REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2060** (CTA Case No.8751)
-versus-	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA** *and* **MODESTO-SAN PEDRO,** *JJ.*
THE COURT OF TAX APPEALS-SPECIAL THIRD DIVISION and KILUSANG MAGKAIBIGAN MULTI-PURPOSE COOPERATIVE, *Respondents.*	Promulgated: DEC 07 2020 2:39 p.m.

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DECISION

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* is the instant *Petition for Certiorari*[1] filed on May 9, 2009 seeking the reversal of the Resolutions of the Court dated August 22, 2018 and March 7, 2019 issued by the Special Third Division of this Court (Court in Division) in CTA Case No. 8751 entitled *Kilusang*

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[1] EB Docket,pp. 1-21.

Magkaibigan Multi-Purpose Cooperative vs. Commissioner of Internal Revenue.

We quote the dispositive portions of the Resolutions of the Court in Division dated August 22, 2018 and March 7, 2019:

Resolution dated August 22, 2018

"**WHEREFORE,** respondent's Petition for Relief from Judgment filed on May 11, 2018 is hereby **DENIED**, for lack of merit.

SO ORDERED."

Resolution dated March 7, 2019

"**WHEREFORE,** in view of the foregoing, respondent's Motion for Reconsideration (Re: Resolution promulgated on 22 August 2018) and petitioner's Motion for Partial Reconsideration (Of the Resolution dated August 22, 2018), are **DENIED** for lack of merit.

SO ORDERED."

PARTIES

The petitioner is the Commissioner of Internal Revenue (CIR), vested with the power to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto or other matters arising under the 1997 National Internal Revenue Code (NIRC), as amended, or other laws administered by the Bureau of Internal Revenue (BIR). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Public respondent Court of Tax Appeals (CTA) Special Third Division, being the Court which issued the assailed Resolutions may be served with legal processes at the Court of Tax Appeals Building, Agham Road, Diliman, Quezon City.

Private respondent Kilusang Magkaibigan Multi-Purpose Cooperative is a cooperative registered in accordance with Republic Act (R.A.) Nos. 6938 and 9520 with Certificate of Registration No. RN-7801-DVO dated March 22, 2004 and

Certificate of Registration No. 9520-11001570 dated November 3, 2009. It is primarily engaged in the vertical and horizontal construction as well as rental of equipment subject to government rules and regulations, and to engage in the buy and sell of hardware and construction materials, office supplies, equipment and basic commodities to members and non-members.[2]

FACTS

On December 20, 2013, private respondent filed a Petition for Review with the Court in Division docketed as CTA Case No. 8751 seeking the reversal of the decision of the CIR denying its protest to the Final Assessment Notices (FANs) for deficiency income tax, value-added tax (VAT) and withholding tax for taxable year 2006 in the aggregate amount of Php11,074,437.74.

Trial ensued with the Court primarily resolving petitioner's Application for Temporary Restraining Order and Writ of Preliminary Injunction and then resolving the case in favor of private respondent in a Decision dated November 17, 2016. The dispositive portion of the said Decision reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED.** Accordingly, the Preliminary Collection Letter dated November 20, 2013, and the Formal Letter of Demand and Final Assessment Notices dated November 21, 2011 are **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED."**

On December 6, 2016, the CIR filed a Motion for Reconsideration of the Decision dated November 17, 2016.

On April 19, 2017, the Court issued a Resolution denying the CIR's Motion for Reconsideration for lack of merit.

With no appeal having been filed by either party, the Court issued an Entry of Judgment on March12, 2018.

On May 11, 2018, the CIR filed a Petition for Relief from Judgment praying that the Entry of Judgment issued by the Court on March 12,2018 be recalled and that he be given an

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[2] Decision of the Court in Division dated November 17, 2016, pp. 1-2.

opportunity to appeal to the Court *En Banc* to challenge the decision of the Court in Division dated November 17, 2016.

On August 22, 2018, the Court in Division issued the *first* assailed Resolution denying the Petition for Relief from Judgment filed by the CIR.

On September 13, 2018, the CIR filed a Motion for Reconsideration (Re: Resolution promulgated on 22 August 2018).

On March 7, 2019, the Court issued the *second* assailed Resolution denying the CIR's Motion for Reconsideration (Re: Resolution promulgated on 22 August 2018) and upholding the Resolution of the Court in Division denying the CIR's Petition for Relief from Judgment.

Hence, this *Petition for Certiorari*[3] filed on May 9, 2019 by petitioner CIR docketed as CTA *EB* No. 2060.

On May 28, 2019, the Court issued a Resolution directing private respondent to file its Comment to the Petition for Certiorari.

On July 1, 2019, private respondent posted its *Comment (On the Petition for Certiorari)* where the issue of lack of jurisdiction of the Court *En Banc* was preliminarily raised. Private respondent avers that petitioner availed of the wrong remedy on the ground that the Court *En Banc* has no jurisdiction over a Petition for Certiorari arising from proceedings before a CTA Division and that the same should have been filed as an original action before the Supreme Court instead of the Court *En Banc*.

On September 23, 2019, the Court issued a Resolution directing the parties to submit their respective Memoranda within thirty (30) days from notice.

On October 23, 2019, petitioner CIR filed its Memorandum while private respondent posted its Memorandum on November 18, 2019.

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[3] EB Docket,pp. 1-21.

On December 19, 2019, the Court issued a Resolution submitting the above-captioned case for decision.

ISSUES

We quote petitioner's grounds for his Petition for Certiorari:

> "1. The respondent Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, in ruling that the fact upon which petitioner anchors his cause of action does not establish the existence of mistake or excusable negligence.
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> 2. Petitioner has a good and substantial cause of action.
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> 3. Respondent *(sic)* complied with the jurisdictional period to file the petition under Rule 38."

Petitioner's Arguments

Petitioner contends that the Court in Division acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that the excusable negligence of the former handling counsel does not warrant the grant of the Petition for Relief from Judgment. Petitioner goes on to describe the seemingly disordered environment within the Litigation Division of the BIR which caused the failure to file a timely appeal on the Court's Resolution denying his Motion for Reconsideration which was issued on April 19, 2019. Aside from the lack of an orderly system within the Litigation Division, petitioner ascribes the failure to timely file an appeal on the negligence of the former handling counsel and maintains that such should not bind him and his office as he did not have any participation in such neglectful act or omission. Petitioner classifies the acts of his former counsel as gross negligence equivalent to an abandonment of a client's cause which serves as an exception to the general rule that a client is bound by the acts or mistakes of counsel.

On the merits of the assessments issued against private respondent, petitioner asserts that the Formal Letter of Demand (FLD) and the FANs for taxable year 2006 have already attained finality due to the alleged failure of private respondent to file a protest within thirty (30) days from receipt thereof.

Petitioner also expressed his disagreement with the conclusion of the Court in Division when it ruled that the Petition for Relief from Judgment was filed out of time.

Petitioner narrates that it received a copy of the Court's Resolution dated March 9, 2018 on March 12, 2018 so he had sixty (60) days from this latter date or until May 11, 2018 within which to file the Petition for Relief from Judgment based on Section 3, Rule 38 of the Revised Rules of Court. Having filed the Petition for Relief from Judgment on May 11, 2018, petitioner confidently asserts that it was filed well within the reglementary period.

Private Respondent's Counter-Arguments

Private respondent invokes the lack of jurisdiction of the Court *En Banc* over the Petition for Certiorari and cites the ruling of the Supreme Court in the case of *CIR vs. Kepco Ilijan Corporation*,[4] where it was supposedly ruled that a certiorari petition arising from proceedings before a CTA Division is properly within the jurisdiction of the Supreme Court and not on the CTA *En Banc*. Private respondent belittles the reliance of petitioner on the case of *CIR vs. San Miguel Brewery, Inc.* wherein the ruling in the *CIR vs. Kepco Ilijan* case was allegedly abandoned. It asserts that a copy of the Supreme Court Resolution in the case of *CIR vs. San Miguel Brewery, Inc.*, could not be found and that any doctrine or principle of law laid down by the Supreme Court, whether sitting in Division or *En Banc*, may be modified or overturned only by the Supreme Court sitting *En Banc*. Private respondent claims that there is no showing that the purported decision of the Supreme Court in the *San Miguel* case was promulgated by the Supreme Court, sitting *En Banc*, therefore, the doctrine laid down in the *CIR vs. Kepco* case cannot be deemed to have been overturned. So, applying the principle enunciated in the *Kepco* case, private respondent argues that an action to nullify a decision of a Division cannot be lodged in the same tribunal but should be elevated to a higher tribunal which in this case is the Supreme Court on the ground that the Court *En Banc* is not a superior court of any of its Divisions.

Notwithstanding the argument against lack of jurisdiction of the Court *En Banc*, private respondent believes that petitioner failed to present any substantial arguments to

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[4]G.R. No. 199422, June 21, 2016. *cm*

prove that the Court in Division committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the Petition for Relief from Judgment. Private respondent defends the wisdom of the Court in Division when it ruled that the negligence of the former handling counsel was not at all excusable. Further, private respondent disagrees that the negligence of the former handling counsel was so gross as to cause abandonment of petitioner's case, hence, is still binding on the latter.

Private respondent also agrees with the Court in Division that the Petition for Relief from Judgment was filed out of time based on Section 3 of Rule 38 of the Revised Rules of Court which reckons the 60-day reglementary period from the time of knowledge of the judgment or final order sought to be set aside. Private respondent theorizes that the 60-day period should be counted from petitioner's counsel's receipt of the April 19, 2017 Resolution denying the latter's Motion for Reconsideration. Private respondent recalls that the Resolution dated April 19, 2017 was received by the Office of the Solicitor General (OSG) on May 2, 2017 and by the BIR Litigation Division on April 24, 2017. Petitioner argues that the 60-day reglementary period should be reckoned from the date the OSG received the notice on May 2, 2017 and which expired on July 1, 2017. Following this theory of private respondent, the Petition for Relief from Judgment was filed out of time because it was filed with the Court only on May 11, 2018. To seal its argument on the matter, private respondent posits that even if the 60-day period is reckoned from the receipt of the said Resolution by the BIR's Litigation Division on April 24, 2017, the Petition for Relief from Judgment filed on May 11, 2018, is still time barred.

RULING OF THE COURT

This Court should first determine whether or not the Court *En Banc* has the requisite jurisdiction to take cognizance of a Petition for Certiorari under Rule 65 of the Revised Rules of Court. It is important that a court or tribunal should first determine whether or not it has jurisdiction over the subject matter, considering that any act that it performs without jurisdiction shall be null and void and without any binding legal effects.[5]

Private respondent avers that the instant Petition for Certiorari is defective because such remedy should have been filed with the Supreme Court and not with the Court *En Banc* which is not considered a superior court of any of its Divisions authorized to nullify decisions of the latter.

We disagree with private respondent.

Section 6 of Rule 135 of the Revised Rules of Court is clear when it provides that when by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect, may be employed by such court or officer,[6] and this includes the issuance of writs of certiorari. The CTA *En Banc* exercises appellate jurisdiction over the decisions or resolutions on motions for reconsideration or new trial issued by the CTA Divisions and with it comes the authority or jurisdiction on petitions for certiorari relative to the decisions and resolutions issued by the latter. We quote Section 2 of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA):

Rule 4
Jurisdiction of the Court

> Section 2. *Cases within the jurisdiction of the Court En Banc.* - The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
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> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
>
> (1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
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> xxx xxx xxx

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[5] Bernadette S. Bilag, et al., vs. Estela Ay-Ay, et al., G.R. No. 189950 dated April 24, 2017.

[6] **"Rule 135**
Powers and Duties of Courts and Judicial Officers
Section 6. *Means to carry jurisdiction into effect.* – When by law jurisdiction is conferred on a court or other judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these Rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules."

In the case of *City of Manila vs. Hon. Grecia-Cuerdo, et.al.,*[7] the Supreme Court elucidated on this point in this manner:

> "A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it."

This was further elaborated on by the Supreme Court in the case of *Banco de Oro, Bank of Commerce, et al., vs. Republic of the Philippines, Commissioner of Internal Revenue, et.al.*[8], where it echoed the ruling in the *Grecia-Cuerdo* case, and emphasized that the CTA, by constitutional mandate, is vested with the jurisdiction to issue writs of certiorari.

Admittedly, legal opinions may vary on the matter but seen from a practical standpoint, the doctrine of hierarchy of courts may be applied to resolve a similar issue, particularly if it is used as an effective mechanism to filter the cases brought before the Supreme Court. This concept was further amplified in the case of *Gios-Samar, Inc, as represented by its chairperson, Gerardo M. Malinao vs. DOTC and Civil Aviation Authority of the Philippines,*[9] and we quote:

> "Strict adherence to the doctrine of hierarchy of courts is an effective mechanism to filter the cases which reach the Court. As of December 31, 2016, 6,526 new cases were filed to the Court. Together with the reinstated/reviewed/reopened cases, the Court has a total of 14,491 cases in its docket. Of the new cases, 300 are raffled to the *Court En Banc* and 6,226 to the three Divisions of the Court. The Court *En Banc* disposed of 105 cases by decision or signed resolutions, while

[7] G.R. No. 175723, February 4, 2014.
[8] G.R. No. 198756, August 16, 2016.
[9] G.R. No. 217158, March 12, 2019.

> the Divisions of the Court disposed of a total of 923 by decision or signed resolution.
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> These clearly are staggering numbers. The Constitution provides that the Court has original jurisdiction over five extraordinary writs and by our rule-making power, we created four more writs which can be filed directly before us. There is also the matter of appeals brought before us from the decisions of the lower courts. **Considering the immense backlog facing the Court, this begs the question: What is really the Court's work? What sort of cases deserve this Court's attention and time?** (emphasis supplied)

The last two questions posed by the Supreme Court in the afore-quoted case may serve to enlighten us in resolving the issue of jurisdiction over Petitions for Certiorari in favor of the CTA *En Banc*.

Timeliness of the Filing of the Petition for Certiorari

We now proceed to determine the timeliness of the filing of the Petition for Certiorari with the Court *En Banc* and we quote Rule 65 of the Revised Rules of Court as basis for our determination.

> **"Rule 65**
> **Certiorari, Prohibition and Mandamus**
>
> Section 1. *Petition for Certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
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> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.
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> Section 4. *When and where petition filed.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the

> sixty-day (60) day period shall be counted from notice of the denial of said motion.
>
> The petition shall be filed in the Supreme Court, or, if it relates to the acts or omissions of a lower court or of a corporation, board or officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable by the Court of Appeals.
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> No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days."

Based on the foregoing provisions, we find that petitioner complied with the procedural requirements for filing a Petition for Certiorari with this Court.

Records show that petitioner received the assailed Resolution dated March 7, 2019 on March 13, 2019.[10]

On May 9, 2019, petitioner filed the instant Petition for Certiorari assailing the validity of the Resolutions dated August 22, 2018 and March 7, 2019. Reckoned from his date of receipt of the Resolution on March 13, 2019, the Petition for Certiorari was filed within the 60-day period provided under the aforequoted Section 4 of Rule 65 of the Revised Rules of Court.

Timeliness of the filing of the Petition for Relief From Judgment

As regards the timeliness of the filing of the Petition for Relief from Judgment, petitioner maintains that he complied with the jurisdictional period pursuant to Section 3 of Rule 38 of the Revised Rules of Court.

We disagree with petitioner and We rule that the Petition for Relief from Judgment has been filed beyond the period prescribed under Section 3 of Rule 38 of the Revised Rules of Court, quoted below:

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[10] Original Docket, Volume III, page 1229.

> **"Rule 38**
> **Relief from Judgments, Orders, or Other Proceedings.**
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> Section 1. *Petition for Relief from judgment, order or other proceedings.* – When a judgment or final order is entered or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that a judgment, order or proceeding be set aside."
>
> Section 3. – *Time for Filing Petition; Contents and Verification.* – A petition provided for in either of the preceding sections of this Rule must be verified, **filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six months after such judgment or final order was entered, or such proceeding was taken**, and must be accompanied with affidavits showing the fraud, accident, mistake or excusable negligence relied upon and the facts constituting the petitioner's good and substantial cause of action or defense." (emphasis supplied)

The afore-quoted Section 3 of Rule 38 of the Revised Rules of Court provides that the Petition for Relief from Judgment must be filed within 60 days after petitioner learns of the judgment to be set aside and within 6 months after such judgment was entered (final entry of judgement). A party filing a petition for relief from judgment must strictly comply with two (2) reglementary periods: (a) the petition must be filed within **sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside;** and (b) within a fixed period of **six (6) months from entry of such judgment, order or other proceeding.**[11]

In the same cited case of *Madarang vs. Morales,* the Supreme Court ruled that the double period required under Section 3, Rule 38 of the Revised Rules of Court is jurisdictional and should be strictly complied with. A Petition for Relief from Judgment filed beyond the reglementary period is dismissed outright. This is because a petition for relief from judgment is an exception to the public policy of immutability of final judgments.

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[11]Madarang vs. Morales, G.R. No. 199283, June 9, 2014.

Records show that the BIR Litigation Division received a copy of the Decision of the Court in Division dated November 16, 2016 (in CTA Case No. 8751) on November 21, 2016.[12] A Motion for Reconsideration was then filed by petitioner on December 6, 2016 seeking reconsideration of the decision of the Court in Division.

On April 19, 2017, the Court in Division issued a Resolution denying petitioner's Motion for Reconsideration.

A copy of the Resolution dated April 19, 2017 was received by the BIR Litigation Division on April 24, 2017,[13] while the OSG received its copy on May 2, 2017.[14]

In the case of *City of Dagupan vs. Maramba,* [15] the Supreme Court ruled that the 60-day period to file a Petition for Relief from Judgment is reckoned from actual receipt of the denial of the motion for reconsideration when one is filed. So applying this to the instant case, the 60-day period is reckoned from April 24, 2017 when the BIR Litigation Division received a copy of the Resolution dated April 19, 2017, so petitioner had until June 23, 2017 within which to file the Petition for Relief from Judgment. However, petitioner only filed its Petition for Relief from Judgment on May 11, 2018[16] which is way beyond the 60-day period contemplated by Section 3 of Rule 38 of the Revised Rules of Court. While it may be said that the Petition for Relief from Judgment complied with the second jurisdictional period of six (6) months from the time of Entry of Judgment which was issued only on March 12, 2018,[17] still it failed to comply with the two periods as expressly stated in the afore-quoted Section 3 of Rule 38 of the Revised Rules of Court. We quote another Supreme Court ruling to emphasize this point, thus:

> " **As provided in Section 3, Rule 38 of the Rules of Court, a party filing a petition for relief from judgment must strictly comply with two reglementary periods: first, the petition must be filed sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and second, within a fixed period of six (6) months from entry of such judgment, order or proceeding**. Strict compliance with these periods is required because a petition for relief from

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[12] Original Court Docket, Volume III, page 1004
[13] Original Court Docket, Volume III, page 1053.
[14] Ibid.
[15] G.R. No. 174411, July 2, 2014.
[16] Original Court Docket, Volume III, page 1065 to 1085.
[17] Original Court Docket, Volume III, pp. 1063 and 1064. *an*

> judgment is a final act or liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain, finality in order to put an end to litigation."[18] (emphasis supplied)

As to the substantive merits of the Petition for Certiorari, we find that the Court in Division did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the Resolutions dated August 28, 2018 and March 7, 2019.

Well-entrenched in jurisprudence is the rule that for certiorari to lie, petitioner must prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent.[19] In the case of *Leonis Navigation Co., Inc. vs. Villamater*[20] the Supreme Court clearly distinguished reversible errors of judgment which may be the subject of an ordinary appeal and a judgment which borders on grave abuse of discretion amounting to lack or excess of jurisdiction, and we quote:

> "**A petition for certiorari does not normally include an inquiry into the correctness of its evaluation of evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari, which is merely confined to issues of jurisdiction or grave abuse of discretion**. It is, thus, incumbent upon petitioner to satisfactorily establish that the NLRC acted **capriciously and whimsically** in order that the extraordinary writ of certiorari will lie. **By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically."** (emphasis supplied)

A reading of the discussions and the corresponding rulings enunciated in the assailed Resolutions reveals that the Court in Division conducted a careful and meticulous consideration of the facts, law and jurisprudence leading to a well thought-out and methodical conclusion as regards the propriety of the Petition for Relief from Judgement filed by petitioner. An analysis of the reasons for the dismissal of the

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[18] Thomasite Center for International Studies vs. Ruth N. Rodriguez, et al., G.R. No. 203642, January 27, 2016.
[19] PNB vs. Teresita Fe A. Gregorio, G.R. No. 194944, September 18, 2017; Leonis Navigation Co., Inc. vs. Villamater, G.R. No. 179169, March 3, 2010.
[20] Id.

Petition for Relief Judgment belies the claim of petitioner that such stem from a capricious or whimsical exercise of judgment by the Court in Division. Consider the issue on the alleged excusable negligence of counsel that petitioner ascribes as the cause of the failure to file an appeal on the Resolution denying his Motion for Reconsideration. We quote petitioner's description (in his Petition for Relief from Judgment) of the scenario which led to the non-filing of an appeal to the Court *En Banc*:[21]

> "The instant case was one of the numerous cases that has been reassigned to respondent's counsel, on top of the original cases assigned to her, in view of the resignations, transfer and reassignments of lawyers from respondent's Litigation Division.
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> During that period, respondent's Litigation Division underwent restructuring-the former Division Chief and Assistant Chief were transferred to another division and a new Division Chief was appointed Likewise, some lawyers from respondent's Litigation Division has *(sic)* just resigned namely Atty. Robinita Chua and Atty. Andro Julio L. Quimpo. Hence the cases that had to be reassigned by the new Division Chief and be inventoried by the office accumulated in number.
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> In that crucial situation, respondent's Litigation Division encountered difficulties not only in the physical transfer of dockets from the previous handling lawyers to the remaining lawyers, but also in the transmittal of court's Notices, Orders and Resolutions to the handling lawyers.
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> When the case docket of the instant case was handed over to the undersigned, it showed no indication that a resolution was already issued by the Honorable Court. The latest pleading in the docket was the Opposition filed by petitioner to respondent's Motion for Reconsideration dated. *(sic)* Hence undersigned counsel relied in good faith that since a Motion for Reconsideration was already filed, the only thing left to do is to wait for the Resolution and from there she will know what action she will take afterwards.
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> xxx xxx xxx
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> Undersigned counsel has not received a copy of the Resolution dated 19 April 2017 because the same has not been transmitted to her by the receiving staff. Even in the receiving log book of respondent's Litigation Division, there was *(sic)* no records that the same was forwarded by the staff

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[21]EB Docket, pp. 55-87.

> to her. Nowhere therein can be found her signature indicating receipt of the same.
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> The receipt thereof coincided with the time when the New Chief of *(sic)* Litigation Division ordered the rearrangement of the office. Hence, some chairs, tables, file cabinets and other office equipments *(sic)* were surrendered to respondent's Property Division. xxx xxx xxx
>
> The copy of the Resolution dated 19 April 2017 might have been inadvertently mingled with either the documents pulled out from the office or with other files. Hence, it was not forwarded to the previous handling counsel nor to the undersigned counsel.
>
> Considering that respondent's Litigation Division has to receive court's Notices, Resolutions and Orders and Pleadings from various courts daily, while the office Records of Cases has not being *(sic)* updated regularly in order to reflect the latest status of the case due to extreme lack of manpower, ordinary diligence and prudence could not have guarded against the untoward situation that happened."

In its analysis of the above explanations of petitioner on why a timely appeal was not filed, the Court in Division stated that "foresight would have dictated that a system be put in place to ensure continuity of work processes during the administrative restructuring and that the new handling lawyers receive notices in the cases that have been newly assigned to them."

Indeed, it is incumbent upon counsels to observe due diligence in handling their assigned cases, including assiduously keeping track of their latest developments and status. The Court in Division, in dismissing the reasons provided by petitioner as inexcusable, cited the case of *Rizal Banking Corporation vs. CIR*,[22] where the Supreme Court held that relief from judgment cannot be granted on the ground of negligence in receiving judicial notices as lawyers are required to adopt a system for the prompt receipt of said judicial notices. We quote an excerpt of the Resolution of the Court dated March 7, 2019:

> "Section 1, Rule 38 of the Rules of Court allows the filing of a petition for relief from judgment when a judgment or final order is entered, or any other proceeding is thereafter taken

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[22]G.R. No. 168498, June 16, 2006.

against a party in court through fraud, accident, mistake or excusable negligence.

However, relief cannot be granted on the flimsy excuse that the failure to appeal was due to the neglect of a party's counsel. Otherwise, all that a losing party would do to salvage his case would be to invoke neglect or mistake of his counsel as a ground for reversing or setting aside the adverse judgment, thereby putting no end to litigation.

Negligence to be excusable must be one which ordinary diligence and prudence could not have guarded against and by reason of which the rights of an aggrieved party have probably been impaired.

As provided in the Resolution dated August 22, 2018, respondent failed to show that his failure to file an appeal was due to excusable negligence." (emphasis supplied)

It is also significant to note that after classifying such negligence of counsel to be *excusable* to warrant a relief from judgment, petitioner then describes the failure to file a timely appeal as constitutive of "gross negligence of counsel" that would serve as an exception to the rule that the mistakes and negligence of counsel bind the client.

It is clear from the above disquisitions and records of this case, that the assailed Resolutions dated August 22, 2018 and March 7, 2019 cannot be characterized as having been issued "arbitrarily" or "despotically" by the Court in Division. Even on the assumption that the assailed Resolutions were erroneous, such would be considered as a mere error of judgment and not an error in jurisdiction that would justify the filing of a Petition for Certiorari under Rule 65 of the Revised Rules of Court.

WHEREFORE, premises considered, the *Petition for Certiorari* filed by petitioner CIR on May 9, 2019 is **DENIED.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(with Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- **versus** -

THE COURT OF TAX APPEALS - SPECIAL THIRD DIVISION and KILUSANG MAGKAIBIGAN MULTI-PURPOSE COOPERATIVE,
Respondents.

CTA EB NO. 2060
(CTA CASE NO. 8751)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated: DEC 07 2020
2:39 p.m.

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the denial of petitioner Commissioner of Internal Revenue's present Petition for *Certiorari,* reached in the *ponencia* of my esteemed colleague, Hon. Justice Catherine T. Manahan. However, I am constrained to register my dissent from the *ponencia's* disquisition on the Court *En Banc*'s jurisdiction over a petition for *certiorari,* under Rule 65 of the Rules of Court (**ROC**), involving its *own* division.

Citing the case *City of Manila, et al. v. Hon. Grecia-Cuerdo, et al.*[1] (**Grecia-Cuerdo**), the *ponencia* declared that this Court, by constitutional mandate, is vested with the jurisdiction to issue writs of *certiorari*. Additionally, the *ponencia* deemed that, from a practical standpoint, the doctrine of hierarchy of courts may be applied to resolve a similar issue; particularly if it is used as an effective mechanism to filter the cases brought before the Supreme Court.

[1] G.R. No. 175723, 04 February 2014.

I respectfully beg to differ.

The controversy in *Grecia-Cuerdo* stemmed from an order of the Regional Trial Court (**RTC**) of Manila, granting a writ of injunction against therein petitioner, City of Manila. *Grecia-Cuerdo* confirmed the CTA's authority to issue a writ of *certiorari* against a lower court, that is, the RTC in cases appealable to it. With due respect, it is my opinion that the case does not concern or even suggest that the CTA *En Banc* enjoys the same authority over its *own* divisions. Obviously, the different CTA divisions are *not* CTA's inferior courts.

At first blush, the unique appellate jurisdiction of the CTA over its own divisions, when read together with the ruling in *Grecia-Cuerdo* (that a court may issue a writ of *certiorari* in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court), gives the impression that the CTA *En Banc* is also empowered to issue a writ of *certiorari* against the orders of any of its divisions. However, as will be explained below, such an interpretation is problematic.

***First*, to entertain this present petition under Rule 65 of the Rules places the Court in a very peculiar situation where it is both respondent and judge of itself; that is, in matters where its actions are alleged to be tainted with grave abuse of discretion.** Thus, to grant the relief prayed for by petitioner would be tantamount to the Court acknowledging that its actions are arbitrary and that there was oppressive exercise of power.

***Second*, the grant of the unique appellate jurisdiction to the CTA did not result in the splitting of the court into two separate entities, namely, the Court *En Banc* and the Court in its divisions.** The *sui generis* appellate jurisdiction of the Court *En Banc* merely resulted in giving the latter a special yet limited jurisdiction over cases previously settled by its divisions.

Although it may be gainsaid that the power to issue the writ of *certiorari* was not expressly given in either Republic Act (**RA**) 1125[2] or RA 9282[3], the Supreme Court, in application of the principle of necessary implication, filled the gaps in the law in order to give it full force and effect. **But then again, as stated earlier, this authority is "in aid of its appellate jurisdiction to review, by appeal or writ of error, the final orders or decisions of the <u>lower court</u>".**[4] These are the clear wordings of the Supreme Court in *Grecia-Cuerdo*. **In the absence of any legal basis declaring the CTA divisions to be lower courts of the CTA, I humbly**

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2 AN ACT CREATING THE COURT OF TAX APPEALS.

3 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.

4 Emphasis and underscoring supplied.

submit that it will not be proper to similarly apply the rule for the lower courts to the CTA divisions.

***Third*, the CTA is a collegiate court and whether it acts by way of one of its divisions or *en banc*, it is nevertheless deemed acting as one indistinguishable body.**

In *Landbank v. Suntay*[5] (*Landbank*), the Supreme Court explained that "**the actions taken and the decisions rendered by any of the divisions are those of the Court itself, considering that the divisions are not considered separate and distinct courts but as divisions of one and the same court**".[6]

In *Commissioner of Internal Revenue v. Kepco Ilijan Corporations*[7] (*Kepco*), the Supreme Court also held that the foregoing principle is likewise applicable to other collegiate courts such as the CA. In the said case, the Supreme Court explained in this wise:

> ...
> **Thus, it appears contrary to these features that a collegial court, sitting *en banc*, may be called upon to annul a decision of one of its divisions which had become final and executory, for it is tantamount to allowing a court to annul its own judgment and acknowledging that a hierarchy exists within such court.** In the process, it also betrays the principle that judgments must, at some point, attain finality. A court that can revisit its own final judgments leaves the door open to possible endless reversals or modifications which is anathema to a stable legal system.
>
> Thus, the **Revised Rules of the CTA and even the Rules of Court[,] which apply suppletorily thereto[,] provide for no instance in which the *en banc* may reverse, annul or void a final decision of a division.**[8]
> ...

Incidentally, while it is correct that adherence to the doctrine of hierarchy of courts is an effective tool to filter cases before the Supreme Court, its application to the Court's own divisions may not be justified as there appears no legal anchor to sustain a conclusion that the divisions are lower or inferior courts of the Court *En Banc*. Moreover, as stated above "**a collegial court, sitting *en banc*, may [not] be called upon to annul a decision of one of its divisions which had become final and executory, for it is tantamount to allowing a court to annul its own judgment and acknowledging that a hierarchy exists within such court**".

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5 G.R. No. 188376, 14 December 2011.
6 Emphasis and underscoring supplied.
7 G.R. No. 199422, 21 June 2016.
8 Id.; Emphasis supplied.

Lastly, the Supreme Court has made clear in the *Commissioner of Internal Revenue v. Court of Tax Appeals and CBK Power Company Limited*[9] (**CBK**) case that **"in all the ... instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65"**. Also, that petitioner therein, who brought his petition for *certiorari* under Rule 65 before the Supreme Court and *not* before the CTA *En Banc* (as the respondent there insisted), deeming the same to be in conformity with Rule 41 of the ROC.[10]

Given the above disquisitions, it is apparent that the CTA *En Banc* has no jurisdiction over the present petition. This becomes undeniable with the Supreme Court's declaration in *CBK* and when *Landbank, Kepco* and *Cruz* are further taken into account since, if the Court *En Banc* is not superior to any of its divisions and a petition for *certiorari* seeks the rectification of a lower court's mistake; then logic dictates that **the CTA *En Banc* has no jurisdiction to issue a writ of *certiorari* against the resolution of its own divisions.**

With the above, I vote for the dismissal of the petition for *certiorari,* under Rule 65 of the Rules of Court, for lack of jurisdiction.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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9 G.R. Nos. 203054-55, 29 July 2015.

10 **RULE 41**
APPEAL FROM THE REGIONAL TRIAL COURTS

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:

(a) An order denying a petition for relief or any similar motion seeking relief from judgment;
(b) An interlocutory order;
(c) An order disallowing or dismissing an appeal;
(d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
(e) An order of execution;
(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
(g) An order dismissing an action without prejudice.

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action provided in Rule 65.