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REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

DAVID TE TAN,
Respondent.

C.T.A. E.B. CRIM. CASE NO. 008
(C.T.A. CRIM. CASE NO. O-148)

Present:

ACOSTA, PJ
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

JAN 10 2011 1:45pm

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DECISION

UY, J.:

This Petition for Review filed by the petitioner, People of the Philippines before the Court of Tax Appeals *En Banc* on March 29, 2010 seeks to set aside the Resolutions of the Honorable Court of Tax Appeals - First Division[1] (Court in Division) and to hold the existence of probable cause to warrant the prosecution of respondent, David Te Tan, in C.T.A. Criminal Case No. O-148, entitled "People of the Philippines, plaintiff, v. David Te Tan,

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[1] Referring to the Former First Division of the CTA, Chaired by Presiding Justice Ernesto D. Acosta, with Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova as members.

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c/o Stanford Marketing, 453 Quintin Paredes Street, Binondo, Manila, accused", for Violation of Section 255 of the Tax Code[2].

The Court in Division ruled in the assailed Resolutions as follows:

1) Resolution promulgated on October 21, 2009[3] dismissed the criminal case against accused David Te Tan for lack of existence of probable cause in view of the latter's availment of tax amnesty under Republic Act No. 9480;

2) Resolution promulgated on December 14, 2009[4] denied herein petitioner's Motion for Reconsideration dated November 27, 2009 for having been filed beyond the reglementary period; and

3) Resolution promulgated on March 9, 2010[5] denied herein petitioner's Motion for Reconsideration dated January 7, 2010 for lack of merit.

THE FACTS

Petitioner is represented by the Bureau of Internal Revenue (BIR), the government agency primarily tasked to collect internal revenue taxes for the support of the government, with principal office address at the BIR National Office Building, Diliman, Quezon City. On the other hand, respondent is an individual taxpayer and the proprietor of Stanford Marketing with registered address at 453 Quintin Paredes Street, Binondo, Manila.

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[2] **SEC. 255.** ***Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.*** - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

[3] Docket, pp. 12-19.

[4] Ibid, at pp. 20-22.

[5] Id., at pp. 23-24.

On July 31, 2009, petitioner, through Assistant City Prosecutor Francisco L. Salomon, filed the Information dated February 20, 2009 before the Court in Division against respondent in Criminal Case No. 0-148, with the following documents attached thereto:

a. Resolution of Asst. City Prosecutor Francisco L. Salomon dated February 20, 2009 in I.S. No. 8A-00132, recommending the filing of the criminal case against accused David Te Tan;

b. Referral Letter of Regional Director Alfredo V. Misajon dated November 22, 2007 addressed to the City Prosecutor of Manila, for the immediate criminal prosecution of the accused;

c. Affidavit of Atty. Ramon B. Lorenzo dated November 22, 2007, recommending the criminal prosecution of the accused;

d. Assessment Notice No. 30-2002 and Demand Letter dated April 11, 2006 issued against the accused;

e. Counter-Affidavit of accused David Te Tan dated February 5, 2008, with attachments consisting of the Notice of Availment of Tax Amnesty, BIR Tax Payment Deposit Slip from the Landbank of the Philippines, Amnesty Tax Payment Form, BIR Form No. 0616 with the Acceptance of Payment Form, BIR Form No. 0617; Tax Amnesty Return BIR Form No. 2116; Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005; Balance Sheet and the Amended Balance Sheet for the same period; and

f. Reply (To Counter-Affidavit) of Atty. Ramon B. Lorenzo dated April 16, 2008, with attached Basic Guide on the Tax Amnesty Act of 2007.

Subsequently, in the Resolution dated August 25, 2009, the Court in Division observed that the taxable period is not 1997 but 2002 and directed as follows:

> "A perusal of the Information would readily show that the accused is being charged for its willfully and unlawfully failing and refusing to pay deficiency taxes for the year 1997, however, attached to the Information is the Assessment/Demand Letter dated April 11, 2007, showing that the taxable period involved is

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not 1997 but is actually 2002. Further, the Resolution of the Fourth Assistant City Prosecutor Francisco L. Salomon also states the internal revenue taxes which accused willfully and unlawfully refused to pay was for the year 2002.

ACCORDINGLY, the plaintiff is hereby **ORDERED** to make the necessary amendments/corrections to the Information within a non-extendible period of five (5) days from receipt hereof. Pending compliance, the determination of the existence of probable cause is held in abeyance."[6]

In Compliance thereto, the prosecution filed an Amended Information on September 16, 2009 charging herein respondent-accused for Violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, alleging as follows::

"AMENDED INFORMATION

The undersigned accuses DAVID TE TAN of a violation of Section 255 of the Tax Code, committed as follows:

That on or about April 11, 2006, in the City of Manila, Philippines, the said accused, DAVID TE TAN, a proprietor of STANFORD MARKETING with business address at Rm. 453 Quintin Paredes Street, Binondo, this City, did then and there willfully and unlawfully fails, refuses and neglects, as they still (fail, refuse and neglects) to pay their deficiency internal revenue tax liabilities for the year 2002, to wit:

Kind of Tax	Assessment No./ Demand Letter	Date	Amount
Def. Income	30-2002	4-11-06	P 3,145,427.73
Compromise Penalty	30-2002	4-11-06	75,000.00

or in the total amount of P3,220,427.73, despite notice and service of said assessment and Warrant of Distraint and/or Levy dated November 26, 2007, without formally protesting against or appealing the same, and repeated demands made upon him to do so, to the damage and prejudice of the Government of the

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[6] Resolution dated August 25, 2009, CTA Criminal Case No. 0-148; Records, pp. 27-29 at p. 29.

Republic of the Philippines in the aforesaid amount of P3,220,427.73, Philippine Currency.

Contrary to Law."

In the assailed Resolution dated October 21, 2009, the Court in Division NOTED the prosecution's "Compliance and Manifestation with Motion to Admit Amended Information" and ADMITTED the aforequoted Amended Information attached thereto.

However, after evaluation of the Information, as well as, the supporting documents/evidence filed by the State Prosecutor, the Court *a quo* dismissed CTA Crim. Case No. O-0148 on the ground that accused David Te Tan has already availed of the benefits under Republic Act (RA) No. 9480, also known as "The Tax Amnesty Act of 2007", granting him immunity, not only from civil and administrative penalties, but also from criminal liabilities under the National Internal Revenue Code (NIRC) of 1997, as amended, for the year 2005 and prior years. Correspondingly, the Court in Division found lack of probable cause to proceed with the said criminal case.

Subsequently, an "Entry of Appearance with Leave to Admit Attached Motion for Reconsideration of the assailed Resolution"[7] was filed by Atty. Mario A. Saldevar and Atty. Ramon B. Lorenzo as special counsel for herein petitioner before the Court in Division on November 27, 2009.

In the Resolution dated December 14, 2009,[8] the Entry of Appearance by Atty. Lorenzo was NOTED while the said Motion for Reconsideration was denied for having been filed beyond the 15-day reglementary period, pursuant

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[7] CTA Criminal Case No. 0-148; Records, pp. 42-53.
[8] Ibid, at pp.64-66.

to Section 1 of Rule 15 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA).

On January 12, 2010, petitioner filed another Motion for Reconsideration[9] which was also denied in the Resolution dated March 09, 2010 for lack of merit. The Court in Division found the motion to be a second motion for reconsideration which is prohibited to be filed under Section 7 Rule 15 of the Revised Rules of the Court of Tax Appeals. Furthermore, the Court in Division found that the same was filed seventeen (17) days beyond the reglementary period.

Thus, this recourse before the Court *En Banc* praying that the assailed Resolutions dated October 21, 2009, December 14, 2009, and March 9, 2010 of the Court in Division, be set aside, and that a decision be rendered finding probable cause to warrant the prosecution of respondent David Te Tan for violation of Section 255 of the NIRC of 1997, as amended.

On April 20, 2010[10], the Court *En Banc* directed respondent to file his comment to the instant Petition for Review. After several extension periods granted in the Resolutions dated May 20, 2010, June 2, 2010, and June 24, 2010[11], respondent finally filed his required Comment on June 17, 2010[12]. Subsequently, this case was considered submitted for decision on August 16, 2010,[13] after petitioner filed its Memorandum on July 29, 2010[14] and respondent filed his Memorandum on August 2, 2010[15].

[9] Id., at pp. 67-71.
[10] Resolution dated April 20, 2010; Docket, pp. 26-70.
[11] Ibid, pp. 32-33, 39-40, 57-60, respectively.
[12] Id., at pp. 44-55.
[13] Resolution dated August 16, 2010; Docket, pp. 83-84.
[14] Petitioner's Memorandum; Docket, pp. 61-68.
[15] Memorandum (for Respondent); Docket, pp. 69-81.

Hence, this Decision.

THE ISSUES

Petitioner submits the following issues for this Court's consideration:

> "1. Whether or not respondent David Te Tan has violated Section 255 of the National Internal Revenue Code (NIRC) for failure to pay his 2002 internal revenue tax liabilities.
>
> 2. Whether or not delinquent accounts are covered by the Tax Amnesty law of 2007 (RA No. 9480).
>
> 3. Whether or not Petitioner's Motion for Reconsideration on the Resolution of the Honorable Court of Tax Appeals-First Division promulgated on December 14, 2009 may be treated a second motion which is prohibited under the Rules of the Court of Tax Appeals".

Relative thereto, petitioner raises a lone **Assignment of Error**, to wit:

> "The Honorable Court of Tax Appeals – First Division erred in rendering the Resolution promulgated on October 21, 2009 dismissing the case, the Court finds lacking the existence of probable cause to go with the case in view of the tax amnesty availment by the respondent under RA 9480."

Petitioner's Arguments:

It is petitioner's contention that respondent cannot validly avail of the benefits of RA No. 9480 considering that the instant case involves collection of delinquent accounts/accounts receivables considered assets of the BIR/Government, which is allegedly excluded from the coverage of said law. This position is premised on the exceptions provided for under "A Basic Guide on the Tax Amnesty Act of 2007" issued by the Committee on Oversight, House of Representatives, and circularized in Revenue Memorandum Circular No. 19-2008. The aforesaid "basic guide" does not really supplant

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nor amend RA No. 9480, but rather, it truly reflects and merely clarifies the real intention of the framers of the tax amnesty law. Accordingly, in order to protect the interest of the Government, the Commissioner of Internal Revenue should allegedly be allowed to prosecute respondent in order to enforce the collection of P3,220,427.73 representing deficiency income tax and compromise penalties for taxable year 2002.

Respondent's Counter-arguments:

Respondent David Te Tan submits the following counter-arguments in his Comment dated June 16, 2010:

a. The factual findings of the Court in Division must be accorded deference in the absence of showing of gross error of abuse on its part;

b. The respondent is duly qualified to avail of the Tax Amnesty under Republic Act No. 9480, thus, he is entitled to immunities granted by said law. The Court of Tax Appeals is therefore correct in dismissing the criminal complaint filed against respondent for lack of probable cause; and

c. The petitioner has explicitly violated the Court of Tax Appeals rules against filing of second motion for reconsideration, which pleading is considered as prohibited therefore, should not be countenanced.

THE COURT EN BANC'S RULING

We find no merit in the petition.

The first issue as to whether or not respondent David Te Tan has violated Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, for failure to pay his 2002 internal revenue tax liabilities, will not be entertained by the Court *En Banc* considering that a resolution thereof would require a full blown trial, a procedure which aptly pertains to the Court in Division pursuant to Section 2 Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA).[16] Unlike the Court in Division, the Court *En Banc* is not a trier of facts because its jurisdiction is merely appellate.

Moreover, considering that no decision on the merits was rendered by the Court in Division in Criminal Case No. 0-148, but was dismissed on the basis of respondent-accused's availment of the benefits of the tax amnesty law under RA No. 9480, the first issue is not a proper issue to be raised before the Court *En Banc*. Evidently, no resolution on the first issue was rendered by the Court in Division which may be the proper subject of appellate review by the Court *En Banc*.

As regards the second issue as to whether or not delinquent accounts are covered by the Tax Amnesty law of 2007 (RA No. 9480),[17] We take a careful and thorough consideration of the pertinent provisions of RA No. 9480, to wit::

> "**Section 1**. ***Coverage***. There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005: Provided, however, That the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.
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> xxx xxx xxx
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> **Sec. 6. *Immunities and Privileges***. Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:

[16] Rule 9, Procedure in Criminal Cases, Sec. 2. *Institution of Criminal Cases.* – All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. xxx.
[17] An Act Enhancing the Revenue Administration and Collection By Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years.

1. ***The taxpayer shall be immune from the payment of taxes, as well as addition thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.***

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Sec. 8. *Exceptions.* The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

1. Withholding agents with respect to their withholding tax liabilities;

2. Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

3. Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

4. Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

5. Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

6. Tax cases subject of final and executory judgment by the courts." *(Emphasis Ours)*

Records show that respondent-accused availed of the tax amnesty under RA No. 9480 on December 20, 2007 while the case was still pending investigation by the Department of Justice. Petitioner neither questioned nor rebutted the fact that respondent-accused had fully complied with the requirements under RA No. 9480.

However, it is petitioner's submission in the instant petition that respondent-accused cannot avail of the benefits under RA No. 9480 considering that the instant case involves the collection of delinquent accounts/accounts receivables which are considered as assets of the BIR/Government already. Petitioner anchors his claim on Revenue Memorandum Circular No. 19-2008 (RMC 19-2008), which provides:

"**Who may avail of the amnesty?**

The following taxpayers may avail of the Tax Amnesty Program:

- ✓ Individuals
- ✓ Estates and Trusts
- ✓ Corporations
- ✓ Cooperatives and tax-exempt entities that have become taxable as of December 31, 2005
- ✓ Other juridical entities including partnerships.

➢ Fiscal year taxpayers may likewise avail of the tax amnesty using their Financial Statement ending in any month of 2005.

EXCEPT:

☒ Withholding agents with respect to their withholding tax liabilities

☒ Those with pending cases:

- ☒ Under the jurisdiction of the PCGG
- ☒ Involving violations of the Anti-Graft and Corrupt Practices Act
- ☒ Involving violations of the Anti-Money Laundering Law
- ☒ For tax evasion and other criminal offenses under the NIRC and/or the RPC
- ☒ Issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer. (e.g. Taxpayers who have failed to observe or follow BOI and/or PEZA rules

on entitlement to Income Tax Holiday Incentives and other incentives)

- ☒ Cases involving issues ruled with finality by the Supreme Court prior to the effectivity of RA 9480 (e.g. DST on Special Savings Account)
- ☒ Taxes passed on and collected from customers for remittance to the BIR
- ☒ ***Delinquent Accounts/ Accounts Receivable considered as assets of the BIR/Government, including self-assessed tax.***" *(Emphasis Ours)*

Under the exclusions from the coverage of RA No. 9480 enumerated in Section 8 thereof, final and executory assessments of the BIR are not mentioned therein. Therefore, petitioner's reliance on the BIR's inclusion of "delinquent accounts/accounts receivable considered as assets of the BIR/Government, including self-assessed tax" as one of the exceptions from the coverage of the tax amnesty law, is misplaced.

As aptly ruled by the Court in Division:

> "The supposed 'basic Guide on the Tax Amnesty Act of 2007' cannot supplant or amend the Tax Amnesty Law. To hold that assessments which have attained finality cannot be covered by the amnesty is contrary to the clear provisions of the Tax Amnesty Law. It is an elementary rule in statutory construction that administrative issuances cannot expand or limit the letter and the spirit of the law they seek to enforce. And in case of conflict between the basic law and the rule or regulation issued to implement said law, the law prevails."

It bears stressing that the tax amnesty partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.[18]

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[18] *Commissioner of Internal Revenue vs. Marubeni Corporation*, 423 Phil. 862,874.

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In the case of ***Philippine Banking Corporation vs. Commissioner of Internal Revenue***[19], the Supreme Court ruled that the law (RA No. 9480) mandates that the taxpayer shall thereafter be immune from payment of taxes, and additions thereto, as well as the appurtenant civil, **criminal** or administrative penalties under the NIRC of 1997, as amended, arising from failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

Applying the foregoing jurisprudence in the case at bench, by virtue of the availment of herein respondent-accused of the Tax Amnesty Program under RA No. 9480, he now enjoys immunity from criminal prosecution arising from the tax assessment against him for taxable year 2002. Consequently, he is entitled to the cancellation of the assessments against him which are the subject of Criminal Case No. 0-148.

The third issue pertains to whether or not petitioner's Motion for Reconsideration on the Resolution of the Honorable Court of Tax Appeals-First Division promulgated on December 14, 2009 may be treated as a second motion which is prohibited under the Rules of the Court of Tax Appeals.

Notably, the instant Petition for Review and Memorandum filed by petitioner are bereft of any supporting discussions on the third issue, except for the mention thereof as part of the issues presented in the instant case. Nevertheless, in the interest of making a complete determination of all the issues raised in this case, We shall resolve it with special focus on any

[19] G.R. No. 170574, January 30, 2009.

procedural flaw or flaws possibly committed by herein petitioner that merited the denial of its motions.

The third issue is resolved in the affirmative, taking into consideration the antecedent events that transpired in Criminal Case No. 0-148, to wit:

1) The Court in Division dismissed Criminal Case No. 0-148 in the Resolution dated October 21, 2009[20] against accused David Te Tan for lack of probable cause to proceed with the said criminal case in view of the latter's availment of tax amnesty under Republic Act No. 9480;

2) An "Entry of Appearance with Leave to Admit Attached Motion for Reconsideration" was filed by Atty. Mario A. Saldevar and Atty. Ramon B. Lorenzo on November 27, 2009 entering their appearances as special counsel for the Commissioner of Internal Revenue (to be referred to as the First Motion) and assailing the foregoing dismissal Resolution of October 21, 2009;

3) The Court in Division rendered the Resolution dated December 14, 2009[21] denying herein petitioner's First Motion (Motion for Reconsideration dated November 27, 2009) for having been filed beyond the reglementary period;

4) Another "Motion for Reconsideration (Re: Resolution dated December 14, 2009)" (to be referred to as the Second Motion) was filed by special counsel on January 12, 2010 assailing the Resolution dated December 14, 2009; and

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[20] Docket, pp. 12-19.
[21] Ibid, at pp. 20-22.

5) The Court in Division rendered the Resolution dated March 9, 2010[22] denying herein petitioner's Second Motion for lack of merit as it found the same to be a second motion for reconsideration which is prohibited under Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals and for having been filed beyond the reglementary period allowed by law.

Evidently, petitioner filed two Motions for Reconsideration in Criminal Case No. 0-148: the first one on November 27, 2009 attached to petitioner's "Entry of Appearance with Leave to Admit Attached Motion for Reconsideration"; and the second one on January 7, 2010. The subject of the third issue is the Motion for Reconsideration filed on January 7, 2010.

Under Section 7, Rule 15 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), a second motion for reconsideration is a prohibited pleading to be filed with this Court. Said provision reads:

Section 7, Rule 15 of the 2005 RRCTA

> "**SEC. 7. *No second motion for reconsideration or for new trial.*** – No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order."

Aside from the foregoing proscription, timeliness in the filing of a motion for reconsideration or for new trial is likewise mandated under Section 1, Rule 15 of the same Rules, to wit:

> "**SEC. 1. *Who may and when to file motion*.** – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial **within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question**. *(Emphasis and underscoring supplied."*

[22] Id., at pp. 23-24.

Petitioner's Motion for Reconsideration filed on January 7, 2010 violated both Sections 1 and 7 of Rule 15 of the RRCTA. In this regard, We quote with approval the Court in Division's pronouncement in the Resolution dated March 9, 2010 denying petitioner's second Motion for Reconsideration filed on January 7, 2010, to wit:

> "At the outset, we note that the instant motion for reconsideration is in reality a second motion for reconsideration of the October 21, 2009 Resolution wherein this Court dismissed the case against herein Accused. Such second motion for reconsideration is prohibited under Section 7 Rule 15 of the Revised Rules of the Court of Tax Appeals.
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> Moreover, assuming *arguendo* that the filing of this second motion for reconsideration is justified, the same is still dismissible for having been filed beyond the reglementary period.
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> An aggrieved party may seek a reconsideration of any decision, resolution or order of the Court by filing a motion for reconsideration within fifteen (15) days from the date of receipt of notice of decision, resolution or order of the Court (Section 1 Rule 15 of the Revised Rules of the Court of Tax Appeals). Considering that plaintiff filed this instant motion only on January 17, 2010 or exactly seventeen (17) days from receipt of the assailed Resolution or on December 21, 2009, as found in the records of the case, the same was filed beyond the period allowed."[23]

For having been filed late, petitioner's two Motions for Reconsideration did not suspend the running of the period within which an appeal from a decision, resolution or order of the CTA may be perfected. Thus, the first assailed Resolution dated October 21, 2009, became final and unappealable before the Court *En Banc*. Consequently, the filing of the second Motion for Reconsideration became an exercise in futility, not only because it is prohibited but also, because it was filed out of time.

[23] Supra, see note 5.

In view thereof, this Court finds that no reversible error was committed by the Court in Division when it rendered the assailed Resolutions dated October 21, 2009, December 14, 2009, and March 9, 2010.

WHEREFORE, in view of the foregoing considerations, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Resolutions dated October 21, 2009, December 14, 2009, and March 9, 2010 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice