REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2749** (CTA Case No. 9725)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES, *JJ.***
COURT OF TAX APPEALS THIRD DIVISION and FCF MINERALS CORPORATION, Respondents.	Promulgated: MAY 15 2025 4:20

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RESOLUTION

FERRER-FLORES, J.:

For resolution is petitioner's **Motion for Reconsideration (Re: Decision dated 13 August 2024)** filed on September 4, 2024,[1] with respondent's **Comment** filed on November 13, 2024.[2]

Petitioner seeks the reversal of this Court's Decision dated August 13, 2024 (assailed Decision), which denied the *Petition for Certiorari and Prohibition Under Rule 65* and read as follows:

[1] *Rollo*, pp. 62 to 78.
[2] *Rollo*, pp. 91 to 99.

WHEREFORE, premises considered, the instant **Petition for Certiorari and Prohibition Under Rule 65** is **DISMISSED**.

SO ORDERED.

In his *Motion*, petitioner claims that the Court *En Banc* erred in dismissing his *Petition for Certiorari and Prohibition Under Rule 65* for his failure to file a motion for reconsideration of the Resolution dated February 15, 2023 denying his *Petition from Relief from Judgment*.[3]

Petitioner still faults the original handling counsel of the instant case, Atty. Marionn Phillbee Tejada, for his failure to file a motion for reconsideration and reiterates his claim that he had no knowledge that the same was not filed in view of the voluminous number of pleadings filed by the Litigation Division. Petitioner reiterates in the instant *Motion* that he was surprised to receive an Entry of Judgment for the instant case and that his inability to file a motion for reconsideration was due to excusable negligence as he was not aware that it was not filed. He repeats his contention that he has no participatory negligence as it was entirely attributable to Atty. Tejada. Petitioner still asserts that the rule, which states that the mistakes of the counsel bind the client, may not be strictly followed where its observance would result in outright deprivation of the client's liberty or property or where the interest of justice so requires.

Petitioner incessantly claims that he has meritorious defense under Revenue Memorandum Circular (RMC) No. 17-2013,[4] and continually posits that Financial and Technical Assistance Agreement (FTAA) contractors are liable to pay the taxes during and after their recovery period as compliance with their tax obligations and not in the nature of settling the government share under the FTAA.

Finally, petitioner reuses the argument that the Rules of Court should be liberally construed so as not to defeat substantial justice. M

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Rule VIII
Process of Adjudication

SECTION 1. *Case assigned to a Justice for study and report.* – Every Division case, whether appealed or original, assigned to a Justice for study and report shall be retained by him even if he is transferred to another Division. The Justice, though transferred, shall write the report with the other members of the Division to which the case was originally submitted for decision. Their Division shall be called Special (No.) Division.

4 SUBJECT: Clarifying the Taxes Due from Financial or Technical Assistance Agreement (FTAA) Contractors During "Recovery Periods", February 15, 2013.

On the other hand, herein private respondent counters that what was prohibited in an order denying a petition for relief from judgment is an appeal, not a motion for reconsideration. Respondent emphasized that petitioner acknowledged the negligence on his part when Atty. Tejada failed to file the required motion for reconsideration. Moreover, respondent maintains that the liberal application of the rules is not justified as the large volume of work and loaded calendar is not a valid excuse for failure to comply with the reglementary periods required. It stresses that this is not the first time that petitioner has acted negligently as the *Petition for Relief from Judgment*, which is the subject of the *Petition for Certiorari and Prohibition Under Rule 65*, was dismissed by the Court in Division for being filed out of time. Finally, respondent maintains that petitioner does not have meritorious defenses.

Petitioner's *Motion* is bereft of merit.

A reading of petitioner's *Motion* shows that the arguments therein are substantially identical to those raised in the *Petition for Certiorari and Prohibition Under Rule 65* and reiterate the very same legal contentions and factual issues that have already been considered by the Court in the assailed Decision.

As aptly discussed in the assailed Decision, a special civil action for certiorari under Rule 65 of the Rules of Court is available only when the following essential requisites concur: (a) the petition must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (b) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (c) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.[5]

Under Section 4 of Rule 65 of the Rules of Court, if a motion for reconsideration is timely filed, whether required or not, the 60-day period to file a petition for *certiorari* shall be counted from the notice of the denial of said motion, to wit:

> **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 (60) day period shall be counted from notice of the denial of said motion.** M

[5] *Jerzon Manpower and Trading, Inc. vs. Nato*, G.R. No. 230211, October 6, 2021, citing the case of *Philippine Airlines Employees Association vs. Cacdac*, G.R. No. 155097 (Resolution), September 27, 2010.

> 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, 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 only by the Court of Appeals.
>
> No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Emphasis ours)

The Court *En Banc* already found that, in the instant case, no motion for reconsideration of the denial of the *Petition for Relief from Judgment* was filed by herein petitioner before the Court in Division. The *Petition for Certiorari and Prohibition Under Rule 65* was filed within 60 days from petitioner's alleged receipt of the denial of his *Petition for Relief from Judgment*, which was on February 28, 2023.[6]

At the risk of being repetitive, we reiterate the ruling of the Supreme Court in the recent case of *Del Monte Land Transport Bus Company and Narciso O. Morales vs. Carlito T. Abergos*,[7] wherein the exceptions to the requirement of a motion for reconsideration prior to the filing of a petition for *certiorari* were enumerated and the Supreme Court held that the Court of Appeals should have dismissed the petition outright for failure of Abergos to file a motion for reconsideration and for failure to provide justification for not doing so.

The Court *En Banc* finds petitioner's excuses, that his counsel's inability to file a motion for reconsideration was due to the fact the he was kept in the dark regarding his counsel's gross negligence in failing to file the motion for reconsideration in the instant case, unacceptable and not among the enumerated exceptions to the non-filing of a motion for reconsideration prior to the filing of a petition for certiorari.

In sum, there being no new issues or substantial arguments raised in the instant *Motion*, this Court finds no compelling reason to disturb or overturn the assailed *Decision* or rediscuss our ruling thereon.

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[6] Counting 60 days from February 28, 2023, petitioner had until April 29, 2023 within which to file his petition for certiorari. April 29, 2023 is a Saturday and May 1, 2023 is a holiday.

[7] G.R. No. 245344, December 2, 2020.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Decision dated 13 August 2024)** is hereby **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice