records Division of this Court, Division Docket – Vol. I (CTA Case No. 8993), p. 284.
[12] Division of this Court, Division Docket – Vol. I (CTA Case No. 8993), pp. 328 to 329
[13] Minutes of Hearing held on September 3, 2015, Division of this Court, Division Docket – Vol. I (CTA Case No. 8993), p. 334.

October 6, 2015.[14] Thereafter, the Court in Division issued a Pre-Trial Order on October 9, 2015.[15]

After the presentation of the parties' respective witnesses on the issue on prescription, namely: Victoria A. Martinez and Atty. Esmeraldo C. Amistad for petitioner on October 14, 2015[16]; Olivia S. Sison for respondent on May 2, 2015[17], the parties were ordered by the Court in Division to file their respective Memorandum within 30 days from receipt of the Court in Division's Resolution of respondent's Formal Offer of Evidence on the issue of Prescription.

Petitioner filed its Memorandum[18] on November 21, 2016 while respondent failed to file his Memorandum.

On February 27, 2017, the Court in Division issued the assailed Resolution, denying petitioner's *Omnibus Motion* to declare the deficiency tax as null and void.[19] The Court in Division based its resolution on the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.).*

On March 16, 2017, petitioner filed a *Motion for Reconsideration [Re: Resolution dated February 27, 2017].*[20] Thus, on March 22, 2017, the Court in Division ordered respondent to file a *Comment* to the said *Motion.*[21] However, despite due notice, respondent failed to file the said comment.[22]

In the assailed Resolution dated May 4, 2017[23] the Court in Division denied petitioner's *Motion* for lack of merit. Meanwhile, the Court in Division set the continuation of proceedings in CTA Case

[14] Division Docket – Vol. II (CTA Case No. 8993), pp. 563 to 566.
[15] Division Docket – Vol. II (CTA Case No. 8993), pp. 570 to 575
[16] Minutes of Hearing on October 14, 2015, Division Docket – Vol. II (CTA Case No. 8993), p. 576.
[17] Minutes of Hearing on May 2, 2016, Division Docket – Vol. II (CTA Case No. 8993), p. 791.
[18] Petitioner's "Memorandum (Re-Issue of Prescription for Petitioner)", Division Docket – Vol. II (CTA Case No. 8993), pp. 866-916;
[19] EB Docket, pp. 61 to 73; Division Docket – Vol. II (CTA Case No. 8993), pp. 920 to 932.
[20] Division Docket – Vol. II (CTA Case No. 8993), pp. 933 to 952.
[21] Resolution dated March 22, 2017, Division Docket – Vol. II (CTA Case No. 8993), p. 956.
[22] Records Verification Report dated April 10, 2017 issued by the Judicial Records Division of this Court, Division Docket – Vol. III (CTA Case No. 8993), p. 959.
[23] EB Docket, pp. 75 to 77; Division Docket – Vol. III (CTA Case No. 8993), pp. 961 to 963.

No. 8993 in the Resolution dated May 11, 2017[24] until the same was submitted for decision on November 16, 2017.[25]

Meanwhile, petitioner filed before the Court *En Banc* a *Motion for Extension of Time to File Petition for Review* on May 26, 2017.[26] The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from May 26, 2017 or until June 10, 2017 within which to file its *Petition for Review.*[27]

On June 9, 2017, petitioner filed the instant *Petition for Review* before the Court *En Banc*[28] praying that the Court *En Banc* issue an order declaring the right of respondent to assess petitioner for taxable year 2009 in the aggregate amount of P289,733393.80 as already prescribed; and to declare void *ab initio* the FC and FDDA, which input deficiency taxes against petitioner in the total amount of P289,733393.80.

On July 6, 2017, respondent was ordered by the Court *En Banc* to file *Comment* to the instant *Petition for Review*, within ten (10) days from notice.[29] Respondent, however, failed to file his *Comment* to the instant *Petition* despite due notice.[30] On September 25, 2017, the Court *En Banc* resolved to give DUE COURSE to the instant *Petition for Review* and submitted the same for decision.[31]

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues for the resolution of the Court *En Banc*, to wit:

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[24] Division Docket – Vol. III (CTA Case No. 8993), p. 965.
[25] Resolution dated November 16, 2017, Division Docket – Vol. III (CTA Case No. 8993), p. 1129.
[26] EB Docket, pp. 1 to 6.
[27] Minute Resolution dated May 30, 2017, EB Docket, p. 7.
[28] EB Docket, pp. 8 to 59.
[29] Resolution dated July 6, 2017, EB Docket, p. 479 to 480.
[30] Records Verification Report dated August 29, 2017 issued by the Judicial Records Division of this Court, EB Docket, p. 481.
[31] Resolution dated September 25, 2017, EB Docket, pp. 483 to 484.

"A.

WHETHER OR NOT THE PERIOD TO ASSESS PETITIONER FOR DEFICIENCY TAXES FOR TAXABLE YEAR 2009 HAS ALREADY PRESCRIBED PURSUANT TO SECTION 203 AND 222 (B) OF THE TAX CODE.

B.

THE FACTUAL ANTECEDENTS SURROUNDING PETITIONER'S CASE ARE NOT ON ALL FOURS WITH THAT OF THE NEXT MOBILE CASE

C.

ASSUMING *ARGUENDO* THAT THE NEXT MOBILE CASE AIMED TO ESTABLISH NEW PRECEDENT WITH REGARD TO WAIVERS, THE SAME CANNOT OVERTURN THE *KUDOS METAL* DOCTRINE

D.

THE HONORABLE COURT, IN BASING ITS DECISION SOLELY ON THE ALLEGED INFIRMITIES OF THE WAIVERS, FAILED TO CONSIDER PETITIONER'S OTHER ARGUMENTS".[32]

Petitioner's arguments:

With regard to the issue on prescription, petitioner contends that the period to assess petitioner by respondent for taxable year 2009 has already prescribed pursuant to Section 203 and 222(B) of the Tax Code.

Allegedly, the Waivers in this case are fatally defective that they could not be relied upon to justify the failure of the BIR to issue such tax deficiency assessment on time; and the defects are as follows:

(a) There was no board resolution authorizing the signatory to sign the First, Second and Third Waivers on behalf of petitioner.

[32] EB Docket, p. 15.

(b) The Fourth Waiver was not properly accepted by the BIR.
(c) The Revenue Officer who accepted the Waivers is not authorized to do so.

In addition, petitioner also submits that the factual antecedents surrounding petitioner's case are not on all fours with that of the *Next Mobile* case. Allegedly, the Court in Division, having relied solely on the alleged infirmities of the Waivers, failed to consider petitioner's other meritorious arguments.

THE COURT *EN BANC*'S RULING

After careful consideration of the arguments and issues raised in the instant Petition for Review, the antecedent facts and obtaining circumstances in CTA Case No. 8993, the Court *En Banc* finds the filing of the instant case premature, and must perforce be dismissed for lack of jurisdiction.

In arriving at the foregoing findings, the Court *En Banc* looked into the nature of the assailed Resolutions dated February 27, 2017 and May 4, 2017, both issued by the Court in Division in CTA Case No. 8993, specifically, whether or not these Resolutions are final orders resolving matters declared by the Rules of Court as appealable; or are these Resolutions merely interlocutory orders resolving matters that are not appealable under the same Rules.

While the Court *En Banc* has jurisdiction over final orders and judgments of the Court in Division, this Court is without jurisdiction to entertain appeals over interlocutory orders issued by the Court a *quo*, as held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Court of Tax Appeals and CBK Power Company Limited*,[33] to wit:

> " **It is, therefore, clear that the CTA *en banc* has jurisdiction over final order or judgment <u>but not over interlocutory orders issued by the CTA in division</u>.**
>
> In *Denso (Phils), Inc. v. Intermediate Appellate Court,*[34] we expounded on the differences between a 'final judgment' and an 'interlocutory order,' to wit:

[33] G.R. Nos. 203054-55, July 29, 2015.
[34] 232 Phils. 256 (1987).

> **A 'final' judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto**, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligation of the parties and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move xxx xx xxx and ultimately, of course, to cause the execution of the judgment once it becomes *'final'* or, to use the established and more distinctive term, 'final and executory.'
>
> xxx xxx xxx
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> Conversely, **an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is 'interlocutory,'** *e.g.,* an order denying a motion to dismiss under Rule 16 of the Rules xxx xxx xxx. **Unlike a 'final' judgment or order, which is appealable, as above pointed out, an 'interlocutory' order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.**[35]

Given the differences between a final judgment and an interlocutory order, there is no doubt that the CTA

[35] *Denso (Phils), Inc., v. IAC, supra,* at 263-264. (citations omitted).

> 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 reconsideration thereof are all interlocutory orders since they pertain to the order of default.**
>
> **Since the CTA Orders are merely interlocutory, <u>no appeal can be taken therefrom</u>.** 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:
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>> 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." *(Emphases and underscoring supplied)*

Clearly from the foregoing jurisprudential pronouncements, a "final judgment or order" is one that finally disposes of a case, leaving nothing more to be done by the Court (referring to the Court in Division in this case) in respect thereto. In contrast, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory".

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And in instances where an interlocutory order is appealed before the Court *En Banc* by way of a Petition for Review under Section 4(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals, the Court *En Banc* has no jurisdiction to review said interlocutory order/s issued by the Court in Division because the Court *En Banc* may only review decisions, resolutions, or orders of the former in a case that has been resolved with finality and in effect already finally disposed of.

In the instant *Petition for Review,* specifically on page 2 thereof, under the heading Nature of the Petition, it is alleged as follows:

> " I.
>
> NATURE OF PETITION
>
> 4. This is an appeal by way of a Petition for Review pursuant to Section 4(b) of A.M. No. 05-11-07-CTA, also known as the Revised Rules of the Court of Tax Appeals ("Revised CTA Rules"), assailing the Resolutions dated February 27, 2017 and May 4, 2017 issued by the Second of this Honorable Court ("Second Division") in CTA Case No. 8993 entitled "*First Philippine Utilities Corporation vs. Commissioner of Internal Revenue*".[36]

Without doubt therefore, petitioner availed of the remedy under Section 4(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals in assailing the Resolutions dated February 27, 2017 and May 4, 2017 of the Court in Division in CTA Case No. 8993.[37] Hence, the same shall be of no avail as the said Resolutions, being interlocutory orders, are not appealable to the Court *En Banc*.

The assailed Resolution dated February 27, 2017 issued by the Court in Division denied petitioner's *Omnibus Motion* to declare the deficiency tax as null and void[38] relying on the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*[39] to wit:

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[36] Petition for Review, CTA EB 1659, p. 2, EB Docket, p. 9
[37] Pars. 4, and 38 to 41, *Petition for Review*, EB Docket, pp. 9 and 14.
[38] EB Docket, pp. 61 to 73; Division Docket – Vol. II (CTA Case No. 8993), pp. 920 to 932.
[39] G.R. No. 212825, December 7, 2015.

"In this case, it must be noted that petitioner voluntarily executed and submitted the subject Waivers, one after the other, and never raised a single objection thereto, only to assail their validity after the issuance of the assessment on the ground that its own representative did not have the authority to sign the Waivers. Further, it is significant to point out that the signatory in the said Waivers, Mr. Francis Giles B. Puno was the Treasurer of the petitioner. Hence, petitioner should not be allowed to benefit from its wrongdoing and should be deemed estopped from questioning the validity of the Waivers only after the assessment against it was issued.

Considering the foregoing, the Court finds that respondent's period to assess petitioner has not yet prescribed at the time when the PAN and FAN were issued.

WHEREFORE, premises considered, petitioner's prayer in the **Omnibus Motion** to declare the deficiency tax as null and void is hereby **DENIED.** Accordingly, set the presentation of petitioner's evidence on March 27, 2017, at 9:00 a.m.

SO ORDERED."

Additionally, petitioner, by its own allegations in its "*Omnibus Motion*" filed on July 20, 2015, as contained in the Prayer therein, requested the Court in Division to conduct a full-blown trial in CTA Case No. 8993, in the event that said Court finds that prescription has not set in against respondent, and We quote:

"PRAYER

WHEREFORE, Petitioner respectfully prays that this Honorable Court issue an order, as follows:

xxx xxx xxx

(D) On the other hand, **should the Honorable Court find that prescription has not set in against respondent, <u>conduct a full-blown trial</u> to, among others, facilitate the reception of petitioner's evidence against the assessments under the Final**

> **Decision on Disputed Assessment (FDDA) in the total amount of Two Hundred Eight Nine Million Seven Hundred Thirty Three Thousand Three Hundred Ninety Three Thousand** (sic) **Pesos and Seventy Nine Centavos (₱289,733,393.79).** (Emphasis and underscoring supplied).[40]

Evidently, petitioner is well aware that the Resolution dated February 27, 2017 is an interlocutory order because the Court in Division, after the issuance thereof, proceeded and conducted a full blown trial in CTA Case No. 8993, until the same was submitted for decision on November 16, 2017.[41] Notwithstanding said recourse prayed for however, petitioner filed the instant Petition for Review.

As regards the Court in Division's subsequent assailed Resolution dated May 4, 2017, denying petitioner's *Motion for Reconsideration* of the Resolution dated February 27, 2017, the Court *En Banc* finds the same also an interlocutory order because it pertains to the denial of the *Omnibus Motion* as gleaned from the dispositive portion thereof, to wit:

> "**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration (Re: Resolution dated February 27, 2017) is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Corollary thereto, Section 1, Rule 50 of the 1997 Rules of Civil Procedure, which is suppletorily applicable to the RRCTA,[42] significantly provides as follows:

> **"RULE 50**
>
> **DISMISSAL OF APPEAL**
>
> SECTION 1. *Grounds for dismissal of appeal.* – An

[40] Omnibus Motion, CTA Case No. 8993, p. 3, Division Docket – Vol. I (CTA Case No. 8993), pp. 277 to 282, at p. 279

[41] Resolution dated November 16, 2017, Division Docket – Vol. III (CTA Case No. 8993), p. 1129.

[42] Section 3, Rule 1 of the RRCTA, provides as follows:
"SEC. 3. *Applicability of the Rules of Court.* – The Rules of Court in the Philippines shall apply suppletorily to these Rules."

appeal may be dismissed by the Court of Appeals, on its own motion or that of the appellee, on the following grounds:

xxx xxx xxx

(i) **The fact that the order or judgment appealed from is not appealable**." *(Emphasis supplied)*

Considering that the assailed Resolutions are merely interlocutory orders issued by the Court in Division in CTA Case No. 8993, the same are not appealable before the Court *En Banc*, and therefore, the instant *Petition for Review* must perforce be dismissed for lack of jurisdiction.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction, without prejudice to the parties' right to appeal the assailed Resolutions dated February 27, 2017 and May 4, 2017 upon final disposition on the merits of CTA Case No. 8993.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice