REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

NORTHERN MINDANAO MEDICAL CENTER, CAGAYAN DE ORO CITY, REPRESENTED BY ITS MEDICAL CENTER CHIEF II, JOSE C. CHAN, M.D.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE REGION NO. 16, CAGAYAN DE ORO CITY,
Respondent.

CTA EB No. 1784 (Formerly EB UDK No. 19)
(UDK SP NO. 017)

Present:

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

Promulgated:

SEP 27 2019

3:19 p.m.

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review* filed by Northern Mindanao Medical Center, Cagayan De Oro City, Represented by its Medical Center Chief II, Jose C, Chan, M.D., on September 15, 2017 against the Commissioner of Internal Revenue Region No. 16, Cagayan De Oro City,[1] assailing the Resolutions dated June 1, 2017[2] and July 18, 2017[3], both issued by the Second

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[1] EB Docket, pp. 13 to 28.

[2] EB Docket, pp. 29 to 30; Division Docket (UDK-SP No. 017), pp. 94 to 95. Issued by Associate Justice Juanito C. Castañeda, Jr., Associate Justice Caesar A. Casanova and Associate Justice Catherine T. Manahan.

[3] EB Docket, pp. 31 to 36; Division Docket (UDK-SP No. 017), pp. 135 to 140. Issued by Associate Justice Juanito C. Castañeda, Jr., Associate Justice Caesar A. Casanova and Associate Justice Catherine T. Manahan.

Division of this Court (Court in Division) in CTA UDK SP No. 017, entitled *"Northern Mindanao Medical Center, Cagayan de Oro City represented by its Medical Center Chief II, Jose C. Chan, M.D., Petitioner, vs. Commissioner of Internal Revenue, Revenue Region & Bureau of Internal Reve No. 16, Cagayan De Oro City, Respondent"*, the dispositive portions of which respectively read:

> **Resolution dated June 1, 2017:**
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> "**WHEREFORE,** in view of the foregoing, the Memorandum of Appeal is hereby **DISMISSED** for failure to comply with the essential requisites as described above.
>
> **SO ORDERED.**"
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> **Resolution dated July 18, 2017:**
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> "**WHEREFORE**, premises considered, the 'Motion for Reconsideration (And for the Admission of the herein attached Certification of Non-Forum Shopping)' filed by petitioner on June 19, 2017 is hereby **DENIED** for lack of merit.
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> Accordingly, the Petition for Review is **DISMISSED** for being filed beyond the period prescribed by the relevant provisions of law and implementing regulations.
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> **SO ORDERED.**"

THE FACTS

Petitioner Northern Mindanao Medical Center filed, through registered mail, a *Memorandum of Appeal* on April 6, 2017,[4] assailing: (1) the undated *Final Decision* of respondent CIR on its protest/appeal to the *Final Decision on the Disputed Assessment* (FDDA) dated April 30, 2010 issued by the Regional Director of Revenue Region No. 16; and (2) the said FDDA dated April 30, 2010. The said *Memorandum of Appeal* was signed by Dr. Jose C. Chan, MD, Medical Center Chief II of petitioner. The case was docketed as CTA UDK-SP No. 017.

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[4] Division Docket (UDK-SP No. 017), pp. 38 to 46.

In his letter dated May 17, 2017,[5] Atty. Danilo B. Fernando, Executive Clerk of Court of this Court, advised Dr. Jose C. Chan that the postal money orders in the total amount of ₱3,500.00, attached to petitioner's *Memorandum of Appeal*, is not sufficient for the payment of the total filing fees due from petitioner which is ₱71,581.80. Dr. Chan was directed to pay the entire amount of filing fees within three (3) days from receipt of the said letter, otherwise, the appeal will be dismissed pursuant to Section 1(e), Rule IV of the *Internal Rules of the Court of Tax Appeals*. In addition, Atty. Fernando, in the same letter, informed petitioner that appeal to this Court is initiated by filing a *Petition for Review* in at least five (5) copies, not a *Memorandum of Appeal*, which Dr. Chan filed by registered mail in only three (3) copies.

In the Resolution dated June 1, 2017,[6] the Court in Division dismissed the *Memorandum of Appeal*, for failure of petitioner to comply with the following:

1) The appeal from the decisions of the Regional Director and respondent CIR was by way of a *"Memorandum of Appeal"* instead of by a *Petition for Review*, pursuant to Section 2 of Rule 6 of the Revised Rules of the Court of Tax Appeals (RRCTA);

2) The initiatory pleading was not accompanied by a *Certification against Forum Shopping*, pursuant to the same Section 2 of Rule 6 of the *Revised Rules of the Court of Tax Appeals* (RRCTA); and

3) Payment of the correct amount of docket fees upon filing of the pleading, pursuant to Section 3 of Rule 6 of the RRCTA, and petitioner's failure to submit the required number of copies in accordance with Section 4 of Rule 5 of the said Rules.

On June 2, 2017, petitioner, through its counsel, filed the *Letter* dated May 29, 2017,[7] stating that petitioner is submitting its *Petition for Review*[8] for filing, and Postal Money Orders and Manager's Checks in the aggregate amount of ₱71,581.80, for payment of docket fees.

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[5] Division Docket (UDK-SP No. 017), pp. 90 to 91.
[6] EB Docket, pp 29 to 30; Division Docket (UDK-SP No. 017), pp. 94 to 95.
[7] Division Docket (UDK-SP No. 017), p. 96
[8] Division Docket (UDK-SP No. 017), pp. 97 to 106.

In the *Letter* dated June 20, 2017,[9] Atty. Danilo B. Fernando, informed petitioner's counsel that the *Petition for Review* cannot be given due course in view of the Court in Division's Resolution dated June 1, 2017, dismissing petitioner's *Memorandum of Appeal*. Enclosed in the said Letter was, *inter alia*, the pertinent Postal Money Orders and Manager's Checks received from petitioner in the aggregate amount of ₱71,581.80.

On June 19, 2017, petitioner, through counsel, filed a *Motion For Reconsideration*,[10] praying for the following: 1) that the Resolution promulgated on June 1, 2017 be reconsidered and set-aside; 2) that the corrected copy of the initiatory pleading labelled as *"Petition for Review"* together with the *"Certification of Non-Forum Shopping"* be admitted; 3) that the five (5) managers checks in the total amount of ₱71,581.80 representing payment of docket fees for the *Petition for Review* be accepted; and 4) that the initiatory pleading be reinstated.

In the assailed Resolution dated July 18, 2017, the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.[11]

On August 31, 2017, petitioner filed a *Motion for Extension (To File Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure)*,[12] with the Court of Appeals, praying that petitioner be given a period of fifteen (15) days from September 1, 2017 or until September 16, 2017, to file and submit its petition for review under Rule 43 of the 1997 Rules of Procedure. The Court of Appeals granted the *Motion* in its Minute Resolution dated September 25, 2017.[13]

On the same date, petitioner filed before the Court of Appeals a *Motion to Withdraw "Motion for Extension" & "Intent to File Petition for Review before the Court of Appeals"*[14], realizing its error of filing the said *Motion for Extension*. In its Minute Resolution dated September 8, 2017,[15] the Court of Appeals granted the *Motion to Withdraw*.

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[9] Division Docket (UDK-SP No. 017), p. 124.
[10] Division Docket (UDK-SP No. 017), pp. 125 to 132.
[11] Resolution dated July 18, 2017, Division Docket (UDK-SP No. 017), pp. 135 to 140.
[12] EB Docket, pp. 5 to 7.
[13] Minute Resolution dated on September 8, 2017, EB Docket, p. 62.
[14] EB Docket, pp. 9 to 11.
[15] Minute Resolution dated on September 25, 2017, EB Docket, p. 64.

Also on August 31, 2017, petitioner filed, through registered mail, a *Motion for Extension (To File Petition for Review under Sec. 3(b) Rule 8 of the Revised Rules of the Court of Tax Appeals)*[16] before this Court *En Banc*, praying that petitioner be given a period of fifteen (15) days from September 1, 2017 or until September 16, 2017 to file and submit its petition for review under Sec. 3(b), Rule 8 of the RRCTA.

On September 15, 2017, petitioner filed the instant *Petition for Review*. The case was initially docketed as CTA EB UDK No. 19.

In the Resolution dated November 16, 2017,[17] the Court *En Banc* directed petitioner to pay the full amount of the legal/docket fees due, and to indicate the correct amount in each postal money order check sufficient enough to cover each component of the required legal/docket fees, within ten (10) days from receipt. The Judicial Records Division of this Court was also directed to assign the correct docket number upon receipt of the full and correct payment of the legal/docket fees required. The respondents were also directed to file their comment to the petition within ten (10) days from receipt.

On January 25, 2018, petitioner filed, through registered mail, its *Notice of Compliance,* with attached letter dated January 24, 2018[18] addressed to Atty. Danilo B. Fernando. The said letter indicated the component of the legal/docket fees are covered by each postal money order. However, in the letter dated February 7, 2018 addressed to Atty. Danilo B. Fernando,[19] the Judicial Records Division of this Court found that there were no postal money orders attached to the said *Notice of Compliance*.

Subsequently, a copy of the same *Letter* dated January 24, 2018, with now attached postal money orders, were filed, through registered mail, on February 8, 2018.[20]

Eventually, the instant case was docketed as CTA EB No. 1784.

For his part, respondent failed to file its *Comment* on the instant *Petition for Review*.[21]

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[16] EB Docket, pp. 1 to 3.
[17] EB Docket, pp. 57 to 61.
[18] EB Docket, pp. 67 to 69.
[19] EB Docket, p. 74.
[20] EB Docket, pp. 75 to 76.
[21] Records Verification Report dated February 2, 2018 issued by the Records Division of this Court, EB Docket, p. 66.

In the Resolution dated March 6, 2018,[22] the *Notice of Compliance* and the attached letter dated January 24, 2018 with the postal money orders were noted by this Court *En Banc*, and the instant *Petition for Review* was given due course. The parties were directed to submit their respective memoranda within thirty (30) days from receipt of the said Resolution.

Respondent filed his *Memorandum* on April 26, 2018[23] while the *Memorandum for Petitioner* was filed, through registered mail, on July 16, 2018.[24] However, the Court *En Banc* found that insufficient copies of the said *Memorandum for Petitioner* were filed per Record Verification Report dated July 30, 2018 issued by the Records Division of this Court.[25] Thus, the Court *En Banc* ordered petitioner to submit additional eight (8) copies of its *Memorandum* within ten (10) days from notice.[26] On August 24, 2018, petitioner filed its *Notice of Compliance,*[27] submitting eight (8) additional copies of the *Memorandum for Petitioner.*

In the Resolution dated October 4, 2018,[28] the Court *En Banc* admitted petitioner's *Memorandum*, despite the lapse of thirty-seven (37) days after the expiration of the period granted by the Court *En Banc*, in the interest of justice. In the same Resolution, the case was deemed submitted for decision.

Hence, this Decision.

THE ISSUES

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

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> Whether or not in its jurisdictional aspect, the Second Division of this Honorable Court, with due respect, committed a reversible error in dismissing the appeal of

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[22] EB Docket, pp. 82 to 84.
[23] EB Docket, pp. 85 to 98.
[24] EB Docket, pp. 107 to 122.
[25] EB Docket p. 106.
[26] Minute Resolution dated August 1, 2018, EB Docket, p. 150.
[27] EB Docket, pp. 151 to 152.
[28] EB Docket, pp. 157 to 158.

petitioner from the decisions of the Commissioner of Internal Revenue and the BIR Revenue Region No. 16;

II

Whether or not on the merits of the appeal, the Commissioner of Internal Revenue and the BIR Revenue Region No. 16, with due respect, committed the following reversible errors in their herein assailed decisions, to wit:

a. That the questioned assessment from the Regional Office is couched in general terms and failed to indicate the specific items subject of tax deficiency;

b. That the assigned Regional Officer failed to consider and appreciate the supporting documents consisting of vouchers, contracts, payrolls, list of payees and other documents earlier submitted by petitioner in relation to the questioned assessment;

c. That the questioned assessment erroneously based its findings of tax deficiency from the income statement previously submitted by petitioner but which were already subjected to all tax deductions;

d. That the Regional office failed to squarely passed upon salient points and issues raised by herein petitioner;

e. That the findings on tax deficiency contravene prior audit findings of the Commission on Audit;

f. That the issuance of the questioned warrant of distraint and/or levy is patently premature and baseless considering that it covers other disputed assessments which were not dealt with nor included in the herein assailed final decision of the Regional Director;

g. That the implementation of the warrant of distraint and/or levy can only wholely paralyze(d) the hospital operations of Petitioner which is tasked to deliver needed medical services to the detriment of the general public, particularly to a big number of indigent patients."

Petitioner's arguments:

Petitioner argues that the Court in Division committed a reversible error in dismissing the appeal of petitioner from the decisions of respondent and BIR Revenue Region No. 16, on the ground that the appeal was "not perfected" for failure to comply with legal requirements.

According to petitioner, the subject appeal was filed within the thirty (30) day reglementary period as provided under Sec. 228 of the 1997 National Internal Revenue Code (NIRC). It is also petitioner's position that insofar as its filing of an initiatory pleading labelled as "*Memorandum of Appeal*" instead of *"Petition for Review"* is concerned, it has mailed on May 29, 2017 to the Court a corrected copy of its initiatory pleading labelled as *"Petition for Review"*.

When there is a conflict between the title of the case and the allegations in the complaint, the latter prevails in determining the parties to the action.

On the finding that the initiatory pleading was not accompanied by a *Certification against Forum Shopping*, petitioner admits in utmost good faith his inadvertence in failing to attach in the *Petition for Review* the subject document, and thus, had attached the same to its Motion for Reconsideration with an earnest prayer that it be admitted as integral part of its petition. Moreover, petitioner contends that the belated submission of its *Certification of Non-Forum Shopping* be considered as substantial compliance with the requirements under the rules, and prays a liberal construction of the rules for the admission of its *Certificate of Non-Forum Shopping*.

Anent the finding that petitioner failed to pay the correct amount of docket fees upon the filing of the pleading pursuant to Sec. 3 of Rule 6 of the RRCTA, petitioner posits that it exerted earnest efforts to ascertain the exact amount of fees.

Lastly, petitioner avers that the questioned assessment from the Regional Office is couched in general terms and failed to indicate the specific items subject of tax deficiency; that the assigned Regional Officer failed to consider and appreciate the supporting documents, consisting of vouchers, contracts, payrolls, list of payees and other documents earlier submitted by petitioner in relation to the questioned assessment. Allegedly, the questioned assessment erroneously based its findings of tax deficiency from the income statement previously submitted by petitioner, but which were already subjected to all tax deductions. The Regional office failed to squarely pass upon salient points and issues raised by petitioner; that the findings on tax deficiency contravene prior audit findings of the Commission on Audit; Allegedly, the issuance of the questioned warrant of distraint and/or levy is patently premature and baseless, considering that it covers other disputed assessments which were not dealt with nor included in the assailed final decision of the Regional Director. Considering that petitioner is tasked to deliver needed medical services to the general public, particularly to a big number of indigent patients, the implementation of the warrant of distraint and/or levy can only wholly paralyze the hospital in its operations, to the detriment of the general public.

Respondent's counter-arguments:

Respondent CIR counter-argues that the Court *En Banc* does not have jurisdiction over the instant *Petition*. According to respondent, the Court *En Banc* may grant an additional period not exceeding fifteen (15) days from the expiration of the original period, provided a proper motion and payment of the full amount of docket and other lawful fees and deposit costs before the expiration of the original period to file the said *Petition for Review*.

In addition, when petitioner received the Resolution dated July 18, 2017 on August 17, 2017, petitioner had until September 1, 2017 to file the petition for review or a motion for extension of time to file the same, and pay the full amount of docket and other lawful fees and deposit costs.

However, respondent points out that when petitioner filed a *Motion for Extension (To File Petition for Review under Sec. 3(b) Rule 8 of the Revised Rules of the CTA)* before September 1, 2017, it, failed to pay the full legal fees due before September 1, 2017. Hence, petitioner's motion for extension of time and the *Petition for Review* filed on September 15, 2017 was filed out of time.

Allegedly, the Court in Division did not err in denying and dismissing petitioner's *Motion for Reconsideration* and *Petition for Review*, because the assessment against petitioner has become final, executory and demandable.It is respondent's stand that the "corrected" petition for review as reckoned from the time petitioner received the FDDA issued by him was belatedly filed.

Further, respondent CIR points out that the Court in Division assumed that the FDDA issued by respondent CIR is the decision appealable to the Court, but a perusal of the document issued by respondent CIR would reveal that it is not a decision of respondent CIR on the protest of petitioner that is appealable to this Court. Allegedly, the decision contemplated under Section 7 of Republic Act No. 9282 is the FDDA dated April 30, 2010 issued by Regional Director Esmeralda M. Tabule.

Lastly, granting for the sake of argument that the document issued by respondent CIR is the decision appealable to this Court, he contends that petitioner failed to perfect his appeal within the prescribed period, and that non-compliance with the *Certification against Non-Forum Shopping* is not curable by its subsequent submission.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* must be denied for want of merit.

Appeal by *Petition for Review* under the RRCTA is the appropriate remedy from decisions, rulings, or inactions of respondent CIR. The pertinent provisions of the RRCTA, regarding the filing of a *Petition for Review* before this Court, read as follows:

Sections 2, 3(a), and 4(a), Rule 8:

"SEC. 2. *Review of cases in the Court in Division.* — **In appealed cases falling under the jurisdiction of the Court in Division in Sections 3(a)(1)**[29] to 3(a)(6) and

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[29] Section 3(a)(1) and (2), Rule 4 of the RRCTA reads:

"SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decision 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 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

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3(c)(2) of Rule 4, **the party filing the case shall be called the Petitioner and the party against whom the case is filed shall be called the Respondent. <u>The pleading shall be entitled Petition for Review</u>.**

xxx xxx xxx

SEC. 3. *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, xxx **may appeal to the Court by <u>petition for review filed within thirty days</u> after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx.

SEC. 4. *Where to appeal; mode of appeal.* —

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, xxx **shall be taken to the Court by filing before it <u>a petition for review</u>** as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal." *(Emphases and underscoring supplied)*

<u>Sections 2 and 3, Rule 6</u>:

"SEC. 2. *Petition for review; contents.* — **The <u>petition for review</u> shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision.**

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other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; xxx;

> **The <u>petition</u> shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court.** A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition.
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> SEC. 3. *Payment of docket fees.* – **The Clerk of Court shall not receive <u>a petition for review</u> for filing unless the petitioner submits proof of payment of the docket fees.** Upon receipt of the petition or the complaint, it will be docketed and assigned a number, which shall be placed by the parties on all the papers thereafter filed in the proceeding. The Clerk of Court will then issue the necessary summons to the respondent or defendant." *(Emphasis and underscoring supplied)*

Based on the foregoing provisions, it is clear that in appeals from the decision, ruling, or inaction of respondent CIR, a *Petition for Review* must be filed with the Court in Division of this Court, within thirty (30) days from receipt of a copy of the decision or ruling, or the expiration of the period fixed by law for respondent CIR to act on the disputed assessment, with proof of payment of the corresponding docket fees. Such *Petition for Review* must state that the party filing the case is the *"Petitioner"*, and the party against whom the case is filed is the *"Respondent"*. The said *Petition* must contain allegations showing the jurisdiction of this Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, and the reasons relied upon for the review of the challenged decision. In addition, the same *Petition for Review* must be verified and must contain a certification against forum shopping.

Notwithstanding the foregoing requirement that a *Petition for Review* must be filed, petitioner filed instead a *"Memorandum on Appeal"* before the Court in Division.

It should not be forgotten that procedural rules are designed to facilitate the adjudication of cases. **Courts and litigants alike are enjoined to abide strictly by the rules.**[30] Thus, the above-quoted provisions of the RRCTA ought to be followed.

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[30] *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010.

(initials)

Moreover, **like all rules, procedural rules are required to be followed except only for the most persuasive of reasons when they may be relaxed** to relieve a litigant of an injustice not commensurate with the decree of his thoughtlessness in not complying with the procedure prescribed.[31] As a corollary, the non-observance of the rules of procedure may only be excused *"for the most persuasive of reasons"*.

In the instant case, petitioner advanced no reason why it filed *"Memorandum on Appeal"*, instead of a *"Petition for Review"*, consistent with the aforequoted provisions of the RRCTA. Thus, on this score alone, We find no justification to relax the rules of procedure in petitioner's case.

Additionally, there are other reasons why the instant *Petition for Review* must fail.

The "Memorandum on Appeal" filed by petitioner cannot be equated to the "Petition for Review" required under the RRCTA.

Petitioner points out that insofar as its filing of an initiatory pleading labelled as *"Memorandum on Appeal"*, instead of a *Petition for Review*, is concerned, it has mailed on May 29, 2017 to the Court in Division a corrected copy of its initiatory pleading labelled as *"Petition for Review"*. In support thereof, it invokes the following doctrinal pronouncements of the Supreme Court, to wit:

> "When there is a conflict between the title of the case and the allegations in the complaint, the latter prevail in determining the parties to the action. Jurisprudence directs us to look beyond the form and into the substance so as to render substantial justice to the parties and determine speedily and inexpensively the actual merits of the controversy with least regard to technicalities."[32]
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> "The designation or caption is not controlling, more than the allegations in the complaint, for it is not even an indispensable part of the complaint.

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[31] *Lazaro, et al., vs. Court of Appeals, et al.*, G.R. No. 137761, April 6, 2000.
[32] *Spouses William Genato and Rebecca Genato vs. Rita Viola*, G.R. No. 169706, February 5, 2010.

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> Instead of focusing on what an action for mandamus should contain, the court a *quo* should have proceeded to examine the essential facts alleged in petitioners complaint. For what determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought.
>
> The cause of action in a complaint is not determined by the designation given to it by the parties. The allegations in the body of the complaint define or describe it. The designation or caption is not controlling more than the allegations in the complaint. It is not even an indispensable part of the complaint.
>
> xxx xxx xxx
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> The trial court is reminded that the caption of the complaint is not determinative of the nature of the action. The caption of the pleading should not be the governing factor, but rather the allegations in it should determine the nature of the action, because even without the prayer for a specific remedy, the courts may nevertheless grant the proper relief as may be warranted by the facts alleged in the complaint and the evidence introduced."[33]

In other words, petitioner is, in effect, saying that the Court in Division should have treated the *"Memorandum on Appeal"* it earlier filed as equivalent to a *Petition for Review* as required under the RRCTA, since the said Court should have looked into the allegations in the said *"Memorandum on Appeal"*, instead of the title, designation or caption given.

We disagree.

Contrary to petitioner's stance, the question involved in this case is not simply one of whether there was conflict between the title or the designation of the case, on one hand, and the allegations in the complaint, on the other. Rather, the crux of the controversy is on whether petitioner's *"Memorandum on Appeal"* filed with the Court in Division is tantamount to the *"Petition for Review"* required to be filed under the RRCTA.

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[33] *Spouses Carlos Munsalud and Winnie Munsalud vs. National Housing Authority*, G.R. No. 167181, December 23, 2008.

We answer in the negative.

As already stated, the *"Petition for Review"* under the RRCTA is required to be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court.

In *Shipside Incorporated vs. The Court of Appeals, et al.*,[34] the Supreme Court stated certain rules regarding verification and certification against forum shopping, to wit:

> "The Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional (*Uy v. LandBank*, G.R. No. 136100, July 24, 2000). **Such requirement is simply a condition affecting the form of the pleading, <u>non-compliance with which does not necessarily render the pleading fatally defective</u>. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.** The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.
>
> On the other hand, the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition. Section 5, Rule 45 of the 1997 Rules of Civil Procedure provides that **the failure of the petitioner to submit the required documents that should accompany the petition, including the certification against forum shopping, <u>shall be sufficient ground for the dismissal thereof</u>. <u>The same rules applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation</u>.**" *(Emphases and underscoring supplied)*

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[34] G.R. No. 143377, February 20, 2001.

Based on the foregoing jurisprudential pronouncements, non-compliance with the requirement of verification does not necessarily render the pleading fatally defective. However, this is not so in the case of the submission of the certification against forum shopping; failing which, the same is a sufficient ground for the dismissal of the petition. In addition, it is clear that even when there is such a certification, but is not accompanied by proof that the signatory thereof is authorized to file the petition on behalf of the corporation, the same is likewise considered as a ground for the dismissal of the case.

In this case, We see no defect in the verification part of the "VERIFICATION"[35] attached to the petitioner's *"Memorandum on Appeal"*, since there is no indication that the allegations made therein by Dr. Jose C. Chan, MD, as Medical Center Chief II, as such, are not based on his personal knowledge or on authentic records. However, We cannot say the same as regards petitioner's compliance with the required certification against forum shopping, since petitioner failed to attach or incorporate the same to its *"Memorandum on Appeal"*.

Furthermore, it must already be pointed out, in relation to the required certification against forum shopping, that petitioner's filing of the later pleading labelled *"Petition for Review"*, having now a "VERIFICATION/CERTIFICATION OF NON-FORUM SHOPPING"[36], did not cure the defect. Not only was the latter pleading belatedly filed, as will be discussed momentarily, the certification against forum shopping attached thereto, was not accompanied by proof that Dr. Jose C. Chan, MD, as Medical Center Chief II, was authorized to file the said *"Petition for Review"* on behalf of petitioner.

Moreover, to repeat, the *"Petition for Review"* under the RRCTA must be accompanied by proof of payment of docket fees. In this case, the filing of the *"Memorandum on Appeal"* of petitioner was indisputably not accompanied by a full payment of the prescribed docket fees.

It is already settled that the payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal. In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.[37] Thus, the Court in Division is correct in dismissing the case *a quo*.

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[35] Division Docket (UDK-SP No. 017), p. 46.
[36] Division Docket (UDK-SP No. 017), p. 105.
[37] *Gipa, et al. vs. Southern Luzon Institute, et al.*, G.R. No. 177425, June 18, 2014.

The subsequent filing by petitioner of the "Petition for Review" is of no moment.

Petitioner banks on the notion that by its subsequent filing of a pleading labelled as a *"Petition for Review"*, it merely submitted a "corrected copy" of its initiatory pleading labelled as "*Memorandum of Appeal*".

As We have already discussed, the said "*Memorandum of Appeal*" filed on April 6, 2017 cannot be equated with the *"Petition for Review"* required under the RRCTA. Thus, in filing a subsequent pleading labelled as *"Petition for Review"*, petitioner cannot validly argue that it merely submitted a "corrected copy" of its initiatory pleading.

In addition, the filing of the said *"Petition for Review"* was belatedly made. To reiterate, based on aforequoted Section 3(a), Rule 8 of the RRCTA, the filing of a *Petition for Review* must be made within thirty (30) days after receipt of a copy of the decision or ruling of respondent CIR. Otherwise, this Court shall not be vested with jurisdiction.

The 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[38]

Since the alleged date of the receipt of respondent CIR's *Final Decision* was on March 7, 2017,[39] the filing of petitioner's *"Petition for Review"* on June 2, 2017[40] was done beyond the said 30-day period.

It is axiomatic that a fatally defective or erroneous appeal or motion will not toll the running of a period to appeal. A detour from the proper course of an appeal will not earn for the errant party a fresh start.[41] Thus, petitioner's filing of its "*Memorandum of Appeal*" did not toll the running of the 30-day period to appeal.

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[38] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.
[39] Division Docket (UDK-SP No. 017), pp. 39 to 40.
[40] Division Docket (UDK-SP No. 017), p. 97.
[41] *Banting, et al. vs. Spouses Jose Maglapuz and Raymunda Bandin Maglapuz*, G.R. No. 158867, August 22, 2006.

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Correspondingly, the Court in Division did not acquire jurisdiction over the case *a quo*, in view of petitioner's failure to observe the said period to appeal.

Relative to the subsequent filing of its *"Petition for Review"*, petitioner also sets its focus on the letter dated May 17, 2017[42] issued by Atty. Danilo B. Fernando, Executive Clerk of Court of this Court. According to petitioner, pursuant to and in compliance with the said letter, which it allegedly received on May 26, 2017,[43] it urgently mailed via private courier,[44] on May 29, 2017, five (5) copies of the said *"Petition for Review"*, together with five (5) DBP Manager's checks in the total amount of ₱71,581.80, as payment of the docket fees. Said copies and Manager's checks, however, were only received by this Court on June 2, 2017.

It must be remembered that in the said letter of Atty. Fernando, the latter directed petitioner to pay the entire amount of docket fees within three (3) days from receipt of the said letter; otherwise, the appeal will be dismissed, in accordance with Section 1(e), Rule IV of the *Internal Rules of the Court of Tax Appeals*. Moreover, petitioner, in the same letter, was also informed that appeal to this Court is initiated by filing a *Petition for Review* in at least five (5) copies, not a *Memorandum of Appeal*.

Notably however, petitioner failed to comply with the 3-day period for the full payment of the prescribed docket fees.

Considering that Atty. Fernando's letter was allegedly received by petitioner on May 26, 2019, the latter had until May 29, 2017 to pay in full the prescribed docket fees. However, as mentioned earlier, the DBP Manager's checks in the total amount of ₱71,581.80 was received by this Court only on June 2, 2017, or beyond the said 3-day period to comply.

To stress, the requirement of an appeal fee is by no means a mere technicality of law or procedure. It is an essential requirement in the perfection of an appeal without which the decision appealed from would become final and executory, as if no appeal was filed at all. And this must be so considering that the right to appeal is not a

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[42] Division Docket (UDK-SP No. 017), pp. 90 to 91.
[43] *Petition for Review*, and petitioner's *Memorandum*, EB Docket, pp. 20 and 114.
[44] Division Docket (UDK-SP No. 017), pp. 122 to 123.

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natural right nor a part of due process but is merely a statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law.[45]

Simply put, where the appellate docket fee is not paid in full within the reglementary period, the decision of the trial court becomes final and no longer susceptible to an appeal. For once a decision becomes final, the appellate court is without jurisdiction to entertain the appeal.[46] Since the full payment of the docket fees was not made by petitioner within the 3-day reglementary period, the *Final Decision* of respondent CIR became final, and the Court is without jurisdiction to entertain petitioner's case.

With the foregoing findings, the Court *En Banc* deems it unnecessary to address the other issues raised by petitioner.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Resolutions dated June 1, 2018 and July 18, 2017, both rendered by the Court in Division in UDK-SP No. 017, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[45] *Acda vs. The Minister of Labor, et al.*, G.R. No. L-51607, December 15, 1982.
[46] *D.M. Wenceslao and Associates, Inc. vs. City of Parañaque., et al*, G.R. No. 170728, August 31, 2011.

CIELITO N. MINDARO-GRULLA
Associate Justice

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

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