REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

HELICON TECHNOLOGY CORPORATION Represented by its Chief Financial Officer PAMELA A. SAÑO,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10694

Members:

RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review (With Prayer to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes)* prays that: (1) before the trial on the merits and after due notice and hearing, an order be issued lifting the *Warrant of Distraint and/or Levy* ("WDL") dated October 28, 2021, and suspending the collection of taxes; and (2) after trial on the merits, a decision be issued cancelling, withdrawing and/or declaring the *Final Decision on Disputed Assessment* ("FDDA") dated July 17, 2020, representing alleged income tax, value added tax ("VAT") and documentary stamp tax ("DST") deficiencies for the calendar year ending in December 31, 2012, in the total amount of Php36,132,786.56 against petitioner, the compromise penalty in the amount of Php4,000.00, and the WDL dated October 28, 2021, null and void.[1]

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[1] Prayer, *Petition for Review (With Prayer to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes)*, Docket – Vol. I, p. 27.

The Facts

Petitioner Helicon Technology Corporation is a domestic corporation registered with the Securities and Exchange Commission ("SEC") with Company Registration No. CS200619718.[2]

Respondent is the duly appointed Commissioner of Internal Revenue, vested under the laws with the authority to carry out functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code ("NIRC") and other laws, rules and regulations. He holds office at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.[3]

On November 22, 2013, petitioner received the *Letter of Authority* (LOA-047-2013-00000576) dated November 21, 2013 with No. SN eLA201100054887,[4] signed by Regional Director ("RD") Nestor S. Valeroso, with *Checklist of Documentary Requirements*,[5] wherein Revenue Officer Abdul Bashit Busran and Group Supervisor Faisal Mamacotao, were authorized to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year 2012.

Thereafter, on October 6, 2015, petitioner, through Mr. Nick Gitsis, executed a *Waiver of Defense of Prescription under the Statute of Limitations of the NIRC*,[6] which was received by respondent on September 6, 2015.

On May 16, 2016, petitioner received the *Preliminary Assessment Notice* ("PAN") (Part I),[7] with *Details of Discrepancies*,[8] both dated May 13, 2016 issued by BIR Assistant RD Teresita M. Dizon, informing petitioner that after investigation, there has been found due from petitioner deficiency income tax, VAT and DST, for taxable year 2012, [9] in the aggregate amount of Php32,526,631.22 inclusive of surcharges and interests.

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2 Exhibit "P-1", Docket – Vol. I, p. 30.
3 Par. 2, The Parties, *Petition for Review (With Prayer to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes)*, Docket – Vol. I, p. 9.
4 Exhibit "P-3", Docket – Vol. I, p. 33.
5 Exhibit "P-3-1", Docket – Vol. I, p. 34.
6 Exhibit "P-6", Docket – Vol. I, p. 37.
7 Exhibit "P-7", Docket – Vol. I, pp. 38 to 39.
8 Exhibits "P-8" and "P-8-1", Docket – Vol. I, pp. 40 to 41.
9 Par. 7, *Petition for Review (With Prayer to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes)*, vis-à-vis par. 6, *Respondent's Answer*, Docket – Vol. I, pp. 10 and 296, respectively.

On even date, petitioner received the PAN (Part II),[10] also dated May 13, 2016 and issued by Assistant RD Dizon, informing petitioner that after investigation of the latter's internal revenue tax liabilities for the same taxable year, it allegedly failed to pay DST on time or times as required by existing revenue laws, rules and regulations in relation to Section 255 of the NIRC, as amended by Republic Act ("RA") No. 8424, thus, imposing a compromise penalty.[11]

Subsequently, on May 31, 2016, petitioner filed the reply protest letter dated May 27, 2016 with annexes, addressed to BIR Assistant RD Dizon, disputing all the assessments on the deficiency taxes consisting of income tax, VAT, and DST, for taxable year 2012.[12]

On June 3, 2016, petitioner received the *Formal Assessment Notice* ("FAN") (Part I)[13] and *Details of Discrepancies*,[14] both of even date, issued by BIR RD Jonas DP. Amora, informing petitioner that after investigation, there has been found due from the latter alleged deficiencies in income tax, VAT and DST, for taxable year 2012.[15]

Also on the same date, petitioner received the FAN (Part II) of even date[16] issued by RD Amora, informing petitioner that after investigation of the latter's internal revenue tax liabilities for the same taxable year, it allegedly failed to pay DST on time or times as required by existing revenue laws, rules and regulations in relation to Section 255 of the NIRC, as amended by RA No. 8424, thus, imposing a compromise penalty.[17]

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[10] Exhibit "P-9", Docket – Vol. I, p. 42.

[11] Par. 8, *Petition for Review (With Prayer to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes)*, vis-à-vis par. 6, *Respondent's Answer*, Docket – Vol. I, pp. 10 and 296, respectively.

[12] Par. 9, *Petition for Review (With Prayer to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes)*, vis-à-vis par. 6, *Respondent's Answer*, Docket – Vol. I, pp. 10 and 296, respectively. Refer also to Exhibits "P-10" to "P-10-8", Docket – Vol. I, pp. 43 to 51.

[13] Exhibit "P-11", Docket – Vol. I, pp. 52 to 53.

[14] Exhibits "P-12" to "P-12-2", Docket – Vol. I, pp. 54 to 56.

[15] Par. 10, *Petition for Review (With Prayer to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes)*, vis-à-vis par. 6, *Respondent's Answer*, Docket – Vol. I, pp. 10 and 296, respectively.

[16] Exhibit "P-13", Docket – Vol. I, p. 57.

[17] Par. 11, *Petition for Review (With Prayer to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes)*, vis-à-vis par. 6, *Respondent's Answer*, Docket – Vol. I, pp. 10 and 296, respectively.

On June 9, 2016, petitioner filed its *Request for Reinvestigation* on FAN (Part 1) and FAN (Part II) dated June 3, 2016 with RD Amora.[18]

Subsequently, on August 17, 2016, petitioner received the letter dated August 4, 2016 from the BIR, requiring the former to submit relevant supporting documents to support its claim within sixty (60) days from the date of filing of protest pursuant to Revenue Regulation ("RR") No. 18-2013.[19]

On August 31, 2016, petitioner filed another letter dated August 30, 2016, reiterating its *Request for Reinvestigation – Formal Assessment Notice ("FAN") dated June 3, 2016*,[20] with the supporting documents.

Thereafter, on September 2, 2020, petitioner received the FDDA dated July 17, 2020, issued by BIR RD Maridur V. Rosario, partially granting the request for reinvestigation by dropping of, and adjusting, the assessment on the underclared income from unaccounted salaries and wages, and the corresponding VAT, and requiring payment of the assessments in the amounts of Php24,731,715.66, Php11,358,456.36, Php38,614.54, and Php4,000.00, representing alleged income tax, VAT, DST and compromise penalty, respectively for 2012.[21]

On October 1, 2020, petitioner filed the appeal letter dated September 25, 2020 before the Office of the respondent, disputing anew the assessment made in the FDDA.[22]

Petitioner then received on October 28, 2021, the WDL with No. RR8A-WDL-2021-10-395 of even date.[23]

On December 3, 2021, petitioner filed the present *Petition for Review (With Prayer to Lift Warrant of Distraint and/ or Levy and to Suspend Collection of Taxes)*.[24]

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18 Par. 12, *Petition for Review (With Prayer to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes)*, vis-à-vis par. 6, *Respondent's Answer*, Docket – Vol. I, pp. 11 and 296, respectively. Refer also to Exhibits "P-14" to "P-14-8", Docket – Vol. I, pp. 58 to 66.

19 Exhibit "P-15", Docket – Vol. I, p. 199.

20 Exhibits "P-16" to "P-16-8", Docket – Vol. I, pp. 68 to 76.

21 Par. 15, *Petition for Review (With Prayer to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes)*, vis-à-vis par. 8, *Respondent's Answer*, Docket – Vol. I, pp. 11 and 296, respectively. Refer also to Exhibit "P-17", Docket – Vol. I, pp. 77 to 79.

22 Par. 16, *Petition for Review (With Prayer to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes)*, vis-à-vis par. 8, *Respondent's Answer*, Docket – Vol. I, pp. 11 and 296, respectively. Refer also to Exhibits "P-18" to "P-18-4", Docket – Vol. I, pp. 80 to 84.

23 Exhibit "P-19", Docket – Vol. I, p. 85.

24 Docket – Vol. I, pp. 8 to 29.

At the hearing held for the petitioner's *Motion to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes* on March 2, 2022,[25] petitioner presented the testimony of Pamela A. Saño,[26] its Chief Financial Officer. During the said hearing, the Court resolved to grant the said *Motion to Lift* subject to the posting with this Court of an acceptable surety bond via the Order dated March 2, 2022.[27]

Respondent, on the other hand, posted its *Motion to Admit Respondent's Comment/Opposition (To Petitioner's Motion to Lift Warrant of Distraint and/or Levy (WDL) and to Suspend Collection of Taxes)* on March 4, 2022.[28]

On March 9, 2022, respondent filed his *Motion to Admit Herein Attached Respondent's Answer*,[29] with the attached *Respondent's Answer*,[30] interposing the following special and affirmative defenses, to wit: (1) the Court lacks jurisdiction over the subject petition for review for being prematurely filed; (2) in the alternative, the Court lacks jurisdiction over the subject petition for review for being filed out of time; (3) there was no need to issue notice of informal conference to the petitioner; (4) petitioner was not able to substantiate its claims against the findings in the FAN; (5) anent the income tax, only the unaccounted income from the unaccounted salaries and wages were adjusted; (6) only the undeclared income from unaccounted salaries and wages in the amount of Php6,189,257.56 was dropped from the computation; (7) petitioner was assessed on DST based on advances from stockholders; (8) anent the imposition of the compromise penalty of Php4,000.00, respondent is willing to settle the violation under Section 255 of the NIRC, subject to the payment thereof; (9) petitioner was charged with penalty of fifty percent (50%) surcharge for filing false return; and (10) since the assessment was validly made, petitioner is liable to pay its deficiency VAT for taxable year 2012.

On March 28, 2022, petitioner filed an *Opposition to Respondent's Motion to Admit Answer with Motion to Declare Respondent in Default*,[31] and a *Reply Ex Abundanti Ad Cautelam (To the Respondent's Answer dated March 4, 2022)* was filed by petitioner on March 30, 2022.[32]

Subsequently, on April 13, 2022, the *BIR Records* for this case were transmitted to this Court, consisting of 140 pages in one (1) folder.[33]

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25 Minutes of the hearing held on, March 2, 2022, Docket – Vol. I, p. 285.
26 *Judicial Affidavit* dated November 26, 2021, Docket – Vol. I, pp. 146 to 162.
27 Docket – Vol. I, pp. 405 to 406.
28 Docket – Vol. I, pp. 356 to 360.
29 Docket – Vol. I, pp. 289 to 292.
30 Docket – Vol. I, pp. 295 to 310.
31 Docket – Vol. I, pp. 367 to 370.
32 Docket – Vol. I, pp. 372 to 381.
33 Docket – Vol. I, pp. 403 to 404.

Respondent's Comment was posted on April 14, 2022.[34]

In the Resolution dated June 16, 2022,[35] the Court, *inter alia*: (1) canceled the Order dated March 2, 2022 which granted petitioner's *Prayer to Lift WDL and Suspend Collection of Taxes*, in view of petitioner's manifestation that it would not be able to post a surety bond; (2) denied respondent's *Motion to Admit Herein Attached Respondent's Answer*, for lack of merit; and (3) granted petitioner's *Motion to Declare Respondent in Default*, and thus, respondent was declared in default pursuant to Section 3, Rule 9 of the Revised Rules of Court as amended, thereby allowing petitioner to present evidence *ex parte*.

On July 7, 2022, respondent posted its *Motion for Reconsideration (on Honorable Court's Resolution dated 16 June 2022)*,[36] while petitioner filed its *Comment and Opposition to Respondent's Motion for Reconsideration (on Honorable Court's Resolution dated 16 June 2022)* on July 28, 2022.[37]

Petitioner, on August 11, 2022, also filed its *Motion for Partial Reconsideration (on Honorable Court's RESOLUTION dated June 16, 2022)*,[38] to which respondent posted its *Comment/Opposition (On Petitioner's Motion for Partial Reconsideration)* on September 27, 2022.[39]

Thereafter, the Court, in its Resolution dated December 13, 2022,[40] denied the parties respective *Motions*, for lack of merit.

Consequently, on February 10, 2023, respondent posted a *Petition for Review With Omnibus Motion To: (1) Lift Order of Default and (2) Defer Proceedings in CTA Case 10694 in the Third Division* before this Court's *En Banc*. The case was docketed as EB Case No. 2727.[41]

On February 15, 2023, respondent filed a *Manifestation and Motion*,[42] praying that this Court take note of the said *Petition for Review with Omnibus Motion To: (1) Lift Order of Default and (2) Defer Proceedings in CTA Case 10694 in the Third Division*, and hold in abeyance the proceedings of this case. The same was granted

[34] Docket – Vol. I, pp. 407 to 413.
[35] Docket – Vol. I, pp. 417 to 428.
[36] Docket – Vol. I, pp. 431 to 438.
[37] Docket – Vol. I, pp. 445 to 448.
[38] Docket – Vol. I, pp. 454 to 457.
[39] Docket – Vol. 2, pp. 510 to 512.
[40] Docket – Vol. 2, pp. 540 to 549.
[41] Docket – Vol. 2, pp. 674 to 688.
[42] Docket – Vol. 2, pp. 564 to 566.

by the Court and the proceedings for this case was held in abeyance until further orders.[43]

In this Court's *En Banc* Resolution dated March 17, 2023, in CTA EB No. 2727,[44] the *Petition for Review with Omnibus Motion To: (1) Lift Order of Default and (2) Defer Proceedings in CTA Case 10694 in the Third Division* filed by respondent was dismissed for being the wrong remedy to set aside the Order of Default rendered by this Division on June 16, 2022, and for lack of merit.

Subsequently, this Court's *En Banc* issued the Entry of Judgment on April 19, 2023 for CTA EB No. 2727.[45]

The *ex-parte* presentation of petitioner's witness ensued. Petitioner presented its lone witness Ms. Pamela A. Saño on February 13, 2024.[46]

Petitioner filed its *Formal Offer of Evidence* on March 4, 2024.[47] In the Resolution dated August 20, 2024,[48] the Court admitted all the evidence submitted by the petitioner.

Thereafter, petitioner filed its *Memorandum* on October 28, 2024.[49]

This case was considered submitted for decision on January 7, 2025.

<u>The Issues</u>

The following are issues were raised by petitioner for this Court's resolution, *viz*:

> "1. Whether or not the Honorable Court has jurisdiction over the PETITION FOR REVIEW?
>
> 2. Whether or not the FINAL DECISION ON DISPUTED ASSESSMENT dated July 17, 2020 representing alleged Income Tax, Value Added Tax and Documentary Stamp

[43] Resolution dated March 8, 2023, Docket – Vol. 2, pp. 796 to 797.
[44] Docket – Vol. 2, pp. 800 to 803.
[45] Docket – Vol. 2, p. 805.
[46] Minutes of the hearing held on, and Order dated, February 13, 2024, Docket – Vol. 2, pp. 821 to 822.
[47] Docket – Vol. 2, pp. 823 to 830.
[48] Docket – Vol. 2, pp. 833 to 834.
[49] Docket – Vol. 2, pp. 836 to 861.

Tax deficiencies for the calendar year ending December 31, 2012 in the total amount of P36,132,786.56 against petitioner, and the Compromise Penalty in the amount of P4,000.00, is NULL and VOID?

3. Whether or not the WARRANT OF DISTRAINT AND/OR LEVY dated October 28, 2021 is NULL and VOID?"[50]

Petitioner's arguments:

Petitioner argues that the Court has jurisdiction over the petition for review; that the FDDA dated July 17, 2020 and the compromise penalty is null and void, considering that: (a) the petitioner was not afforded due process in view of the non-issuance of *Notice of Informal Conference*, (b) the petitioner was able to substantiate its claims against the findings in the FAN, (c) there is neither undeclared income nor undeclared sales not subjected to VAT, (d) petitioner is not liable to DST, (e) petitioner is not liable to 50% surcharge, and (f) the compromise penalty should not have been imposed; and that the WDL dated October 28, 2021 is null and void.

Discussion/Ruling

The *Petition for Review* is dismissed.

Sections 7(a)(1) and (2), and 11 of RA No. 1125,[51] as amended by RA No. 9282,[52] confers jurisdiction to this Court relative to decisions and inactions of respondent involving disputed assessments, or other matters arising under the NIRC, and states the manner of appealing the same in this wise:

"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**

[50] Par. IV, petitioner's *Memorandum*, Docket – Vol. 2, p. 848.
[51] An Act Creating the Court of Tax Appeals.
[52] An Act Expanding the Jurisdiction of The Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for The Purpose Certain Sections or Republic Act No. 1125, As Amended, Otherwise Known as The Law Creating the Court of Tax Appeals, And for Other Purposes.

> **Code** or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by 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,** where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphases added)*
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> "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...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.**
>
> xxx xxx xxx." *(Emphasis added)*

Based on the foregoing provisions, the appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent 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 BIR.[53] In addition, any party adversely affected by the said decisions or ruling may file an appeal to this Court within thirty (30) days from receipt thereof, under the above quoted Section 11 of RA No. 1125, as amended.

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,*[54] the Supreme Court held as follows, to wit:

> "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. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the <u>warrant of distraint and levy</u> issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected." *(Emphasis and underscoring added)*

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[53] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.,* G.R. No. 169225, November 17, 2010.

[54] G.R. 162852, December 16, 2004.

Moreover, in *Commissioner of Internal Revenue vs. South Entertainment Gallery, Inc.,*[55] the Supreme Court said:

> "**At any rate, in instances when the Commissioner, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds to distrain and levy** or institutes an action for collection in the ordinary courts, **this Court has considered this is an implied denial. The taxpayer's remedy then was to appeal to the Court of Tax Appeals within 30 days from the date that it was notified of the warrant** or collection suit." *(Emphases added)*

Correspondingly, on the basis of law and jurisprudence, petitioner has thirty (30) days from notice of the WDL within which to validly lodge its appeal to this Court.

In this case, it is established that petitioner received the subject WDL (with No. RR8A-WDL-2021-10-395) on October 28, 2021.[56] Thus, counting thirty (30) days therefrom, petitioner has **until November 29, 2021**[57] to file its petition for review before this Court.

Records, however, show that the present *Petition for Review* was filed only **on December 3, 2021**.[58] Petitioner then made the following averments, to wit:

> "8. On November 29, 2021, the counsel for petitioner went to the Court of Tax Appeals on even date at around 1:15 in the afternoon to file the petition and to pay the docket fees with the Judicial Records Division. However, some of the original and/or certified true copies of the documents were not attached to the petition. Hence, the petition was returned to counsel. Accordingly, the latter obtained the required documents from petitioner and attached the same to the petition while inside the court's compound. When the petition was re-submitted around 4:00 o' clock on the same day of November 29, 2021 for filing and payment of docket fees, counsel was informed that the cashier section was already closed and that he can file the petition through a private courier. Thus, the petition was returned to him for the second time. Copies of the log-in and log-out details of counsel on

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[55] G.R. No. 225809, March 17, 2021.
[56] Exhibit "P-19", Docket – Vol. I, p. 85.
[57] The 30th day, November 27, 2021 falls on a Saturday. The next working day is November 29, 2021.
[58] Docket – Vol. I, pp. 8 to 29.

November 29, 2021, as appearing in the log books were attached as Annex 'B' to 'B-1' of the petitioner's *REPLY EX ABUDANTI AD CAUTELAM* filed on March 20, 2022.

9. The petitioner, through counsel, was ready and willing to pay the appellate docket fees on November 29, 2021. In fact, the two (2) checks for payment are dated on that day. However, following the advice of the Judicial Records Division, counsel proceeded to file the petition for review through LBC Express at 5:48 in the afternoon on the same day. The appellate docket fees were paid on December 3, 2021 when the Judicial Records Division received the petition for review and duly notified the counsel. A copy of the LBC Express official receipt was attached as Annex 'C' of the petitioner's REPLY EX ABUNDANTI AD CAUTELAM filed on March 20, 2022.

xxx xxx xxx

12. From the foregoing, petitioner has demonstrated that is ready and willing to pay the docket fees on November 29, 2021. However, because of the advice that the cashier section was already closed at the time it submitted the petition for review for the second time around 4:00 o' clock in the afternoon, petitioner was constrained to file the petition through LBC Express. It is clear that the delay in the payment of appellate docket fees is not entirely attributable to the fault or negligence of petitioner.

13. The petitioner likewise demonstrated good faith by immediately paying within a reasonable time the docket fees on December 3, 2021, which is mere three (3) days after the filing of the petition on November 29, 2022, November 30, 2021, being a regular holiday. xxx."[59]

This Court is not convinced.

The foregoing averments of petitioner were not substantiated. Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.*, mere allegations are not evidence.[60] Thus, such averments can not to be given any weight.

But even granting that the said averments were supported by evidence, We doubt the credibility regarding the allegations that the cashier section of this

[59] Pars. 8, 9, 12, and 13, petitioner's *Memorandum*, Docket – Vol. 2, p. 850 and 853, respectively.
[60] *Castillo vs. Republic of the Philippines, et al.*, G.R. No. 214064, February 6, 2017.

Court was already closed at 4:00 p.m. on November 29, 2021, and that someone in the Judicial Records Division ("JRD") of this Court advised petitioner's counsel to instead file the petition for review through the courier LBC Express.

This is so because even during the COVID-19 Pandemic, the Cash Division of this Court closes only at 4:30 p.m. In fact, records of this Court show that there are still three (3) personnel in the Cash Division until 5:07 p.m. on November 29, 2021, and that they processed/accepted the payment of court/docket fees in another case until 4:31 p.m. Moreover, as regards the supposed advice from the JRD, no officer or employee therein is authorized to give advices to litigants or filers regarding the filing of any pleading or motion. Thus, even when it is true that the said advice was given, the same is not binding on this Court.

Furthermore, We can not accept petitioner's assertion that the present *Petition for Review* was actually filed on November 29, 2021, and as such, the payment of the corresponding court/docket fees on December 3, 2021 may be justified, invoking the case of *KLT Fruits, Inc., et al. vs. WSR Fruits, Inc., et al.* ("*KLT Fruits* case"), [61] wherein the Supreme Court enumerated exceptional and meritorious circumstances and equitable considerations regarding the late payment of docket fees.

To be sure, records bear out that **the present *Petition for Review* was filed <u>on December 3, 2021</u>**.[62] As a corollary, there is nothing on the record which shows that the filing of the said *Petition for Review* was made on November 29, 2021.

Thus, the delay herein is the filing of the present *Petition for Review*; and not only on the payment of court/docket fees. Additionally, the fact that petitioner's checks were dated November 29, 2021 is of no moment or cannot be taken to mean that petitioner is ready and willing to pay the pertinent court/docket fees, simply because checks can be easily ante-dated. Thus, considering that the applicability of the exceptional and meritorious circumstances in allowing the late payment of court/docket fees is premised on the earlier filing of the pertinent initiatory pleading, We cannot readily apply the pronouncements made in the *KLT Fruits* case.

Since the right to appeal is not a constitutional right but a mere statutory privilege, anyone who seeks to invoke such privilege must comply with the applicable rules; otherwise, the right to appeal is forfeited.[63] **Perfection of an**

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[61] G.R. No. 174219, November 23, 2007.
[62] Docket – Vol. I, pp. 8 to 29.
[63] *Agravante vs. Commission on Elections, et al.*, G.R. No. 264029, August 8, 2023.

appeal in the manner and within the period permitted by law is mandatory and jurisdictional. The requirements for perfecting an appeal must, as a rule, be strictly followed.[64]

Correspondingly, the present *Petition for Review (With Prayer to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes)* was filed out of time on December 3, 2021. Hence, this Court cannot take cognizance thereof.

ACCORDINGLY, premises considered, the *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice
Chairperson

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64 *Mcburnie vs. Ganzon, et al.*, G.R. Nos. 178034 & 178117, and 186984-85, September 18, 2009.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice