

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

JOHNNY SY CO,

Petitioner,

CTA EB NO. 2832
(CTA Case No. 11024)

Present:

- versus -

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and,
ANGELES, JL.

**BUREAU OF INTERNAL
REVENUE, ET AL.,**
Respondents.

Promulgated:

MAY 09 2025

[Signature]
11:37a

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DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review¹ pursuant to Section 3(b)², Rule 8 of the Revised Rules of the Court of Tax Appeals;

¹ Rollo, pp. 4-20.

² SEC. 3. *Who may appeal; period to file petition.* —

...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

(**RRCTA**), filed by petitioner Johnny Sy Co (**petitioner**) on 30 November 2023. It seeks to reverse and set aside the Resolutions dated 26 May 2023³ and 26 October 2023⁴ (**assailed Resolutions**) which dismissed the prior Petition for Review for petitioner's failure to submit a compliant Verification and Certification against Forum Shopping despite due notice.

PARTIES OF THE CASE

Petitioner is a meat dealer with address at #8410 Gomburza Street, Ilaya, Sto. Niño, Parañaque where he may be served with notices and other court processes.⁵ He is the owner and sole proprietor of Jupiter's Butcher Shop, which was eventually registered as Jupiter's JRC Meat Shop and relocated to Kawit, Cavite.⁶

Respondent, on the other hand, is the Bureau of Internal Revenue (**BIR**), a government agency vested with authority to carry out the functions and duties of its office, including, among others, the duty to act on disputed assessments pursuant to the pertinent provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and other tax laws, rules and regulations, with office address at the BIR National Office Building, Diliman, Quezon City. Also impleaded as respondent is the Regional Director of Revenue Region (**RR**) No. 9A-CaBaMiRo who may be served with notices and court processes at Collection Division-AMS RR9A-CaBaMiRo, 2nd and 23rd floor, Liana's Junction Plaza, Poblacion IV, Sto. Tomas Batangas.⁷

FACTS OF THE CASE

On 14 January 2020, respondents issued against petitioner a Formal Letter of Demand⁸ (**FLD**) with Details of Discrepancies, assessing him for income tax (**IT**) deficiency of ₱304,701.59 and value-added tax (**VAT**) deficiency of ₱19,527,816.58. On even date,

³ Division Docket, pp. 170-171.

⁴ Id., pp. 186-188.

⁵ See Paragraph 1, The Parties, Petition for Review, id., p. 7.

⁶ Id.

⁷ See Paragraph 5, The Parties, Petition for Review, *rollo*, p. 7.

⁸ Division Docket, pp. 84-87.

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respondents also issued the Assessment Notices⁹ (ANs) demanding the payment of the said deficiency taxes on or before 14 February 2020.

Thereafter, on 06 December 2021, Regional Director Florante R. Aninag (**RD Aninag**) issued Warrant of Dstraint and/or Levy (**WDL**) No. WDL-AMS-RR9A-HMOS-1121-156¹⁰, collecting from petitioner the total deficiency taxes of ₱19,832,518.13. On 13 December 2021, respondents attempted to serve the WDL at petitioner's address in Kawit, Cavite. However, since no one was found at the said address to receive the WDL, it was constructively served on Barangay Secretary Glecie Ignacio instead.¹¹

Later on, after petitioner supposedly was able to secure a copy of the WDL¹², he wrote respondents a letter on 31 January 2022¹³ where he claimed that he denied having received the FLD and ANs. According to him, he was only furnished an electronic copy thereof (on 04 January 2022) when he personally requested for them from BIR RR No. 9A. Moreover, he averred that being engaged as a butcher meat shop, the sale and importation of livestock and poultry feeds used in the manufacture of the finished products are exempted from VAT. Hence, he pleaded for a period of thirty (30) days to submit his administrative protest. He also prayed for a reconsideration or reinvestigation of the assessments against him.

In response to petitioner's letter, respondents issued the Final Demand Before Suit¹⁴ (**FDBS**) on 06 September 2022 stating that the subject assessments had become final, executory and demandable. Petitioner was given ten (10) days from receipt of the said notice to settle his tax liabilities.

⁹ Id., pp. 82-83.

¹⁰ Id., p. 81.

¹¹ Based on the Warrant of Dstraint and/or Levy (**WDL**), Barangay Kagawad Alex Rusit and Chief Tanod Guillermo De Mesa were present during the service, id.

¹² There was no mention either in the Petition for Review or the Letter dated 26 January 2022 of how petitioner Johnny Sy Co received the copy of the Warrant of Dstraint and/or Levy.

¹³ See letter dated 26 January 2022, Division Docket, pp. 27-28.

¹⁴ Id., p. 23.

PROCEEDINGS BEFORE THE COURT

Alleging that he received the FDBS on 11 October 2022¹⁵, petitioner filed the prior Petition for Review¹⁶ on 08 November 2022. The case was raffled to the First Division¹⁷ and docketed as CTA Case No. 11024.

Initially, in a Minute Resolution dated 14 December 2022¹⁸, the Court noted a few defects in the initiatory pleading, thus it directed the petitioner to submit or indicate the following: (1) a Verification and Certification against Forum Shopping¹⁹ that is compliant with the Notarial Rule; (2) the list of documents or exhibits intended to be presented; (3) the names of the witnesses and summary of the witnesses' intended testimonies; and (4) the judicial affidavits of the said witnesses.

Upon receipt of the said notice, petitioner requested for an additional time, or until 08 February 2023, to prepare and submit the required documents.²⁰ Eventually, it was granted.²¹

On 08 February 2023, petitioner filed his Compliance where he indicated the documents he was intending to present.²² Also, he attached his Judicial Affidavit²³ to the prior Petition for Review. Upon review of the said Judicial Affidavit, the Court noted that it is violative of Section 3²⁴ of A.M. No. 12-8-8-SC or the *Judicial Affidavit Rule*. Moreover, for the second time, petitioner failed to submit a compliant Verification and Certification against Forum Shopping. Nonetheless, in the interest of justice, petitioner was given another five (5) days as his

¹⁵ See last par., Statement of Facts, Petition for Review, id., p. 9.

¹⁶ Id., pp. 6-19.

¹⁷ Then composed of Presiding Justice Roman G. Del Rosario, as Chairperson, Associate Justice Catherine T. Manahan and Associate Justice Marian Ivy F. Reyes-Fajardo, as Members.

¹⁸ Division Docket, p. 71.

¹⁹ The actual document filed before the Court is named as "Verification and Certification of Non-Forum Shopping". However, for purposes of discussion, the certification shall be referred as "Certification against Forum Shopping" for uniformity.

²⁰ See Motion for Extension of Time to file Compliance, Division Docket, pp. 73-74.

²¹ Resolution dated 09 February 2023, id., p. 150.

²² Id., pp. 77-139.

²³ Id., pp. 140-144.

²⁴ Section 3. *Contents of Judicial Affidavit*.

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last opportunity to comply with the directive of the previous Minute Resolution of 14 December 2022.²⁵

Later, petitioner again requested for an extension of time, or until 29 April 2023 to submit the lacking documents.²⁶ In the Minute Resolution of 25 April 2023²⁷, the Court gave petitioner until 02 May 2023 to file his compliance.

On 26 April 2023, petitioner filed his “Additional Compliance”²⁸ via private courier. There, he attached the Amended Judicial Affidavit²⁹ and a photocopy of the Verification and Certification against Forum Shopping dated 08 November 2022 (**first Certification**).³⁰

On 26 May 2023, the First Division issued a Resolution which dismissed the petitioner’s prior Petition for Review.³¹ In so ruling, the First Division explained that upon examination of the attachments (in the “Additional Compliance”), the Verification and Certification against Forum Shopping is still not compliant with the 2004 Rules on Notarial Practice³² (**Notarial Rules**). Also, the attached document is a mere photocopy. Thus, for petitioner’s failure to comply with the Court’s repeated directives, the case was dismissed.

On 29 June 2023, petitioner filed a “Motion for Reconsideration (to the Resolution dated May 30, 2023)”³³ (**MR**) where he implored the Court to be more liberal in the application of the technical rules and thus, reverse the assailed Resolution. Also, he prayed for the admission of the Verification and Certification against Forum Shopping dated 29 June 2023³⁴ (**second Certification**) as attached to his MR. 

²⁵ See Resolution dated 29 March 2023, Division Docket, pp. 152-153.

²⁶ See Motion for Extension of Time to File Additional Compliance, id., pp. 154-155.

²⁷ Id., p. 156.

²⁸ Id., pp. 158-159.

²⁹ Id., pp. 160-164.

³⁰ Id., pp. 165-166, supra at note 19.

³¹ Id., pp. 170-171, supra at note 3.

³² A.M. No. 02-8-13-SC.

³³ Division Docket, pp. 172-177.

³⁴ Id., pp. 178-179. The actual document filed before the Court is titled as “Verification and Certification of Non-Forum Shopping”. However, for purposes of discussion, the certification shall be referred as “Certification against Forum Shopping” for uniformity.

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Without respondents' comment³⁵, the First Division resolved to deny the MR for lack of merit.³⁶ It stressed that petitioner was already given several extensions and chances to file the proper documents; however, he still failed to do so. Further, even after it gave petitioner a last opportunity to submit a compliant Verification and Certification against Forum Shopping, he merely submitted a photocopy of the first Certification. The Court added that the relaxation of procedural rules may not be applied to erring litigants who exhibited lackadaisical and non-judicious approach in the filing of their petitions for review.³⁷

Dissatisfied, on 22 November 2023, petitioner filed an "Urgent Motion for Extension of Time to File Petition for Review"³⁸ (**Urgent Motion**) and sought an additional ten (10) days, or until 03 December 2023 to file a petition before the Court *En Banc*. In the Minute Resolution of 24 November 2023, the same was granted.³⁹

On 30 November 2023, petitioner filed the instant Petition for Review⁴⁰ before the Court *En Banc* to contest the assailed Resolutions in CTA Case No. 11024. The same was docketed as CTA EB No. 2832 entitled "*Johnny Sy Co v. Commissioner of Internal Revenue*."

On 12 December 2023⁴¹, the Court noted petitioner's Manifestation filed on 04 December 2023 wherein he submitted the annexes that were previously not attached to the instant petition.⁴² On 20 December 2023, the Court *En Banc* admitted Annexes "A", "B" and "D"⁴³ as part of the present Petition for Review. Further, it ordered the respondents to file their comment to the said petition.⁴⁴

³⁵ See Records Verification dated 08 August 2023, *id.*, p. 183.
³⁶ See Resolution dated 26 October 2023, *supra* at note 4.
³⁷ *Id.*
³⁸ *Rollo*, pp. 1-2.
³⁹ *Id.*, p. 3.
⁴⁰ *Supra* at note 1.
⁴¹ See *En Banc* Minute Resolution dated 12 December 2023, *rollo*, p. 38.
⁴² *Id.*, pp. 24-25
⁴³

Annex	Description
A	Notice of Resolution dated 30 May 2023 and Resolution dated 26 May 2023
B	Notice of Resolution dated 03 November 2023 and Resolution dated 26 October 2023
D	First Division Minute Resolution dated 14 December 2022

⁴⁴ See *En Banc* Minute Resolution dated 20 December 2023, *rollo*, p. 39.

On 25 April 2024, respondents filed a “Comment *Ad Cautelam* (Re: Petitioner’s Petition for Review dated 30 November 2023)”⁴⁵ (**Comment *Ad Cautelam***). On 15 May 2024, the Court *En Banc* submitted the instant case for decision.⁴⁶

ISSUES

Based on the Petition for Review⁴⁷, the central issues for the Court *En Banc*’s resolution are —

I.

WHETHER THE FIRST DIVISION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR REVIEW FILED ON 08 NOVEMBER 2022 FILED BY PETITIONER JOHNNY SY CO; AND

II.

WHETHER THE INSTANT CASE MERITS RELAXATION OF TECHNICAL RULES.

ARGUMENTS

In support of his present petition, petitioner maintains that courts may relax the application of technical rules if a litigant makes a subsequent and substantial compliance of the defective or lacking documents.

In his case, petitioner insists that both the first and second Certifications are duly compliant with Sections 4⁴⁸ and 5⁴⁹ of Rule 7 of the 2019 Amendments to the 1997 Rules of Civil Procedure⁵⁰ (**Rules of Court, as amended**). Thus, there is no reason for the First Division to dismiss the case for the alleged non-compliance with the procedural requirements.

⁴⁵ Id., pp. 54-58.
⁴⁶ See *En Banc* Minute Resolution dated 15 May 2024, id., p. 62.
⁴⁷ See first and second issue, id., p. 8.
⁴⁸ Sec. 4. *Verification*.
⁴⁹ Sec. 5. *Certification against forum shopping*.
⁵⁰ A.M. No. 19-10-20-SC.

Assuming the reason for the dismissal of its prior petition is the violation of the notarial act and the first Certification being a mere photocopy, the dismissal of the petition obstructed rather than served the interests of justice. According to petitioner, the Court may opt to relax the strict application of the rules in the exercise of its equity jurisdiction as ruled in the case of *Heirs of Amada A. Zaulda, et al. v. Isaac Z. Zaulda*.⁵¹

Petitioner adds that the Supreme Court has already allowed several cases⁵² to proceed with the resolution of the case on the merits despite procedural defects and lapses.

Lastly, petitioner claims that while the taxes are the lifeblood of the nation, the collection thereof should be made in accordance with the prescribed rules and regulations. There should be no arbitrariness to prevent any violation of a taxpayer's right to due process.

On the other hand, in the Comment *Ad Cautelam*, respondents counter that the Court in Division was well within its authority to dismiss the case for petitioner's repeated failure to submit a compliant Verification and Certification against Forum Shopping. Respondents point out that petitioner was already given multiple opportunities to submit the necessary documents for the case to proceed. However, he still submitted a non-compliant first and second Certifications. Thus, there is no error nor grave abuse of discretion on the First Division's part when it dismissed petitioner's case.

Moreover, citing *Toshiba Information Equipment (Phils.), Inc., v. Commissioner of Internal Revenue*⁵³ and *Daikoku Electronic Phils., Inc. v. Alberto J. Raza*⁵⁴, respondents aver that liberal application of procedural rules may only be warranted in cases where the litigant invoking it demonstrates merit or justifiable cause (for the non-compliance) under the given circumstances. Here, as petitioner did

⁵¹ G.R. No. 201234, 17 March 2014.

⁵² Petitioner refers the cases of *Malixi v. Baltazar*, 821 Phil. 423 (2017), citing *Paras v. Judge Boldado*, 406 Phil. 589 (2001); *Durban Apartments Corporation v. Catacutan*, 514 Phil. 187 (2005); *Manila Electric Company v. Gala*, 683 Phil. 356 (2012); *Doble v. ABB, Inc./Nitin Desai*, 810 Phil. 210 (2017); *Heirs of Amada Zaulda v. Zaulda*, 729 Phil. 639 (2014); *Trajano v. Uniwide Sales Warehouse Club*, 736 Phil. 264 (2014).

⁵³ G.R. No. 157594, 09 March 2010.

⁵⁴ G.R. No. 181688, 05 June 2009.

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not proffer any justifiable reason for his non-compliance, he should not be allowed to take refuge in merely invoking liberality. Otherwise stated, he could not invoke any liberal application of technical rules to cure his mistakes.

RULING OF THE COURT EN BANC

Before going into the merits of the case, We deem it propitious to first determine the nature of the dismissal of the Resolution of 26 May 2023. The dispositive portion states –

...
WHEREFORE, for failure to comply with the Minute Resolution of the Court dated December 14, 2022 and the Resolution dated March 29, 2023, giving the petitioner a last opportunity to submit a compliant Verification and Certification Against [Forum] Shopping, the Petition for Review filed by Petitioner on November 8, 2022, is hereby **DISMISSED**.

SO ORDERED.

...
The foregoing explicitly states that the dismissal of petitioner’s Petition for Review is both by reason of Section 5, Rule 7 of the Rules of Court, as amended, and Section 3, Rule 17 of the same rule. Hence, We examine the said provisions.

The relevant paragraph of Section 5, Rule 7 of the Rules of Court, as amended provides –

...
Sec. 5. *Certification against forum shopping.* – ...
...

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 [or her] 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.⁵⁵

...

On the other hand, Section 3, Rule 17 of the same rule provides –

...

Sec. 3. *Dismissal due to fault of plaintiff.* – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his or her evidence in chief on the complaint, or to prosecute his or her action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his or her counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.⁵⁶

...

A dismissal based on Section 5, Rule 7 is a dismissal without prejudice, unless otherwise provided. On the other hand, a dismissal grounded on Section 3, Rule 17, equals an adjudication on the merits unless declared by the court otherwise. Relative thereto, a dismissal under Section 3, Rule 17, which has the effect of an adjudication on the merits⁵⁷, is a dismissal with prejudice and bars the refiling of the case.⁵⁸ Thus, when an order completely disposes of the case and leaves nothing to be done by the court, it is considered as a final order that is properly subject of an appeal herein.⁵⁹

We now proceed to the determination of whether the Court *En Banc* has jurisdiction over the present petition.

⁵⁵ Emphasis supplied, italics and underscoring in the original text.
⁵⁶ Emphasis supplied, italics and underscoring in the original text.
⁵⁷ *Robert C. Martinez v. Noel S. Buen*, G.R. No. 187342, 05 April 2017.
⁵⁸ Id.
⁵⁹ Id.

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THE PRESENT PETITION WAS TIMELY
FILED AND THE COURT *EN BANC* HAS
JURISDICTION OVER THE SAME.

The First Division issued the assailed Resolution denying petitioner's MR on 03 November 2023. Petitioner received the said assailed Resolution on 08 November 2023.⁶⁰

Under Section 2(a)(1)⁶¹, Rule 4 in relation to Section 3(b)⁶², Rule 8 of the RRCTA, petitioner had 15 days from 08 November 2023, or until 23 November 2023, within which to file its appeal before this Court. On 22 November 2023, petitioner filed an Urgent Motion and sought for an additional time (or until 03 December 2023) to file the Petition for Review.⁶³ After the same was granted⁶⁴, petitioner filed this petition on 30 November 2023.⁶⁵ Hence, this Court has jurisdiction over the case.

PETITIONER FAILED TO FILE A
COMPLIANT CERTIFICATION AGAINST
FORUM SHOPPING.

Proceeding to the main contention, petitioner maintains that he has filed a compliant Verification and Certification against Forum Shopping. However, the record of the case reveals otherwise.

The first paragraph of Section 5, Rule 7 of the Rules of Court, as amended, provides for the proper content of the Certification against

⁶⁰ Based on the LBC Track and Trace, the document was delivered to Atty. Soraida A. De Guzman on 08 November 2023.

See <<https://www.lbcexpress.com/track/MTI3MjM5NTI2NTY0aGFzaGxiY2V4cHJlc3M=>>, last accessed on 20 February 2025.

⁶¹ **SEC. 2. Cases within the jurisdiction of the Court en banc.** — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied)

⁶² Supra at note 2.

⁶³ Supra at note 38.

⁶⁴ Supra at note 39.

⁶⁵ Supra at note 1.

Forum Shopping as part of any initiatory pleading filed before a court, to wit –

...

Sec. 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 [or she] 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 [or her] 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 [or she] should thereafter learn that the same or similar action or claim has been filed or is pending, he [or she] shall report that fact within five (5) calendar days therefrom to the court wherein his [or her] aforesaid complaint or initiatory pleading has been filed.⁶⁶

...

From the above *proviso*, it is clear that a Certification against Forum Shopping is made under oath by the plaintiff or the principal party in the complaint or other initiatory pleading claiming a relief. Relative thereto, an oath or affirmation before the notary public is made through a jurat. Section 6, Rule II of the Notarial Rules defines jurat in this wise –

...

SEC. 6. *Jurat.* – “Jurat” refers to an act in which an individual on a single occasion:

- (a) appears in person before the notary public and presents an instrument or document;
- (b) **is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;**
- (c) signs the instrument or document in the presence of the notary; and
- (d) takes an oath or affirmation before the notary public as to such instrument or document.⁶⁷

...

⁶⁶ Emphasis supplied, italics and underscoring in the original text.

⁶⁷ Emphasis supplied and italics in the original text.

With the foregoing requirement, a notary public is thus prohibited to perform a notarial act should the person involved as signatory to the document is: (1) not in the notary's presence personally at the time of the notarization; and (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.⁶⁸

The rationale for the physical presence of the affiant ensures the proper execution of the duty of the notary public under the law to determine whether the former's signature was voluntarily affixed.⁶⁹ On the other hand, the submission of competent evidence of identity as defined under Section 12, Rule II of the Notarial Rules ensures that the affiant is the same person who he or she claims to be.⁷⁰ Section 12 reads:

...

Sec. 12. *Competent Evidence of Identity.* - The phrase "competent evidence of identity" refers to the identification of an individual based on:

- (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or
- (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

...

As a general rule, the affiant must present his or her identification card issued by an official agency, bearing his or her photograph and signature.⁷¹ However, in *Jesus G. Reyes v. Glaucoma Research Foundation, Inc. et al.*⁷², the Supreme Court ruled that

⁶⁸ 2004 Rules on Notarial Practice, Rule IV, Section 2(b).

⁶⁹ *Ledesma D. Sanchez v. Atty. Carlito R. Inton*, A.C. No. 12455, 05 November 2019.

⁷⁰ Id.

⁷¹ *Narciso Victoriano v. Juniper Dominguez*, G.R. No. 214794, 23 July 2018.

⁷² G.R. No. 189255, 17 June 2015.

competent evidence of identity is not required in cases where the affiant is personally known to the notary public. Citing *Bernard N. Jandoquile v. Atty. Quirino P. Revilla, Jr.*⁷³ (**Jandoquile**), the High Court reiterates –

...
If the notary public knows the affiants personally, he need not require them to show their valid identification cards. This rule is supported by the definition of a “jurat” under Section 6, Rule II of the 2004 Rules on Notarial Practice. A “jurat” refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is personally known to the notary public or identified by the notary public through competent evidence of identity; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document.
...

In legal hermeneutics, “or” is a disjunctive term that expresses an alternative or gives a choice of one among two or more things.⁷⁴ The word signifies disassociation and independence of one thing from another thing in an enumeration.⁷⁵ The phrase “personally known” contemplates the notary public’s personal knowledge of the signatory’s personal circumstances independent and irrespective of any representations made by the signatory immediately before and/or during the time of the notarization.⁷⁶ It entails awareness, understanding, or knowledge of the signatory’s identity and circumstances gained through firsthand observation or experience which therefore serve as guarantee of the signatory’s identity and thus eliminate the need for the verification process of documentary identification.⁷⁷ **The jurat or affirmation or oath, or acknowledgment must contain a statement that the affiant is personally known to the notary public; it cannot be assumed.**⁷⁸

⁷³ A.C. No. 9514, 10 April 2013; Emphasis and underscoring in the original text.

⁷⁴ *Jesus G. Reyes v. Glaucoma Research Foundation, Inc., et al.*, supra at note 72.

⁷⁵ Id.

⁷⁶ *Rufina S. Jorge v. Alberto C. Marcelo, et al.*, G.R. No. 232989, 18 March 2019.

⁷⁷ *Heir of Herminigildo A. Unite, represented by his sole heir, Florentino S. Unite v. Atty. Raymund P. Guzman*, A.C. No. 12062 (Resolution), 02 July 2018.

⁷⁸ *Rufina S. Jorge v. Alberto C. Marcelo, et al.*, supra at note 76.

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To determine if the above exception in *Jandoquile* is applicable to this case, an examination of the relevant jurats of the submitted Verification and Certifications against Forum Shopping is warranted. Excerpts of the jurats of the Certifications that petitioner submitted are replicated below:⁷⁹

...
*Initial Verification and Certification Against Forum Shopping dated 08 November 2022*⁸⁰ (First Certification)

SUBSCRIBED AND SWORN to before me this NOV 08[,] 2022, personally appeared, with ____ No. _____ and signed the foregoing Verification and Certification and acknowledged that the same is his free and voluntary act and deed.

Doc No. 151
Page No. 31
Book No. IV
Series of 2022.

SIGNATURE OF
NOTARY PUBLIC

...
*Verification and Certification against Forum Shopping dated 29 June 2023*⁸¹ (Second Certification)

SUBSCRIBED AND SWORN to before me this _th day of June 23, 2023, personally appeared, with ____ No. _____ and signed the foregoing Verification and Certification and acknowledged that the same is his free and voluntary act and deed.

Doc No. 321
Page No. 66
Book No. 74
Series of 2023.

SIGNATURE OF
NOTARY PUBLIC

Conspicuously, these jurats do not contain a statement that petitioner Johnny Sy Co is personally known to the notaries public. Since such fact could not be assumed, the Court *En Banc* could only thus conclude that the affiant is not personally known to the notaries

⁷⁹ Emphasis in the original text and underscoring supplied.
⁸⁰ Division Docket, p. 18; Photocopy is at p. 166.
⁸¹ Id., p. 179.

public, hence a showing that competent evidence of identity must be shown. This requirement may not be excused or dispensed with.⁸²

With the foregoing attendant circumstances, it becomes evident that petitioner indeed failed to comply with the Notarial Rules. Petitioner, however, appeals for liberality in the application of the procedural rules, claiming that his Certifications are nevertheless *substantially* compliant.

We disagree.

The substantial compliance rule is defined as compliance with the essential requirements, whether of a contract or of a statute.⁸³ Meanwhile, the presence of special circumstances or compelling reasons must be proffered and established by the erring party-litigant for the court's consideration in determining whether technical rules of procedure may be relaxed.

Corollarily, in *Tible & Tible Company, Inc., et al. v. Royal Savings and Loan Association, et al.*⁸⁴, the Supreme Court has ruled that liberal application of procedural rules applies when there is justifiable cause for non-compliance or compelling reason to relax it. The pertinent parts state –

...

Much reliance is placed on the rule that “[c]ourts are not slaves 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 balance, technicalities take a backseat against substantive rights, and not the other way around.” **This rule must always be used in the right context, lest injustice, rather than justice would be its end result.**

⁸² See *Kilosbayan Foundation, et al. v. Leoncio M. Janolo, Jr., et al.*, G.R. No. 180543, 27 July 2010.

⁸³ *Efren L. Alvarez v. People of the Philippines*, G.R. No. 192591, 30 July 2012.

⁸⁴ G.R. No. 155806, 08 April 2008; Citations omitted, italics and underscoring in the original text, emphasis in the original and supplied.

It must never be forgotten that, generally, the application of the rules must be upheld, and the suspension or even mere relaxation of its application, is the exception. This Court previously explained:

The Court is not impervious to the frustration that litigants and lawyers alike would at times encounter in procedural bureaucracy[,] but imperative justice requires ***correct observance of indispensable technicalities precisely designed to ensure its proper dispensation***. It has long been recognized that strict compliance with the Rules of Court is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.

Procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law is important in ensuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed to provide for a system under which a suitor may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge.

It cannot be overemphasized that procedural rules have their own wholesome rationale in the orderly administration of justice. Justice has to be administered according to the Rules in order to obviate arbitrariness, caprice, or whimsicality. We have been cautioned and reminded in *Limpot vs. CA, et al.*, that:

“Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to propose that substantive law and adjective law are contradictory to each other or, as often suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give both kinds of law, as complementing each other, in the just and speedy resolution



DECISION

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x-----x

of the dispute between the parties. Observance of both substantive rights is equally guaranteed by due process, whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court.

x x x x

"x x x (T)hey are required to be followed except only when for the most persuasive of reasons they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. x x x While it is true that a litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. Justice eschews anarchy."

For the exception to come into play, first and foremost should be the party litigant's plausible explanation for non-compliance with the rules he proposes to be exempted from. Absent any acceptable explanation, the party's plain violation of the rules will not be countenanced.

Thus, in *Suzuki v. De Guzman*, the Court held:

As a general rule, these requirements are mandatory, meaning, non-compliance therewith is a sufficient ground for the dismissal of the petition. While the Court is not unmindful of exceptional cases where this Court has set aside procedural defects to correct a patent injustice, **concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least explain his failure to comply with the rules. There must be at least a reasonable attempt at compliance with the Rules. Utter disregard of the Rules cannot justly be rationalized by harking on the policy of liberal construction.**

...

Here, as discussed above, petitioner failed to submit a compliant Certification against Forum Shopping due to the absence of petitioner's competent evidence of identity when he made the said

Certification under oath before the notaries public. As there was no valid oath or affirmation, one of the essential requisites for the Certification against Forum Shopping is lacking.

Further, petitioner did not offer any special circumstance or compelling reasons to warrant the relaxation of technical rules. Absent any exceptional grounds or justifiable reasons, courts may not simply set aside procedural rules on a party's blind invocation of the "interest of justice". Thus, petitioner's argument that there was substantial compliance with the procedural rules fails to persuade.

THE COURT OF TAX APPEALS' FIRST
DIVISION CORRECTLY DISMISSED THE
PETITION FOR REVIEW DUE TO
PETITIONER'S FAULT.

While the present action is an ordinary appeal that focuses on the supposed error of judgment on the part of the First Division, petitioner also ventures into the argument that the latter acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed his prior Petition for Review.

We do not share petitioner's sentiment.

Even if petitioner shifts the argument to the supposed exercise of grave abuse of discretion, the same would still not merit any action from the Court *En Banc*. Grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.⁸⁵

⁸⁵ *United Coconut Planters Bank v. Alberto T. Looyuko and Jimmy T. Go*, G.R. No. 156337, 28 September 2007.

Certainly, the First Division’s actuations are not without any support from the relevant rules. Section 3⁸⁶, Rule 17 of the Rules of Court, as amended, provides for the instances where the Court can dismiss the case due to the plaintiff’s fault and the latter failed to justify the commission of the said actions, or the omission thereof.

Petitioner’s case is simply a failure to prosecute or pursue his cause of action. The fundamental test for “failure to prosecute” contemplates want of due diligence attributable to the plaintiff in failing to proceed with reasonable promptitude.⁸⁷ There must be unwillingness on the part of the plaintiff to prosecute, as manifested by any of the following instances: (1) plaintiff fails to appear at the time of trial; or (2) plaintiff fails to prosecute the action for an unreasonable length of time; or (3) **plaintiff fails comply with the Rules of Court or any order of the court.**⁸⁸

Here, upon examination of the defective Certification against Forum Shopping, the Court in Division gave petitioner ample opportunities to submit his compliance. For better appreciation, a summary of the various Orders from the Court in Division is provided below:

Order and Date	Relevant Contents
First Division Minute Resolution dated 14 December 2022 ⁸⁹	<i>Records show that petitioner’s counsel failed to indicate the following:</i> 1. <i>Verification and Certification Against Forum Shopping that is compliant with the Notarial Rule;</i> ... WHEREFORE , petitioner’s counsel Atty. Soraida A. De Guzman, is hereby DIRECTED to submit the aforementioned documents within ten (10) days from receipt hereof.

⁸⁶ Supra at p. 10.
⁸⁷ *Heirs of Bartolome J. Sanchez, represented by Edna N. VDA. De Sanchez v. Heldelita, Allen, Alberto, Arthur, Maria Anita, all surnamed Abrantes*, G.R. No. 234999, 04 August 2021.
⁸⁸ Id.
⁸⁹ Supra at note 18.

First Division Resolution dated 09 February 2023 ⁹⁰	[T]he Court GRANTS the same and accordingly gives petitioner a non-extendible period of twenty (20) days from January 20, 2023 or until February 9, 2023 within which to submit the documents required by the Court in its Minute Resolution dated December 14, 2022.
First Division Resolution dated 29 March 2023 ⁹¹	Furthermore, no compliant Verification and Certification Against Forum Shopping was submitted by petitioner pursuant to the directive mentioned in the said Minute Resolution. WHEREFORE , in the interest of substantial justice, the Court gives petitioner a last opportunity to submit to the Court a ... Verification and Certification Against Forum Shopping compliant with the Notarial Rule, within five (5) days from notice.
First Division Minute Resolution dated 25 April 2023 ⁹²	WHEREFORE , petitioner is granted a NON-EXTENDIBLE period of twenty (20) days from April 9, 2023 or until May 2, 2023 within which to file the Compliance to the Resolution dated March 29, 2023.

From the above, it cannot be gainsaid that the Court acted in an arbitrary and despotic manner, nor it refused to perform its duty when it gave petitioner equitable chances to comply and submit a compliant Certification against Forum Shopping. However, as the records bear, petitioner failed to make a proper submission despite the extensions and opportunities granted. Further, as already earlier pointed out, no acceptable excuse or justifiable reason was proffered for his failure to comply with the Certification against Forum Shopping. Thus, the First Division did not commit any grave abuse of discretion when it dismissed the said petition.

Although a different petition, in the case of *Kilusan ng Mamamayan para sa Matuwid na Bayan, a coalition of corporate entities duly registered with the Securities and Exchange Commission, et al. v. Commission on Elections (COMELEC)*⁹³, the Supreme Court dismissed the Petition for Mandamus for petitioner’s failure to rectify the procedural infirmities despite having been given a chance to correct the noted errors. The pertinent discussion and ruling state:

⁹⁰ Supra at note 21.
⁹¹ Supra at note 25.
⁹² Supra at note 27.
⁹³ G.R. No. 259850, June 13, 2023; Citations omitted and emphasis supplied.

...

At the outset, the Petition suffers from procedural defects. Notably, after petitioners filed the present Petition, the Court, in its Resolution dated April 19, 2022, required petitioners to comply with the following procedural requirements:

...

(ii) requirement to submit a proper verification and certification against forum shopping as required by Rule 65 in relation to Sections 4 and 5, Rule 7, same Rules, **it appearing that the affiant therein lacks competent evidence of identity;** and

(iii) requirement to provide competent evidence of identity of the affiant in the affidavit of service pursuant to Sections 2, 6 and 12, Rule II of the 2004 Rules on Notarial Practice, as amended.

In their Compliance, petitioners submitted Mauricio, Jr.'s affidavit stating that he served the Petition to the COMELEC through electronic transmission at info@comelec.gov.ph, the latter's email address publicly listed in its website. Notably, the page of the affidavit containing the notarization does not indicate Mauricio, Jr.'s competent evidence of identity. Further, the Verification and Sworn Certification Against Forum Shopping attached to the Compliance, which was executed by petitioners Macatangay, Jr., Paquiz, and Gonzales, lacks Paquiz's signature. **Further, while the notary public certified that the affiants personally appeared before him and displayed to him the government IDs indicated below their names, the competent evidence of identification of Macatangay, Jr., Paquiz, and Gonzales do not appear below their names. Instead, the barely readable copy of the ID of Macatangay, Jr., and a copy of the ID of Gonzales were attached as the last pages of the Compliance or the Verification and Sworn Certification Against Forum Shopping.**

While it might be the case that the IDs of Macatangay, Jr. and Gonzales—copies of which were attached to the Compliance—were presented to the notary public at the time of notarization of the Verification and Sworn Certification Against Forum Shopping, **such possibility is a mere speculation as the competent evidence of identity of Macatangay, Jr. and Gonzales do not appear on the face of the Verification and Sworn Certification Against Forum Shopping.**

In addition, it must be noted from the Petition that KMP Koalisyon Pangkaunlaran ng Mamamayan and KNK Anak ng Diyos Kadugo ni Kristo had no duly authorized representatives to participate in the filing of the Petition as in fact, no person executed a Verification and Sworn Certification Against Forum Shopping on their behalf. Also, some of the named petitioners, *i.e.*, Celis,

Magdamo, Cornejo, and Mauricio, Jr. failed to execute a Verification and Sworn Certification Against Forum Shopping either in the original Petition or by way of compliance to the Court's April 19, 2022 Resolution.

Thus, petitioners KMP Koalisyong Pangkaunlaran ng Mamamayan and KNK Anak ng Diyos Kadugo ni Kristo, as well as Paquiz, Celis, Magdamo, Cornejo, and Mauricio, Jr., should be dropped as petitioners.

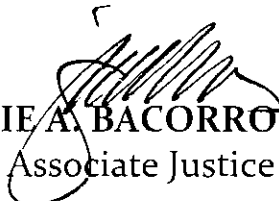
As to the remaining petitioners, despite being given the chance to rectify the procedural infirmities of the Petition, they still failed to correct the said errors. Considering the procedural infirmities of the Petition, the Petition should be dismissed.

...

Similarly in this case, We do not find any substantive arguments or viable reasons to modify or abandon the First Division's assailed Resolutions which dismissed petitioner's prior Petition for Review.

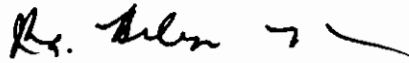
WHEREFORE, premises considered, the present Petition for Review filed by petitioner Johnny Sy Co on 30 November 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice



MA. BELEN M. RINGPIS-LIBAN

Associate Justice



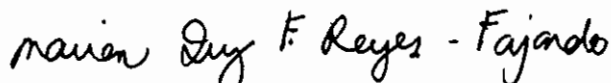
CATHERINE T. MANAHAN

Associate Justice



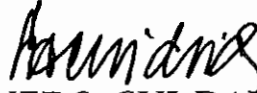
MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice



MARIAN IVY F. REYES-FAJARDO

Associate Justice



LANEE S. CUI-DAVID

Associate Justice



CORAZON G. FERRER-FLORES

Associate Justice



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