REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

***En Banc***

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| **COMMISSIONER OF INTERNAL REVENUE,** *Petitioner,* | **CTA *EB* NO. 2831** (CTA Case No. 10113) |
| | Present: |
| -*versus*- | **DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.* |
| **TETRA PAK PHILIPPINES, INC.,** *Respondent.* | Promulgated: SEP 12 2024 10:21 a.m. |

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**DECISION**

***MODESTO-SAN PEDRO, J.:***

*The Case*

Before the Court is a *Petition for Review*[1] ("Petition") filed by petitioner Commissioner of Internal Revenue ("CIR") on December 6, 2023, with respondent Tetra Pak Philippines, Inc.'s *Comment/Opposition (To The Petition for Review dated 04 December 2023)*[2] ("Comment"), filed via registered mail on March 25, 2024. Petitioner seeks the nullification of the Amended Decision,[3] dated May 23, 2023 ("assailed Decision") and Resolution,[4] dated October 26, 2023 ("assailed Resolution"), both rendered

[1] *Rollo*, pp. 7-20.
[2] *Id.* at 46-62.
[3] *Id.* at 28-33.
[4] *Id.* at 35-41.

by the First Division of the Court of Tax Appeals ("Court in Division"), which partially granted respondent's *Motion for Partial Reconsideration (Re: Decision dated 23 November 2022)* by ordering petitioner to refund respondent an amount representing unutilized input value-added tax ("VAT") attributable to zero-rated sales for the first quarter of calendar year 2017.

### *The Parties*[5]

Petitioner is the Commissioner of the Bureau of Internal Revenue ("BIR") and is empowered by law to act upon and approve claims for refund, tax credit certificates, and other matters involving the enforcement of the *National Internal Revenue Code of 1997, as amended*, and other tax laws, rules, and regulations.

Respondent is a corporation organized and existing under the laws of the Republic of the Philippines and is registered with the BIR under Tax Identification Number 000-169-584-000.

### *The Facts*

Respondent filed an administrative claim for refund of the subject tax with the BIR, but the same was denied through a letter received by respondent on June 13, 2019.[6]

Aggrieved, respondent filed a Petition for Review with the Court in Division on July 12, 2019, to which respondent interposed his Answer on September 23, 2019.[7]

After conducting a full-blown trial,[8] the Court in Division issued a Decision[9] on November 23, 2022, denying respondent's Petition for Review for lack of merit.

Respondent then filed a Motion for Partial Reconsideration[10] on December 27, 2022. As stated above, this was partially granted by the Court in Division through the assailed Decision. Petitioner filed a Motion for Partial Reconsideration[11] on June 14, 2023, but the same was denied in full in the assailed Resolution.

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[5] *See* Decision, dated November 23, 2022, p. 2, Division Records Vol. 3, p. 1241.
[6] *Id.*
[7] *Id.*
[8] *See* Decision, dated November 23, 2022, pp. 4-5, *id.* at 1243-1244.
[9] *Id.* at 1240-1290.
[10] *Id.* at 1292-1308.
[11] *Id.* at 1325-1332.

The assailed Resolution was first received by the Office of the Solicitor General ("OSG") on October 31, 2023, while the BIR received the issuance on November 6, 2023.[12]

Dissatisfied, petitioner filed a Motion for Extension of Time to File Petition for Review[13] ("Motion for Extension") on November 21, 2023, which the Court *En Banc* granted through a Minute Resolution,[14] dated November 22, 2023, on the condition that the motion was actually filed on time.

Petitioner then filed the instant Petition on December 6, 2023, while respondent filed its Comment to the same via registered mail on March 25, 2024, after order to do so.[15] The Court then submitted this case for decision.[16]

Hence, this Decision.

*The Assigned Errors*

Petitioner asserts that the Court erred in partially granting respondent the refund it sought.[17]

*The Arguments*

Petitioner insists that the Court in Division should have dismissed respondent's Petition for Review for the latter's failure to substantiate its refund claim at the administrative level.

Respondent counters that the Court *En Banc* should dismiss his Petition for failure to contain the facts, issues, and grounds for its case and for failing to serve a copy of the Petition to the Court in Division. Furthermore, respondent argues that the Court in Division correctly considered respondent's evidence and properly used the jurisprudence cited in the assailed issuances.

*The Ruling of the Court*

The Petition for Review must be dismissed, though not for the reasons respondent raises. In any event, the Petition is bereft of merit.

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[12] *See* Notice of Resolution, dated October 27, 2023, *id.* at 1358.
[13] *Rollo*, pp. 1-4.
[14] *Id.* at 6.
[15] *See* Minute Resolution, dated March 1, 2024, *id.* at 42.
[16] *See* Minute Resolution, dated May 15, 2024, *id.* at 67.
[17] *See* Petition for Review, p. 4, *id.* at 10.

*The Petition sufficiently complies with requirements regarding content, and Petitioner need not prove that he served the Petition upon the Court in Division*

Respondent claims that the instant Petition should be dismissed as it (1) fails to properly identify the facts and grounds upon which his arguments rely; and (2) lacks proof of service to the Court in Division.

The Court disagrees.

A quick perusal of the Petition shows that it identifies the antecedent facts relevant to this case, in sections neatly titled "Parties," "Statement of the Case," and "Statement of Facts."[18] Said sections concisely summarize the factual context from which this case arises, sufficiently complying with *Rule 43, Section 6 of the Rules of Court.*

As for the legal grounds upon which petitioner relies, the same are included in the Petition. While these may be flawed and shaky grounds for petitioner's case, they are clearly printed in the Petition, spanning nine of its 14 pages. It thus complies with the rule on content.

The fact that the Petition lacked proof of service to the Court in Division, meanwhile, would be a foolish reason for dismissing this case. The rule is set in place to ensure that a court is properly notified of an appeal from one of its rulings, to prevent situations where, for example, said court issues an Entry of Judgment when its ruling, unbeknownst to it, had already been raised before a higher court. This is important, for instance, when a ruling of the Regional Trial Court is brought before the Court of Appeals for review.

Here, the court that issued the assailed ruling is a division of *the very same court* to which petitioner now appeals. The Court of Tax Appeals is not so disorganized, or overly atomized, that it is incapable of informing its own divisions of relevant Petitions for Review filed before it *en banc*. Given the structure of the Court, the problem that the rule attempts to address simply does not arise. Strict compliance with the rule is thus unnecessary.

An issue which this Court must always address, however, is that of jurisdiction.

[18] *See* Petition for Review, pp. 2-4, *id.* at 8-10.

*The Petition for Review was filed late, and the assailed issuances have become final and executory*

Under *Rule 4, Section 2 of the Revised Rules of the Court of Tax Appeals* ("*RRCTA*"), this Court *En Banc* has the jurisdiction to review rulings of the Court in Division in cases arising from administrative agencies, such as the BIR. *Rule 8, Section 3(b) of the RRCTA* provides a prescriptive period for such appeals, requiring an aggrieved party to file a Petition for Review before the Court *En Banc* within 15 days from receipt of the questioned resolution. This may be extended, on motion, by 15 days.

Here, the BIR received the assailed Resolution on November 6, 2023. Petitioner filed his Motion for Extension on November 21, 2023, exactly 15 days from November 6 of that year. He then filed the instant Petition on December 6, 2023, exactly 15 days from his filing of the Motion for Extension.

As stated earlier, however, the OSG received the assailed Resolution on October 31, 2023. Notably, while *Rule 9 , Section 10 of the RRCTA* allows the OSG to deputize officials from the BIR, the same does *not* dissolve the OSG's status as counsel for the government, especially as said rule provides that "such deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General." And while not signed *per se*, petitioner's Motion for Extension and Petition both bear the name of Solicitor General Menardo I. Guevarra. The OSG thus remained as counsel for petitioner, and its receipt of the assailed Resolution amounts to petitioner's receipt of the same.

Given that the OSG received the assailed Resolution on October 31, 2023, petitioner had until November 15, 2023 within which to file either a Petition for Review or a motion praying for an extension of time for filing such. He filed his Motion for Extension on November 21, 2023, almost a week after November 15, 2023. As the Court *En Banc* only granted said Motion for Extension on the condition that it was filed on time, no extension of time was granted, and petitioner should not have been allowed to file the instant Petition on December 6, 2023.

The Petition for Review was thus filed late, the assailed rulings of the Court in Division have become final and executory, and the Court *En Banc* never properly gained jurisdiction over this case. We consequently have no option but to dismiss the Petition for Review.

*Petitioner's arguments were either already refuted by the Court in Division or irrelevant to this case*

Assuming *arguendo* that the Court *En Banc* has jurisdiction over the Petition, the same would still have to be denied for lack of merit. The sole argument raised by petitioner is, for the most part, a rehash of the argument from his Motion for Partial Reconsideration before the Court in Division, who already discussed the fatal flaws of said argument in the assailed Resolution.

The only novel contention in the Petition is its citation of various BIR issuances regarding mandatory submissions for administrative claims for refund. As observed by respondent, however, these cover claims for refund of withholding tax and are thus irrelevant to the case at bar, which involves a claim for refund of input VAT. The argument would thus have to be rejected.

In sum, the Court *En Banc* lacks jurisdiction over this Petition, which is wholly bereft of merit anyway.

**ACCORDINGLY**, petitioner's Petition for Review, filed on December 6, 2023, is hereby **DISMISSED** for lack of jurisdiction.

**SO ORDERED.**

**MARIA ROWENA MODESTO-SAN PEDRO**
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

Marian Ivy F. Reyes-Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**LANEE S. CUI-DAVID**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice

**HENRY S. ANGELES**
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