REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

LARRY E. SEGAYA/LES ENGINEERING AND CONSTRUCTION, *Petitioner,*	**CTA EB NO. 2526** *(CTA Case No. 9875)*
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 08 2023 4:30 pm

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves petitioner's **Motion for Reconsideration** filed *via* registered mail on February 6, 2023, with respondent's **Comment/Opposition (Re: Petitioner's Motion for Reconsideration)** filed on March 31, 2023.

Petitioner seeks reconsideration of the Court *En Banc's* Decision promulgated on December 13, 2022 *(assailed Decision)*, sustaining the Court in Division's dismissal of petitioner's Petition for Review docketed as CTA Case No. 9875.[1] The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the present **Petition for Review *En Banc*** filed by petitioner Larry E. Segaya/LES Engineering and Construction is hereby **DENIED** for lack of merit.

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[1] The Court in Division dismissed the Petition for Review in CTA Case No. 9875 for lack of jurisdiction as the Petition for Review was belatedly filed.

The Decision dated February 26, 2021 and Resolution dated July 14, 2021 rendered by the Court's Second Division in CTA Case No. 9875 are **AFFIRMED**.

SO ORDERED."

Petitioner advances the following reasons in support of his motion:

1. The Court *En Banc* is both a court of law and equity and has the power and authority to relax the rules on procedure in order to serve the highest ends of justice, and acquire jurisdiction over the petition which raised prescription as a matter of defense;

2. The issue of prescription is distinct from the issue of jurisdiction. They are not intertwined and could be resolved separately on their own merits;

3. Rules of technicality must yield to the broader and higher interest of substantial justice;

4. The right of the Bureau of Internal Revenue (BIR) to assess and collect taxes has already prescribed. The assessment notices (AN) covering taxable year 2011 demanded from petitioner to pay the amount of ₱10,233,384.97 on or before January 15, 2016, but the Formal Letter of Demand (FLD) and AN were received by the BIR Revenue Region No. 11 Mailing Unit, for purposes of mailing, only on January 11, 2016, and actually released and mailed only on February 1, 2016. This is a compelling reason for the Court to look into the issue of prescription;

5. The Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code *(Waiver)* signed by petitioner is invalid in view of the following defects: (i) it is undated as to its execution and acceptance; (ii) not notarized; and, (iii) not signed by the Commissioner or his/her duly authorized representative. The fact of receipt by petitioner of his copy is not also indicated in the original found in the records, and there is no showing that the Waiver was executed in three (3) copies;

6. The defects in the Waiver resulted to the non-extension of the period to assess and collect taxes, and made the assessments issued by the BIR beyond the three-year prescriptive period void; and,

7. Even if the Waiver is valid, the FLD was sent to petitioner by registered mail only on February 1, 2016 which was beyond December 31, 2015 - the agreed extended period within which the BIR can make the disputed assessment.

In his Comment/Opposition, respondent counter-argues the following:

1. Before a court can rule upon the merits of a case, it should have jurisdiction over the case;

2. The arguments raised by petitioner were already exhaustively passed upon by the Court;

3. The Court *En Banc* is correct in ruling that the Court in Division has no jurisdiction over the case; and,

4. Respondent's right to assess has not prescribed.

THE COURT *EN BANC'S* RULING

Petitioner's motion is devoid of merit.

The arguments advanced by petitioner in his present motion are mere reiteration or amplification of his arguments in his Petition for Review before the Court *En Banc* which were sufficiently considered and settled in the assailed Decision.

It bears stressing that the Petition for Review of the petitioner before the Court in Division was filed way beyond the thirty (30)-day reglementary period to appeal an inaction on the administrative protest/appeal, thus, the Court in Division was deprived of jurisdiction to take cognizance thereof and cannot decide the case on the merits as the only power left with it was to dismiss the case. The thirty (30)-day period within which to file an appeal with the CTA is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction.[2]

Petitioner's contention that the Court *En Banc* is both a court of law and equity and has the power and authority to relax the rules on procedure in order to serve the highest ends of justice is bereft of merit.

The declaration in *Commissioner of Internal Revenue vs. San Miguel Corporation*[3] and *San Miguel Corporation vs. Commissioner of Internal Revenue,*[4] is instructive, *viz.*:

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[2] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006.
[3] G.R. No. 180740, November 11, 2019.
[4] G.R. No. 180910, November 11, 2019.

> "SMC's argument that its claims should be excepted from the two (2)-year prescriptive period based on equity considerations is untenable; the **Court cannot resort to equity when there is clear statutory law governing the matter**. Relevant herein are the following pronouncements of the Court in *Republic v. Provincial Government of Palawan*:
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> > The Court finds the submission untenable. **Our courts are basically courts of law, not courts of equity**. Furthermore, for all its conceded merits, **equity is available only in the absence of law and not as its replacement.** As explained in the old case of *Tupas v. Court of Appeals*:
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> > > Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. We said in an earlier case, and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which [preempt] and prevail over such persuasions. **Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force**. The applicable maxim, which goes back to the ancient days of the Roman jurists — and is now still reverently observed — is *'aequetas nunquam contravenit legis.' xxx" (Boldfacing supplied)*

Thus, there being no substantial argument or cogent reason put forth by petitioner that would merit the reconsideration sought, the Court sees no reason to modify, much more reverse, the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration, filed on February 6, 2023, is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice