REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COSMOS BOTTLING CORPORATION,
Petitioner,

CTA EB NO. 2081
(CTA Case No. 9405)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 10 2020

4:05 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This is a Petition for Review[1] filed on June 14, 2019 under *Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals* (RRCTA), seeking the reconsideration, reversal and setting aside of the Resolution,[2] dated February 7, 2019 and the Resolution,[3] dated May 14, 2019 (collectively referred to as "Assailed Resolutions"), promulgated by the Court of Tax Appeals First Division (Court in Division) praying for the Court *En Banc* to render a decision remanding the original Petition for Review and Supplemental Petition for Review to the Court in Division for further proceedings to be decided on its merits or ultimately to dismiss or invalidate the disputed assessments.

[1] Court *En Banc* Docket, Vol. I, pp.1-33.
[2] Division Docket, Vol. III, pp. 2004-2009.
[3] *Id.*, pp. 2037-2041.

The respective dispositive portions of the Assailed Resolutions are quoted hereunder:

Resolution dated February 7, 2019:

> "**WHEREFORE**, premises considered, the Petition for Review and Supplemental Petition for Review are hereby **DISMISSED**. Petitioner is hereby declared to have engaged in forum shopping and is adjudged **GUILTY OF DIRECT CONTEMPT**; petitioner is hereby **ORDERED** to pay a **FINE** of Two Thousand Pesos (Php2,000.00), within five (5) days from notice.
>
> Respondent's Manifestation filed on January 23, 2019 is **NOTED**.
>
> **SO ORDERED.**"

Resolution dated May 14, 2019:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration of the Resolution dated February 7, 2019** filed on March 5, 2019 is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner Cosmos Bottling Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at 26th Floor, Net Lima Building, 5th Avenue corner 26th Street, Bonifacio Global City, Taguig City. It is primarily engaged in the business of preparing, packaging, and selling at wholesale beverage products.[4]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with authority, among others, to decide disputed assessments and abate or cancel a tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed, among others.

[4] Par. 3, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Vol. III, p. 1405.

He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner is registered with the BIR with Tax Identification No. 000-243-833-000.[5]

The BIR's Large Taxpayers Service-Large Taxpayers Audit and Investigation Division I issued a Letter of Authority (LOA) No. 2008-00028972, dated May 27, 2009, which authorized the examination and investigation of petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year 2008.[6]

On July 22, 2013, petitioner received a Preliminary Assessment Notice (PAN) for alleged deficiency taxes in the aggregate amount of ₱7,730,115,119.07.[7]

On April 21, 2014, petitioner received Assessment Notices and Formal Letter of Demand (FLD) for alleged deficiency taxes, as follows:[8]

Tax Type	Amount
Income Tax	₱6,839,023,466.98
Value Added Tax	1,207,925,865.67
Withholding Tax on Compensation	86,390,008.88
Expanded Withholding Tax	138,166,491.82
Documentary Stamp Tax	9,808,061.37
Total	₱8,281,313,894.72

On May 21, 2014, petitioner filed a Protest on the Assessment Notices and FLD, with supporting documents submitted on 21 July 2014.[9]

On September 4, 2015, petitioner received the Final Decision on Disputed Assessment (FDDA), dated September 1, 2015, issued by Assistant BIR Commissioner Nestor S. Valeroso, which imposed the following deficiency taxes, including increments.[10]

Tax Type	Amount
Income Tax	₱2,820,757,297.29
Value Added Tax	792,870,187.46
Withholding Tax on Compensation	89,697,604.97

[5] Par. 5, JSFI, Division Docket, Vol. III, p. 1405.
[6] Par. 10, JSFI, Division Docket, Vol. III, p. 1406.
[7] Par. 16, JSFI, Division Docket, Vol. III, p. 1407.
[8] Par. 17, JSFI, Division Docket, Vol. III, p. 1407.
[9] Par. 18, JSFI, Division Docket, Vol. III, p. 1407.
[10] Par. 19, JSFI, Division Docket, Vol. III, pp. 1407-1408.

Expanded Withholding Tax	51,254,808.91
Documentary Stamp Tax	6,328,205.84
Total	₱3,760,908,104.47

On October 5, 2015, petitioner filed its Request for Reconsideration of the FDDA with Hon. Kim S. Jacinto-Henares, then Commissioner of Internal Revenue (CIR), praying that the deficiency tax assessments per FDDA be reconsidered and modified.[11]

On July 1, 2016, petitioner received the Letter dated June 29, 2016 of the then CIR Jacinto-Henares denying petitioner's request for reconsideration.[12]

On July 11, 2016, petitioner submitted a letter of even date to the newly-appointed Commissioner of Internal Revenue Caesar Dulay, requesting the latter to take a second look on the petitioner's position on the issues involved in the FDDA and the Letter-Resolution dated June 29, 2016 issued by former CIR Kim Jacinto-Henares. [13]

On July 21, 2016, petitioner submitted to respondent a Supplemental Letter of even date containing relevant court decisions as bases and/or authority for respondent to take a second look at the Denial Letter of his predecessor.[14]

On July 29, 2016, petitioner filed a Petition for Review with the Court in Division seeking the nullification and cancellation of the FDDA and the Denial Letter of then CIR Kim Henares.[15]

On September 29, 2016, petitioner received an Amended FDDA issued by then OIC of the BIR, Assistant BIR Commissioner Nestor S. Valeroso, revising the deficiency internal revenue taxes, inclusive of interest until 30 September 2016 and compromise penalties, as follows:[16]

Tax Type	Amount
Income Tax	₱50,700,074.74
Value Added Tax	392,437.23
Total	₱51,092,511.97

[11] Par. 21, JSFI, Division Docket, Vol. III, p. 1408.
[12] Par. 22, JSFI, Division Docket, Vol. III, p. 1408.
[13] Par. 23, JSFI, Division Docket, Vol. III, p. 1408.
[14] Par. 24, JSFI, Division Docket, Vol. III, p. 1408.
[15] Par. 25, JSFI, Division Docket, Vol. III, p. 1408.
[16] Par. 34, JSFI, Division Docket, Vol. III, p. 1410.

On September 30, 2016, petitioner paid the foregoing revised deficiency internal revenue taxes for taxable year 2008 per Amended FDDA, inclusive of increments.[17]

On October 13 2016, petitioner filed with the Court in Division a Motion to Withdraw the Petition for Review.[18]

In a Resolution dated October 20, 2016, the Court in Division ordered the petitioner to submit original or certified true copies of the Annexes attached to its Motion to Withdraw and also ordered respondent to file a Comment to the Motion to Withdraw within five (5) days from receipt of the Annexes.[19]

In a Resolution, dated February 9, 2017, the Court in Division reiterated its Order for respondent to file a Comment to the Motion to Withdraw the Petition for Review and directed respondent to show the authority of the OIC of the BIR to issue the Amended FDDA.[20] Respondent filed his Comment with Compliance on April 7, 2017.[21]

In a Resolution, dated May 25, 2017, the Court in Division granted the Motion to Withdraw the Petition for Review but ruled that the Amended FDDA was "fraught with legal infirmity as it is an action beyond the Bureau's authority to do so."[22] Thus, while the Court in Division allowed the withdrawal of the Petition for Review, it did not, however, confirm the validity of the Amended FDDA, to wit:

> **WHEREFORE**, premises considered, Petitioner's Motion to Withdraw Petition for Review is **GRANTED**.
>
> **For clarification, the Court declares that in allowing the withdrawal of the Petition for Review, the Court does not in any way confirm the validity of the Amended FDDA dated September 29, 2016 issued by Deputy Commissioner of Internal Revenue, Operations Group, Officer-in-Charge Nestor S. Valeroso.**[23]

On June 14, 2017, petitioner filed a Motion for Reconsideration of the May 25, 2017 Resolution and prayed that the Court in Division confirm the validity of the Amended FDDA or, in the alternative, reinstate the original

[17] Par. 35, JSFI, Division Docket, Vol. III, p. 1410.
[18] Par. 37, JSFI, Division Docket, Vol. III, p. 1410.
[19] Par. 38, JSFI, Division Docket, Vol. III, p. 1410.
[20] Par. 40, JSFI, Division Docket, Vol. III, p. 1411.
[21] Par. 41, JSFI, Division Docket, Vol. III, p. 1411.
[22] Division Docket, Vol. I, pp. 463-475.
[23] *Id.*

Petition for Review.[24] Acting thereon, the Court in Division issued a Resolution on August 24, 2017 partially granting petitioner's Motion for Reconsideration but only as it declared the case closed and terminated. Accordingly, the Court in Division ordered the reinstatement of the Petition for Review and the filing of respondent's Answer thereto.[25]

On September 27, 2017, petitioner filed a Motion to Admit Supplemental Petition for Review with attached Supplemental Petition for Review.[26] Petitioner's Supplemental Petition for Review was admitted through a Resolution dated October 3, 2017.[27]

On December 8, 2017, respondent filed a Motion to Admit Attached Answer with attached Answer.[28] The Court in Division admitted respondent's Answer through a Resolution dated December 15, 2017.[29] Petitioner filed its Reply (Re: Respondent's Answer dated December 6, 2017) on January 3, 2018.[30]

The Pre-Trial Conference was held on April 26, 2018.[31] Petitioner's Pre-Trial Brief[32] was filed on February 23, 2018 while respondent's Pre-Trial Brief[33] was filed on March 16, 2018.

On June 11, 2018, the parties filed their Joint Stipulation of Facts and Issue[34], which was approved by the Court in the Resolution[35] dated July 26, 2018. The Pre-Trial Order[36] was issued on August 9, 2018.

Petitioner presented its witnesses: (1) Mr. Gil T. Lizaso – Senior Tax Analyst III of Coca-Cola FEMSA Philippines, Inc. (CCFPI)[37] and Atty. Carlito P. Egaña – petitioner's Tax Counsel.[38]

During the November 27, 2018 hearing, the Court in Division required Atty. Emerson S. Panganiban to show cause why the case should not be dismissed for violation of the rule on forum shopping within ten (10) days from said date or until December 7, 2018.[39]

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[24] *Id.*, pp. 476-490.
[25] *Id.*, pp. 528-534.
[26] *Id.*, pp. 539-546.
[27] *Id.*, p. 568.
[28] *Id.*, pp. 577-585.
[29] *Id.*, p. 587.
[30] *Id.*, pp. 606-620.
[31] Minutes of the Hearing dated April 26, 2018, Division Docket, Vol. II, pp. 1326-1329.
[32] Division Docket, Vol. II, pp. 854-876.
[33] *Id.*, pp. 1253-1257.
[34] Division Docket, Vol. III, pp. 1404-1424.
[35] *Id.*, pp. 1483-1488.
[36] *Id.*, pp. 1497-1528.
[37] Order dated November 13, 2018, Division Docket Vol. III, p. 1614-1616.
[38] Order dated November 27, 2018, Division Docket Vol. III, p. 1621-1622.
[39] *Id.*

On December 6, 2018, petitioner filed its Compliance and praying that the Court in Division consider its explanation sufficient so that its Petition for Review will not be dismissed and instead be heard on the merits.[40]

On December 17, 2018, petitioner filed its Formal Offer of Evidence.[41]

On February 7, 2019, the Court in Division dismissed both the Petition for Review and the Supplemental Petition for Review after finding petitioner guilty of forum shopping, *viz*:[42]

> **WHEREFORE**, premises considered, the Petition for Review and Supplemental Petition for Review are hereby **DISMISSED**. Petitioner is hereby declared to have engaged in forum shopping and is adjudged **GUILTY OF DIRECT CONTEMPT**; petitioner is hereby **ORDERED** to pay a **FINE** of Two Thousand Pesos (Php2,000.00), within five (5) days from notice.

On March 5, 2019, petitioner filed its Motion for Reconsideration of the Resolution dated February 7, 2019[43] which the Court in Division denied in the Resolution dated May 14, 2019.[44]

Aggrieved, the petitioner filed the present Petition for Review.

On June 19, 2019, petitioner filed an Urgent Motion to Suspend the Collection of Tax and to Dispense with the Posting of the Surety Bond and/or Reduce the Surety Bond.[45]

In a Resolution dated July 10, 2019,[46] the Court *En Banc* directed the respondent to file his Comment on both the present Petition for Review and petitioner's Urgent Motion to Suspend the Collection of Tax and to Dispense with the Posting of the Surety Bond and/or Reduce the Surety Bond within a period of ten (10) days and five (5) days, respectively, from receipt of the said Resolution.

[40] Division Docket Vol. III, p. 1627-1632.
[41] *Id.*, pp. 1634-1650.
[42] *Id.*, pp. 2004-2009.
[43] *Id.*, pp. 2010-2021.
[44] *Id.*, pp. 2037-2041.
[45] Court *En Banc* Docket, Vol. I, pp. 504-520.
[46] Court *En Banc* Docket, Vol. II, pp. 543-544.

On July 30, 2019, respondent filed via registered mail his Comment on Urgent Motion to Suspend Collection of Tax.[47]

On August 5, 2019, respondent filed a Motion for Additional Time to File Comment[48] which the Court *En Banc* granted in a Minute Resolution dated August 9, 2019.[49] In the said Minute Resolution, the Court *En Banc* granted respondent a final and non-extendible period of ten (10) days from August 4, 2019 or until August 14, 2019 within which to file his Comment to the Petition for Review.

On August 14, 2019, respondent filed an Urgent Motion for Additional Time to File Comment[50] which the petitioner opposed through its Comment/Objection (Re: Respondent's Urgent Motion for Additional Time to File Comment dated August 13, 2019).[51]

On August 27, 2019, respondent filed his Comment on Petition for Review.[52]

On August 30, 2019, petitioner filed a Motion for Leave of Court to Admit Attached Reply (Re: Respondent's Comment dated July 30, 2019) with attached Reply (Re: Respondent's Comment dated July 30, 2019).[53] On September 11, 2019, petitioner also filed an Urgent Motion for Leave of Court to Admit Attached Reply (Re: Respondent's Comment on Petition for Review dated August 23, 2019) with attached Reply (Re: Respondent's Comment on Petition for Review dated August 23, 2019).[54]

In a Resolution dated September 19, 2019,[55] the Court *En Banc* denied respondent's Urgent Motion for Additional Time to File Comment and, accordingly, expunged respondent's Comment to the Petition for Review from the case records. In the same Resolution, the Court *En Banc* submitted the present Petition for Review for Decision. In the same Resolution as well, the Court *En Banc* required the parties to submit their respective memoranda as regards petitioner's Urgent Motion to Suspend Collection of Tax and to Dispense with the Posting of the Surety Bond and/or Reduce the Surety Bond.

Notwithstanding the Court *En Banc*'s pronouncement of submitting the present Petition for Review for decision, respondent filed on October 9,

[47] *Id.*, pp. 558-562.
[48] *Id.*, pp. 554-556.
[49] *Id.*, pp. 564-564-A.
[50] *Id.*, pp. 565-567.
[51] *Id.*, pp. 570-573.
[52] *Id.*, pp. 575-583.
[53] *Id.*, pp. 585-593.
[54] *Id.*, pp. 594-605.
[55] *Id.*, pp. 608-609.

2019 via registered mail his Motion for Reconsideration of the September 19, 2019 Resolution.[56]

Thereafter on October 24, 2019, petitioner filed its Comment (Re: Respondent's Motion for Reconsideration dated October 9, 2019).[57]

On October 25, 2019, petitioner filed its Memorandum (Re: Urgent Motion to Suspend the Collection of Tax and to Dispense with the Posting of the Surety Bond and/or Reduce the Surety Bond).[58] Respondent, on the other hand, filed a Manifestation on October 29, 2019 stating that he is adopting his Comment on Urgent Motion to Suspend Collection of Tax as his Memorandum on this particular issue.[59]

In a Resolution dated December 10, 2019,[60] the Court *En Banc* denied petitioner's Urgent Motion to Suspend the Collection of Tax and to Dispense with the Posting of the Surety Bond and/or Reduce the Surety Bond as well as respondent's Motion for Reconsideration dated October 9, 2019.

On January 2, 2020, petitioner filed a Motion for Reconsideration (Re: Resolution dated December 10, 2019)[61] which the Court *En Banc* denied through a Resolution dated July 2, 2020.[62]

THE ISSUES

In its Petition for Review, petitioner has raised the following issues for the Court *En Banc*'s resolution:[63]

"I. Whether petitioner's Letters dated July 11 and 21, 2016 filed with the CIR require disclosure in the Certification of Non-Forum Shopping;

II. Whether the filing of the aforesaid letters with the CIR and of the Petition for Review with the CTA constitutes forum shopping;

III. If filing of the aforesaid letters with the CIR and of the Petition for Review with the CTA constitutes forum shopping, whether special circumstances are present in this

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[56] *Id.*, pp. 611-614.
[57] *Id.*, pp. 618-621.
[58] *Id.*, pp. 622-645.
[59] *Id.*, pp. 658-659.
[60] *Id.*, pp. 663-670.
[61] *Id.*, pp. 671-679.
[62] *Id.*, pp. 696-698.
[63] Court *En Banc* Docket, Vol. I, pp. 12-13.

case to warrant the relaxation of the rule[s] against forum shopping;

IV. Assuming the Court concludes that petitioner engaged in forum shopping, whether the Amended FDDA is final and executory because it is res judicata in the Petition for Review; [and]

V. Whether the Disputed Assessment issued by Respondent to Petitioner is void (a) for lack of authority of the revenue officers to conduct the audit investigation and (b) due to prescription, and therefore dismissible under Section 1, Rule 9 of the Rules of Court."

THE COURT *EN BANC*'S RULING

In its Petition for Review, petitioner submits that the subject letters dated July 11, 2016 and July 21, 2016, respectively, addressed to CIR Dulay (the "Letters") are mere informal requests that do not require disclosure.[64] Petitioner also asserts that the CIR is not a "forum" within the contemplation of the rule on forum shopping.[65] It likewise added that assuming that the CIR is a forum, it still did not violate the rule against forum shopping because there was no pending action with the CIR.[66] Petitioner also posits that assuming the letters could be construed as pending case, the elements of *litis pendentia* are wanting in this situation.[67]

Petitioner also claims that assuming there is forum shopping in the present case, the same does not warrant the dismissal of the original Petition for Review.[68] Petitioner likewise maintains that there exist in the present case special circumstances that warrant the relaxation of the rule against forum shopping.[69] Petitioner further avers that assuming there is forum shopping, the issuance of the Amended FDDA necessarily serves as res judicata in the present case and therefore final and executory.[70]

Finally, petitioner submits that the disputed assessment should be held void on the ground of lack of authority on the part of the revenue officers to conduct the audit investigation and prescription.[71] ge

[64] *Id.*, pp. 13-16.
[65] *Id.*, pp. 16-19.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*, pp. 20-24.
[70] *Id.*, p. 24.
[71] *Id.*, pp. 24-31.

After thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* finds that the present Petition for Review should be denied for lack of merit. Notably, petitioner's assertions in the present Petition for Review are mere restatements of those which it previously raised in its prior pleadings and which had already been adequately discussed and passed upon by the Court in Division in the Assailed Resolutions. The Court *En Banc* thus adheres to the Court in Division's finding that petitioner is guilty of forum shopping that warrants the dismissal of both its Petition for Review and Supplemental Petition for Review.

Forum shopping exists when, as a result of an adverse judgment in one forum, a party seeks another and possibly favorable judgment in another forum other than by appeal or *certiorari*.[72] There is also forum shopping when a party institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition.[73]

In *Villanueva v. Adre*,[74] the Supreme Court clarified that the rule against forum shopping is not limited only to suits or actions pending in courts but applies as well to administrative proceedings, to wit:

> "There is forum-shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or *certiorari*) in another. **The principle applies not only with respect to suits filed in the courts but also in connection with litigations commenced in the courts while an administrative proceeding is pending, as in this case, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling**." *(Emphasis supplied)*

The rule against forum shopping is embodied in Section 5, Rule 7 of the 1997 Rules of Civil Procedure, which provides:

RULE 7
Parts of a Pleading

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[72] *Commissioner of Customs et. al. v. Pilipinas Shell Petroleum Corporation (PSPC), et. al.*, G.R. No. 205002, April 20, 2016, 791 SCRA 92; *Government Service Insurance System (GSIS) v. Group Management Corporation (GMC) and Lapu-Lapu Development & Housing Corporation (LLDHC)*, G.R. Nos. 167000 & 169971, June 8, 2011, 651 SCRA 320; *FELS Energy, Inc. v. Province of Batangas*, G.R. Nos. 168557 & 170628, February 16, 2007, 516 SCRA 203.
[73] *Commissioner of Internal Revenue v. Court of Tax Appeals*, G.R. No. 203403, November 14, 2018; *Municipality of Taguig v. Court of Appeals*, G.R. No. 142619, September 13, 2005, 469 SCRA 588, 594-595.
[74] G.R. No. 80863, April 27, 1989, 172 SCRA 882.

> Section 5. *Certification Against Forum Shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: **(a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof;** and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> **Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing.** The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. **If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.** *(Emphasis supplied)*

To determine whether the rule against forum shopping has been violated, the Supreme Court laid down the following test:

> "To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought."[75]

[75] *Ignacio v. Office of the Treasurer of Quezon City*, G.R. No. 221620, September 11, 2017, 839 SCRA 320, 320-321; *Lanao Del Norte Electric Cooperative, Inc. v. Provincial Government of Lanao Del Norte*, G.R. No. 185420, August 29, 2017, 838 SCRA 44; *Municipality of Cainta v. City of Pasig*, G.R. Nos. 176703 & 176721, June 28, 2017, 828 SCRA 277-278; *Yap v. Court of Appeals*, G.R. No. 186730, June 13, 2012, 672 SCRA 428; *Genova v. De Castro*, G.R. Nos. 132076 & 140989, July 22, 2003, 407 SCRA 174-175.

In the case of *Top Rate Construction and General Services, Inc. v. Paxton Development Corporation et. al.,*[76] the Supreme Court explained the rationale of the rule against forum shopping as follows:

> "It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action."

It is well-settled that once there is a finding of forum shopping, the penalty of summary dismissal shall be imposed on all pending actions based on the same claim in any court.[77] This is so because twin dismissal is the punitive measure to those who trifle with the orderly administration of justice.[78]

Considering the foregoing discussion vis-à-vis the relevant facts of the present case, the Court *En Banc* fully agrees with the following ratiocination given by the Court in Division:[79]

> "In the case at bar, in the <u>**July 11, 2016 Letter**</u>, petitioner requested respondent, CIR Caesar R. Dulay, to take a second look on the said **FDDA dated September 1, 2015 and the Letter (Final Decision) dated June 29, 2016 of then CIR Kim S. Jacinto-Henares**. Similarly, in the original <u>**Petition for Review filed on July 29, 2016**</u> before the Court, petitioner sought the nullification and cancellation of the **FDDA dated September 1, 2015 and the Letter (Final Decision) dated June 29, 2016 of then CIR Kim S. Jacinto-Henares.**
>
> More importantly, the Court notes that in the <u>**Letter dated July 21, 2016**</u> addressed to respondent, petitioner specifically prayed for respondent to "re-examine and take a hard look at [its] case and grant [its] request for the suspension or revocation of [respondent] predecessor's midnight denial of its request for reconsideration."

[76] G.R. No. 151081, September 11, 2003 (Resolution), 410 SCRA 617.
[77] *Fontana Development Corp., et. al. v. Vukasinovic*, G.R. No. 222424, September 21, 2016, 804 SCRA 165.
[78] *Id.*, citing *Gloria S. Dy v. Mandy Commodities Co., Inc.*, G.R. No. 171842, July 22, 2009, 593 SCRA 453.
[79] Division Docket, Vol. III, p. 2008.

From the foregoing, there can be no denying that while (sic) the July 11, 2016 and July 21, 2016 Letters and the instant Petition involve the **same party against whom the assessment was issued, the rights asserted and reliefs prayed for (*i.e.*, nullification and reversal of the FDDA dated September 1, 2015 and the Letter (Final Decision) are founded on the same facts.**

Considering petitioner's action in instituting the Petition for Review and Supplemental Petition for Review with this Court, when at the same time, it has a pending request with the BIR to reconsider the assessment issued against it, - - worse, without disclosing the pendency of the July 11, 2016 and July 21, 2016 Letters in its Certification of Non-Forum Shopping, the Court finds petitioner guilty of forum shopping."

In both of these Letters, petitioner unmistakably assails the denial of its administrative appeal and implores the newly-appointed CIR to take a second look at its defenses against the deficiency tax assessment. Petitioner's contention that the above Letters were merely informal requests to the newly-appointed CIR that do not require disclosure strains credulity. It is clear those two Letters were precipitated by the adverse decision of the former CIR and that they were filed precisely to secure a more favorable decision from the newly-appointed CIR. From a reading of their tenors, these Letters certainly constitute a claim involving the same facts, causes of action, and reliefs sought as those in the petition filed with the Court in Division. In fact, even petitioner's prayer for the withdrawal of its petition after receiving the amended FDDA, which substantially reduced the deficiency assessment, implicitly confirmed that the facts and reliefs expressed in its Letters, on the one hand, and those contained in its petition with the Court in Division, on the other hand, were founded on the same cause. In other words, the fact that petitioner had asked for the withdrawal of its petition after receiving an amended FDDA, which apparently agreed to the significant reduction of its deficiency assessment to a more acceptable amount, shows that the filing of these Letters essentially accomplished the purpose of its judicial appeal. The petitioner was able to obtain the same relief from the administrative agency, thus, rendering the proceeding from another forum, *i.e.* before the Court in Division, unnecessary.

In sum, petitioner's claim as expressed through the Letters should have been disclosed by petitioner when it elevated its appeal before this Court. Petitioner's failure to do so is violative of the rule against forum shopping warranting the dismissal of its Petition for Review and Supplemental Petition for Review before the Court in Division. ℛ

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

See Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

With due respect, I join D.O. of Justice San Pedro
ERLINDA P. UY
Associate Justice

(With due respect, I join the Dissenting Opinion of J. San Pedro)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, please see Dissenting Opinion)
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 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

COSMOS BOTTLING CORPORATION, Petitioner,	**CTA EB NO. 2081** **(CTA CASE NO. 9405)**
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, *and,* **MODESTO-SAN PEDRO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 10 2020 4:05 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

This Court could not turn a blind eye on the palpable violation against the rule on forum shopping committed by petitioner and consider the same as a mere technicality.

Under Section 5, Rule 7 of the Rules of Court, an initiatory pleading that fails to include a Certification Against Non-Forum Shopping or makes a misrepresentation as to the pendency of another case involving the same issues, parties and causes of action with the subsequent case,[1] shall be summarily dismissed even as the same shall constitute direct contempt. **For reasons known to petitioner alone, it opted to omit the filing of said Letters in the narration of facts in its Petition for Review and chose not to disclose the pendency of the same in its Certification on Non-Forum Shopping.**

[1] *Surendra Gobindram Daswani vs. Banco De Oro Universal Bank and Register of Deeds of Makati City*, G.R. No. 190983, July 29, 2015.

Petitioner only decided to disclose to the Court in Division the filing of the July 11, 2016 and July 21, 2016 Letters to the Commissioner of Internal Revenue (CIR) (both of which sought a review of the Final Decision on Disputed Assessment ["FDDA"] dated September 1, 2015) after an Amended FDDA dated September 29, 2016 was issued by Mr. **Nestor S. Valeroso**, **which drastically reduced petitioner's tax liabilities for the year 2008 from ₱3.760 Billion**[2] **to ₱51.09 Million.**[3] Thus, it cannot be said that the relief petitioner sought before respondent was no longer pending when it filed its Petition for Review on July 29, 2016 as precisely **substantial relief was obtained by petitioner when Mr. Valeroso acted on petitioner's July 11, 2016 and July 21, 2016 Letters by issuing the Amended FDDA on September 29, 2016**.

More importantly, the issuance of the Amended FDDA, after the former CIR has rendered a decision, is itself of doubtful validity. Note should be made that the July 11, 2016 and July 21, 2016 Letters can hardly be considered as mere offers of compromise precisely because of their substance. They were not even supported by documentary requirements required to be attached to an application for compromise as provided under Revenue Memorandum Order No. 22-01.

At any rate, even if the Amended FDDA which **reduced petitioner's deficiency tax liabilities for taxable year 2008 from ₱3.760 Billion**[4] **to ₱51.09 Million**[5] is considered as an administrative compromise between petitioner and Mr. Valeroso, acting in his capacity as the Officer-in-Charge of the BIR, still its validity cannot be upheld. As categorically provided in Section 204, *supra,* **compromise of basic tax involving more than ₱1,000,000.00 shall be subject to the approval of the Evaluation Board. Considering that the compromise was without the approval of the Evaluation Board, the same is invalid. Mr. Valeroso cannot arrogate to himself the power vested in the Evaluation Board.**

In fine, I vote to AFFIRM the February 7, 2019 and May 14, 2019 Resolutions of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] ₱3,760,908,104.47.
[3] ₱51,092,511.97.
[4] *Supra*, note 2.
[5] *Supra*, note 3.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COSMOS BOTTLING CORPORATION, *Petitioner,*	**CTA *EB* NO. 2081** *(CTA Case No. 9405)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 10 2020 4:05 p.m.

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DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

I respectfully dissent to the Decision penned by my esteemed colleague, Associate Justice Juanito C. Castaneda, Jr, which denied the instant Petition for Review ("Petition") on the ground of forum shopping. It is my opinion that no forum shopping occurred in the case at bar when petitioner sent the 11 July 2016 and 21 July 2016 Letters to respondent and subsequently filed a Petition for Review and Supplemental Petition for Review before the Court in Division. My reasons are as follows:

Warning Against Inordinately Denying Litigants the Right to Appeal.

I start my disquisition by quoting ***Cortal, et al. v. Inaki A. Larrazabal Enterprises, et al.***[1], to wit –

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[1] G.R. No. 199107, 30 August 2017.

"Appeal is the remedy available to a litigant seeking to reverse or modify a judgment on the merits of a case. The right to appeal is not constitutional or natural, and is not part of due process but is a mere statutory privilege. Thus, it must be availed in keeping with the manner set by law and is lost by a litigant who does not comply with the rules.

Nevertheless, appeal has been recognized as an important part of our judicial system and courts have been advised by the Supreme Court to cautiously proceed to avoid inordinately denying litigants this right.

II

Procedural rules 'are tools designed to facilitate the adjudication of cases [so] [c]ourts and litigants alike are thus enjoined to abide strictly by the rules.' They provide a system for forestalling arbitrariness, caprice, despotism, or whimsicality in dispute settlement. Thus, they are not to be ignored to suit the interests of a party. Their disregard cannot be justified by a sweeping reliance on a 'policy of liberal construction.'

Still, this Court has stressed that every party litigant must be afforded the fullest opportunity to properly ventilate and argue his or her case, 'free from the constraints of technicalities.' Rule 1, Section 6 of the Rules of Court expressly stipulates their liberal construction to the extent that justice is better served:

> Section 6. Construction. - **These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.**

Procedural rules may be relaxed for the most persuasive of reasons so as to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. This Court has noted that a strict application of the rules should not amount to straight-jacketing the administration of justice and that the principles of justice and equity must not be sacrificed for a stern application of the rules of procedure. In *Obut v. Court of Appeals*:

> We cannot look with favor on a course of action which would place the administration of justice in a straightjacket for then the result would be a poor kind of justice if there would be justice at all. Verily, judicial orders, such as the one subject of this petition, are issued to be obeyed. Nonetheless a non-compliance is to be dealt with as the circumstances attending the case may warrant. **What should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities."**
> (Emphasis Ours, Citation omitted)

This Dissent is guided by the directive above.

The Essence of Forum Shopping is Shopping For or Choosing a Forum, and Appeals are Normally Outside the Scope of Forum Shopping.

Central to the present case is the rationale for the rule against forum shopping. For this, I refer to ***Eversley Childs Sanitarium v. Spouses Anastacio And Perla Barbarona***,[2] where the Supreme Court had the occasion to clarify, as follows –

> "*First Philippine International Bank v. Court of Appeals* recounted that forum shopping originated as a concept in private international law:
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> To begin with, forum shopping originated as a concept in private international law, where non-resident **litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses**, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of *forum non conveniens* was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.
>
> In this light, *Black's Law Dictionary* says that forum shopping '**occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict**.' Hence, according to *Words and Phrases*, 'a litigant is open to the charge of 'forum shopping' whenever he chooses a forum with slight connection to factual circumstances surrounding his suit, and litigants should be encouraged to attempt to settle their differences without imposing undue expense and vexatious situations on the courts.'"
> (Emphasis in the original)

From this basic premise, then, it is easy to see that at the core, petitioner is not guilty of forum shopping as it did not choose the forum before which it presented its case. On the contrary, it had no choice but to file the Petition for Review and Supplemental Petition for Review it did with the Court in Division. Stated differently, petitioner had no other forum to file its Petition with, save for the Court in Division, as it is the court imbued with exclusive appellate jurisdiction over tax assessments issued by respondent.

Corrolary to this, "(a)ppeals and petitions for *certiorari* are normally outside the scope of forum shopping because of their nature and purpose; they grant a litigant the remedy of elevating his case to a superior court for review. It is assumed, however, that **the filing of the appeal or petition for *certiorari* is properly or regularly invoked** in the usual course of judicial proceedings, and **not when the relief sought**, through a petition

[2] G.R. No. 195814, 4 April 2018.

for *certiorari* or appeal, is **still pending** with or has yet to be decided by the respondent court or court of origin, tribunal, or body exercising judicial or quasi-judicial authority, *e.g.*, a still pending motion for reconsideration of the order assailed via a petition for *certiorari* under Rule 65."[3]

Here, it has been demonstrated that respondent, through then Commissioner Kim Henares, had already ruled on petitioner's Protest via the Final Decision on Disputed Assessment, dated 1 September 2015, and had also denied petitioner's Motion for Reconsideration via her half page letter of denial. Thus, there can be no denying that the relief sought by petitioner before respondent was no longer pending, and this is precisely why it had to file its Petition for Review before the Court in Division.

The Letters of Petitioner are Not Compliant with the Procedure on Tax Assessment and were Merely Offers of Compromise.

Section 228 of the 1997 National Internal Revenue Code of the Philippines ("NIRC") provides for the remedies of a taxpayer in case of assessments it wishes to dispute, thus:

> "SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
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> xxx xxx xxx
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
>
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied** in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

[3] Villamor, Jr. v. Hon. Manalastas, G.R. No. 171247, 22 July 2015.

(Emphasis and underscoring, Ours)

It is not disputed that petitioner received the Assessment Notices and Formal Letter of Demand ("FLD") for alleged deficiency taxes on 21 April 2014. Petitioner filed a Protest on the Assessment Notices and FLD, with supporting documents submitted thereafter. Its Motion was unfortunately denied in a half page issuance of then CIR Kim Henares.

With such denial, petitioner went to the Court in Division for relief within the time allowed.

These actions of petitioner all fall within the procedure outlined, above.

A perusal of the Letters filed by petitioner following the issuance of the denial of its Motion for Reconsideration and before its filing of the Petition for Review before the Court in Division show that these are not compliant with the procedure provided in ***Section 228 of the NIRC,*** which had already been exhausted by petitioner.

Accordingly, no other interpretation can be made from these actuations that these were mere good faith offer of compromise which petitioner resorted to even while it intended to pursue its judicial remedies. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.[4] It is an accepted and desirable practice in courts of law and administrative tribunals.[5] Settlement of disputes brought before the courts is, in fact, encouraged.[6]

This conclusion is supported by the last two paragraphs of the 11 July 2016 Letter which provide, as follows –

> "If you find that our client's position deserves a second look, **we offer to pay deficiency taxes** on issues which we honestly consider our client liable. The deficiency taxes, which we think our client is liable, amounts to not more than P50,000,000.00, which our client is willing to pay in one week's time instead of going to the CTA. **Our client prefers administrative settlement of dispute** and concentrate on its daily operations rather that spending its precious time and efforts on litigation.
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> **We would like to confer with you to discuss this matter** as soon as possible."
> (Emphasis, Ours)

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[4] New Civil Code of the Philippines, Article 2028.
[5] Far East Bank and Trust Co., Trust and Investment Group, and FEB Investment Inc., vs. Trust Union Shipping Corp. et. al., G.R. No. 154716, 16 September 2008, citing Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) vs. Abella, G.R. No. 153904, 17 January 2005.
[6] Viesca vs. Gilinsky, G.R. No. 171698, 4 July 2007.

Such an offer of compromise can hardly be construed as a "**pending action or claim**" which petitioner should have included in its Certification Against Forum Shopping.

Dismissal of the Petition for Review is Harsh and the Circumstances Call for a Relaxation of the Rules.

As discussed, above, the failure of petitioner to mention the Letters it submitted to the BIR can hardly be characterized as a pending action or claim and are, at the core, simply offers of compromise.

This Court should not condemn petitioner's act of preserving its right to appeal while at the same time trying to obtain a settlement of the deficiency tax assessments issued against it. In reality, this is a practice which this Court considers as preferable. At most, petitioner was simply being prudent in preserving its rights which is a characteristic that should not be punished but encouraged.

Accordingly, I find that the dismissal of the Petition for Review and the Supplemental Petition for Review is harsh and that the ends of justice will be better served with reinstatement of the same.

In ***Cua, Jr., et al. v. Tan, et al.***[7], the failure of a litigant to inform the Court of the pendency of another related case did not automatically result in dismissal of his petition. There, it was ruled that –

> "Assuming *arguendo* that Solomon did have the legal obligation to inform the Court in G.R. No. 182008 of the pendency of G.R. No. 181455-56, his failure to do so does not necessarily result in the dismissal of the former. Although the submission of a certificate against forum shopping is deemed obligatory, it is not jurisdictional. Hence, in this case in which such a certification was in fact submitted - only, it was defective -- **the Court may still refuse to dismiss and may, instead, give due course to the Petition in light of attendant exceptional circumstances.**
>
> xxx xxx xxx
>
> **The merits of the Petitions in both G.R. No. 181455-56 and No. 182008 compel this Court to give more weight to substantive justice, instead of technical rules**. Indeed, where, as here, there is a strong showing that a grave miscarriage of justice would result from the strict application of the Rules, the Court will not hesitate to relax the same in the interest of substantial justice. **It bears stressing that the rules of procedure are**

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[7] G.R. No. 181455-56, 4 December 2009.

> **merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion.** In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that, on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within the power of the Court to suspend the Rules, or except a particular case from its operation." (Emphasis, Ours)

Most compelling is the guidance under this directive—"Relaxation of the rules may be had when the appeal, on its face, appears to be absolutely meritorious or when there are persuasive or compelling reasons to relieve a litigant of an injustice not commensurate with the degree of thoughtlessness in not complying with the prescribed procedure."[8]

Considering that the Letters which petitioner failed to mention in its Certificate of Forum Shopping are mere offers of compromise and not, strictly speaking, "pending actions or claims," dismissal on this ground is certainly "not commensurate with the degree of thoughtlessness in not complying with the prescribed procedure."

At any rate, even if the Letters partook of the nature of a pending action or claim, considering the doubt as to its nature and the applicability of the rule on forum shopping, coupled with the merits of the Petition, there lies adequate ground to relax the rule on forum shopping.

Such a relaxation of the rule on forum shopping is not unique. Just last year, the Supreme Court, once again, relaxed the rule on forum shopping in ***Foodbev International, et al. v. Ferrer, et al.***,[9] where it ruled in this wise—

> "It is true that the Court is strict in dismissing a case when lawyers and/or litigants commit forum shopping. In *CMTC International Marketing Corp. v. Bhagis International Trading Corp.,* the Court emphasized that 'procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.'
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> However, it is likewise true that strict imposition of technical rules can result to miscarriage of substantial justice. The *CMTC* case recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice.

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[8] The Orchard Golf & Country Club, Inc., et al. v. Yu and Yuhico, G.R. No. 191033, January 11, 2016, citing Calipay v. National Labor Relations Commission, 640 Phil. 458, 466 (2010); and Asia United Bank v. Goodland Company, Inc., 650 Phil. 174, 183-185 (2010).

[9] G.R. No. 206795, 16 September 2019.

The Court reiterates its pronouncement in *National Power Corp. v. Court of Appeals*

> Notwithstanding the procedural lapse in this case, We opt not to deny the case based on merely technical grounds. We must be reminded that deciding a case is not a mere play of technical rules. If we are to abide by our mandate to provide justice for all, we should be ready to set aside technical rules of procedure when the same hampers justice rather than to serve the same."

Even ***Section 2, Rule I of the Revised Rules of the Court of Tax Appeals*** supports this view, when it provides for the liberal interpretation of the Rules in order to promote the objective of securing a just, speedy and inexpensive determination of every action and proceeding before this Court, *viz:*

> "SEC. 2. Liberal construction. - The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court."

The Petition, on its Face, Presents Substantive Issues Which Far More Outweigh the Technical Issues.

Among the issues in the Petition are that the revenue officer who conducted the audit of its books of accounts and other accounting records was not authorized to do so and that the deficiency tax assessment issued against petitioner has already prescribed.

Should either of these allegations turn out to be true, the entire deficiency tax assessment against petitioner will be declared void. As a void assessment bears no fruit,[10] correspondingly, none of the amounts due from the deficiency tax assessment issued against petitioner can be collected.

Indeed, a perusal of the BIR Records forwarded by respondent, which usually is the source of his documentary evidence in a case before this Court, shows that Letter of Authority ("LOA") No. 2008-00028972 was issued on 27 May 2009 by OIC-ACIR, Large Taxpayer Service, Zenaida G. Garcia, authorizing revenue officers, Esterlina Aloy, Ma. Salud Maddela, Zenaida Paz and Rogelio Gonzales, and group supervisor, Victoria L. Evangelista, to examine petitioner's books of accounts and other accounting records for all

[10] Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc., G.R. No. 198677, 26 November 2014.

internal revenue taxes due for TY 2008.[11] On 25 February 2013, the audit/investigation of petitioner was turned over to revenue officer, Carolyn V. Mendoza, and group supervisor, Rolando M. Balbido, through Memorandum of Assignment No. LOA-116-2013-0429 issued by the Chief of Regular LT Audit Division I, Cesar D. Escalada.[12] Following this, said revenue officers recommended, on 1 April 2014, the issuance of an FLD and its corresponding Assessment Notices against petitioner.[13]

Should respondent fail to present any rebutting evidence to the contrary, it may be ruled that the revenue officers who conducted the audit of petitioner are without authority to do so. Consequently, the entire assessment to which this case is founded upon will be ruled invalid.

The importance of an LOA cannot be over-emphasized. In ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***,[14] the Supreme Court ruled as follows:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives...
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> xxx xxx xxx
>
> xxx [I]t is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.
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> xxx xxx xxx
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> In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:
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>> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**."

So, too, can the defense of prescription bring the tax collection to a halt. ℓ

[11] See BIR Records, Folder 1, p. 1.
[12] *Id.*, at p. 297.
[13] *Id.*, at pp. 425-451.
[14] G.R. No. 222743, 5 April 2017.

Under the exceptional circumstances of the case, coupled with the substantial issues just cited, it stands clear that affirming the dismissal of the Court in Division based on a rigid application of the rule against forum shopping will subvert substantial justice.

I also cannot turn a blind eye to the effects such a dismissal may wreak on the economic rights of petitioner and its numerous employees. Petitioner will end up losing billions of pesos, and its 75 year old business, necessarily resulting in the loss of employment of its numerous employees. All these, by virtue of a technicality, which purpose is to promote the just, speedy, and inexpensive disposition of cases, and which would disappointingly be used to deny the very purpose which said rule seeks to promote.

These, despite the fact that the very assessment issued against petitioner may be ruled as entirely void had the Petition been allowed to proceed.

I end my argumentation by quoting Chief Justice Diosdado M. Peralta's recent learned advice in ***People v. Lee***,[15] to wit—

> "Clearly, there is a need to relax the requirements imposed by the Rule on certification against forum shopping and verification in the present Petition. The substantive issue in this case far more outweighs whatever defect in the certification against forum shopping and in the verification. Procedural rules must be faithfully followed and dutifully enforced. Still, their application should not amount to "placing the administration of justice in a straight jacket." An inordinate fixation on technicalities cannot defeat the need for a full, just, and equitable litigation of claims. After all, the rules of procedure were designed to promote and facilitate the orderly administration of justice. It was never meant to subvert the ends of justice."

Premises considered, I vote that the instant Petition for Review filed by petitioner, **COSMOS BOTTLING CORPORATION**, be **GRANTED,** the Resolutions, dated 7 February 2019 and 14 May 2019, respectively, be **REVERSED AND SET ASIDE,** and this case be **REMANDED** to the Court in Division for further proceedings.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[15] G.R. No. 234618, 16 September 2019.