

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 2751
(CTA Case No. 10129)

Present:

-versus-

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

Promulgated:

GOLDXTREME TRADING CO.,
Respondent.

APR 17 2024

X

[Signature] 1:25 p.m.

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review,¹ filed by petitioner the Commissioner of Internal Revenue (“CIR”) on 8 May 2023, with respondent Goldxtreme Trading Co.’s Comment (To Petitioner’s Petition for Review dated May 4, 2023) (“Comment”),² filed on 20 July 2023. Petitioner seeks the reversal of the Decision, dated 7 February 2023³ (“Assailed Decision”), which cancelled and set aside petitioner’s assessments of respondent’s alleged deficiency Income Tax, Value-Added Tax, and Expanded Withholding Tax for Taxable Year 2015 (“Assailed Assessments”) and enjoined him from proceeding with the collection of

¹ *EB* Records, pp. 1-15.

² *Id.*, pp. 82-124.

³ *Id.*, pp. 20-62.

said taxes, and the Resolution, dated 12 April 2023⁴ (“Assailed Resolution”), which denied respondent’s Motion for Reconsideration of the Assailed Decision (“Division MR”), both rendered by the Honorable Special 2nd Division of this Court (“Court in Division”). Concomitantly, petitioner also prays that the Court uphold the validity of the Assailed Assessments.⁵

The Parties

Petitioner is the duly appointed CIR vested by law to implement and enforce the provisions of the *National Internal Revenue Code of 1997, as amended* (“*NIRC*”), and other tax laws.⁶

Respondent is a partnership duly organized under Philippine laws to primarily engage in the business of wholesale and retail sales of gold jewelry, fashion accessories, cellphones, cellphone loads, prepaid cards, scents, and other related products.⁷

The Facts

On 7 October 2016, respondent received Letter of Authority (“LOA”) No. LOA-027-2016-00000155, dated 5 October 2016.⁸

Supposedly, respondent received a second LOA, with No. LOA-027-2018-00000301, which was allegedly received by a certain Nins de Guzman on 11 July 2018.⁹

Respondent then received a Preliminary Assessment Notice (“PAN”), dated 12 September 2018, on 27 September 2018. After a request for the extension for the period to do so, respondent filed a Reply to the PAN on 26 October 2018.¹⁰

On 27 November 2018, respondent received a Formal Letter of Demand (“FLD”), to which it replied with a Protest on 21 December 2018. After some back and forth between the parties, petitioner eventually denied the protest through an undated Letter of Denial, which respondent received on 24 June 2019.¹¹

Aggrieved, respondent filed a Petition for Review, docketed as CTA Case No. 10129, before the Court in Division on 23 July 2019.

⁴ *Id.*, pp. 63-70.

⁵ *See* Petition for Review, p. 14, *id.*, p. 14.

⁶ *See* Decision, dated 7 February 2023, p. 2, *id.*, p. 21.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *See* Decision, dated 7 February 2023, p. 3, *id.*, p. 22.

¹⁰ *See* Decision, dated 7 February 2023, pp. 2-3, *id.*, pp. 21-22.

¹¹ *See* Decision, dated 7 February 2023, pp. 3-5, *id.*, pp. 22-24.

After a full-blown trial,¹² the Court in Division granted the Petition for Review via the Assailed Decision, promulgated on 7 February 2023. This prompted petitioner to file a Motion for Reconsideration (Notice of Decision promulgated on February 7, 2023),¹³ to which respondent filed a Comment.¹⁴ The Division MR was then denied for lack of merit in the Assailed Resolution.

Dissatisfied with the above rulings, petitioner filed the instant Petition on 8 May 2023. Respondent filed its Comment to the same on 20 July 2023, while also filing a Motion¹⁵ praying for the issuance of an Entry of Judgment before the Court in Division on even date. Said Motion, however, was eventually denied by the Court in Division through their Resolution, dated 4 October 2023,¹⁶ given the pendency of the case at bar before this Court *En Banc*.

The parties were referred to mediation¹⁷ but decided not to have their case mediated.¹⁸ As such, the case was submitted for decision through a Minute Resolution, dated 7 November 2023.¹⁹

Hence, this Decision.

The Assigned Errors

Petitioner assigns the following errors to the assailed issuances of the Court in Division:²⁰

- I. The Court in Division erred in ruling that the PAN and FLD were issued without the requisite authority of the Revenue Officers;
- II. The Court in Division erred in ruling that the PAN and FLD were issued pursuant to the second LOA; and
- III. The Court in Division erred in declaring the Assailed Assessment void due to numerous violations of respondent's right to due process.

The Arguments

Petitioner insists that:

¹² See Decision, pp. 5-8, *id.*, pp. 24-27.

¹³ Division Records Vol. 3, pp. 1047-1059.

¹⁴ See Resolution, dated 12 April 2023, p. 1, *EB* Records, p. 63.

¹⁵ Division Records Vol. 3.

¹⁶ *Id.*

¹⁷ See Minute Resolution, dated 15 August 2023, *EB* Records, p. 126.

¹⁸ See PMCA-CTA Form 6—No Agreement to Mediate, dated 19 September 2023, *id.*, p. 138.

¹⁹ *Id.*, p. 139.

²⁰ Petition for Review, pp. 3-4, *id.*, pp. 3-4.

- (a) The PAN and FLD were issued pursuant to the first issued LOA, as evidenced by the similarities between the audit report prepared by the Revenue Officer named in said LOA and the assessments presented in the PAN and FLD; this shows that these issuances were issued pursuant to the findings of a properly authorized Revenue Officer;²¹
- (b) The second LOA never purported to replace the first LOA, so its existence does not necessarily imply that the PAN and FLD were issued pursuant to it and not to the first LOA;²² and
- (c) The LOA was issued and the relevant taxable year occurred before the applicable rules and regulations began to require Notices of Informal Conference, meaning that petitioner did not, in fact, violate respondent's right to due process.²³

Respondent, meanwhile, observes that the arguments put forth in the instant Petition are a verbatim copy of those raised in the Division MR;²⁴ it accordingly spends most of its Comment reiterating the counterarguments from its earlier comment to the Division MR.

More seriously, however, respondent also claims that this Court *En Banc* has no jurisdiction over the present case. This is allegedly so as the Division MR failed to identify the specific findings and conclusions of the Assailed Decision that were not supported by the evidence or that were contrary to law. Such identification, however, is required by ***Sec. 2, Rule 37 of the Rules of Court, as amended***, for a Motion for Reconsideration. Thus, respondent contends, the Division MR is not actually an MR, and the Assailed Decision has become final and executory. And given that ***Sec. 1, Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended ("RRCTA")***, requires a Motion for Reconsideration or New Trial before the Court in Division to precede the filing of a Petition for Review before this Court *En Banc*, petitioner should be barred from filing the instant Petition for failure to file a valid Motion for Reconsideration.²⁵

The Ruling of the Court

The Petition for Review must be dismissed 

²¹ Petition for Review, pp. 4-7, *id.*, pp. 4-7.

²² Petitioner for Review, pp. 8-10, *id.*, pp. 8-10.

²³ Petition for Review, pp. 10-13, *id.*, pp. 10-13.

²⁴ Comment, p. 5, *id.*, p. 86.

²⁵ Comment, pp. 1-5, *id.*, pp. 82-86.

**The Petition for Review was
belatedly filed.**

Petitioner claims to have received the Assailed Resolution on 25 April 2023. However, a perusal of the Notice of Resolution,²⁶ dated 12 April 2023, reveals that petitioner actually received the same on 19 April 2023.

Under **Rule 8, Section 3(b) of the RRCTA**, a party adversely affected by a ruling of the Court of Tax Appeals (“CTA”) in Division has fifteen (15) days from receipt of the questioned Resolution within which to file a Petition for Review before the CTA *En Banc*:

“(b) A party 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.”
(Emphasis and underscoring supplied.)

Given that petitioner received the Assailed Resolution on 19 April 2023, he had until 4 May 2023 within which to file his Petition for Review. However, he filed the instant Petition on 8 May 2023. This Court thus has no jurisdiction over the case at bar. Accordingly, the present Petition must be dismissed, for that is the only course of action a court can take when it lacks jurisdiction over a case, as settled in *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*.²⁷

To be clear, this lack of jurisdiction stems from petitioner’s late filing of the Petition for Review, not because his Division MR was invalid, as claimed by respondent. To review, respondent insists in its Comment that petitioner’s Division MR was not a compliant Motion for Reconsideration as it did not identify specific findings or conclusions in the Assailed Decision that were not supported by evidence or that were contrary to law. It bases this claim on the Court in Division’s observation, in the Assailed Resolution, that petitioner failed to address certain critical findings in the Assailed Decision, which is required of Motions for Reconsideration under **Sec. 2, Rule 37 of the Rules of Court, as amended**. Relevantly, **Sec. 1, Rule 8 of the RRCTA** requires that a Motion for Reconsideration or New Trial to have been filed with the Court in Division before a litigant can file a Petition for Review with the Court *En Banc*. Respondent thus asserts that since no valid Motion for Reconsideration was filed before the Court in Division, the instant Petition for Review is invalid, and the Court *En Banc* has no jurisdiction over it.

Respondent’s argument is terribly misplaced. 

²⁶ Division Records Vol. 3, p. 1074.

²⁷ G.R. No. 185666, 4 February 2015.

The Court *En Banc* first notes that this interpretation of the Division MR is based on a perniciously partial reading of the Assailed Resolution. The Court in Division, indeed, noted that petitioner failed to address *some* of its findings, but this notice constitutes a single paragraph in the seventh (7th) page of the Assailed MR. Prior to this, however, the Court in Division discussed petitioner's arguments regarding the LOA and the Notice of Informal Conference, *i.e.* claims regarding *specific findings or conclusions* in the Assailed Decision that petitioner believed to be *unsupported by the evidence or contrary to law*. The Court in Division did not address such arguments merely on a whim: said arguments were specifically raised in the Division MR. The Division MR, as such, is compliant with **Sec. 2, Rule 37 of the Rules of Court, as amended**, and is thus a valid Motion for Reconsideration. A lack of merit, though critical, does not immediately imply procedural invalidity, after all.

Furthermore, the Supreme Court itself has been notably liberal in its enforcement of procedural rules regarding *pro forma* Motions for Reconsideration, consistently reiterating a list of factors that justify the relaxation of such rules:

- (a) Matters of life, liberty, honor, or property;
- (b) The existence of special or compelling circumstances;
- (c) The merits of the case;
- (d) A cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules;
- (e) A lack of any showing that the review sought is merely frivolous and dilatory; and
- (f) A lack of showing that the other party will be unjustly prejudiced by such a review.

This list was upheld by the High Court fairly recently in *Heirs of Juan M. Dinglasan v. Ayala Corporation, et al.*,²⁸ but has been repeatedly applied by said Court in a long line of cases stretching back to *Benjamin Paulino, et al. v. Court of Appeals, et al.*²⁹

While exceptions must usually be proven by those seeking to enjoy them, the above also imposes restrictions on those who insist that the relevant rules should not be relaxed. In the case at bar, then, respondent should have at least shown that (a) the review sought by the Division MR is frivolous or dilatory; and (b) the review sought would unjustly prejudice it.

²⁸ G.R. No. 204378, 5 August 2019.

²⁹ G.R. No. L-46723, 28 October 1977.

Respondent failed to show either of these. It merely imputed procedural infirmities which, as discussed above, are not actually present in the Division MR. Petitioner's Motion for Reconsideration before the Court in Division was thus valid, albeit unmeritorious.

The above, of course, is purely academic, as petitioner's late filing of his Petition still prevented the Court *En Banc* from assuming jurisdiction over this case.

The Petition for Review raises the same arguments as those of the Division MR and thus fails to controvert the Assailed Resolution.

Assuming *arguendo* that this Court has jurisdiction over the present Petition, We would still have to deny it. As observed by respondent and confirmed by this Court *En Banc*, the instant Petition for Review is, indeed, a verbatim rehash of the Division MR. Petitioner did implement a few changes to adapt the Petition to its current context, such as replacing instances of "This Honorable Court" with "The 2nd Division of this Honorable Court" or swapping "petitioner" for "respondent" and vice versa. Other than these minor adjustments, however, the Petition for Review is a near word-for-word replica of the Division MR.

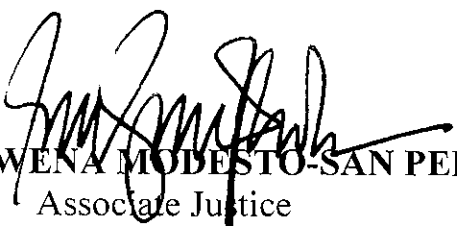
Accordingly, even if the Petition for Review had been filed on time, the Court in Division's thorough refutations of the arguments that petitioner raised, and its findings on the issues he did not address, still stand, effectively uncontroverted. He does not explain why the FLD should be considered as having been issued pursuant to the first LOA when it explicitly identifies the control number of the second LOA, or why the LOA should not be treated as replacing the first LOA when the former explicitly identifies itself as "a replacement of" the first LOA, or why the prohibition on the non-retroactivity of rulings should apply when said prohibition only applies when the retroactivity is prejudicial to the taxpayer but not to the government, or why such prohibition is even relevant when the PAN had not yet been issued when Revenue Regulations No. 7-2018, the rule requiring a Notice of Informal Conference, was issued, or why the Court *En Banc* should ignore the other findings used as bases for the Court in Division's rulings, such as his failure to serve the PAN and FLD to either respondent or its authorized representatives, or his issuance of the FLD without addressing respondent's arguments, or his issuance of a Denial Letter without considering respondent's supporting documents.

In brief, by reusing the same arguments from his Division MR as-is, the Petition for Review is still completely refuted by the Assailed Decision and Assailed Resolution. Thus, even if the instant Petition had been filed on time, the same would still have failed to convince this Court *En Banc* that the Court in Division committed any reversible error or that the Assailed Assessment is valid.

All told, this Court still has no jurisdiction over the instant Petition and must dismiss the same.

WHEREFORE, petitioner's Petition for Review, filed on 8 May 2023, is hereby **DISMISSED** for being belatedly filed. The Decision, dated 7 February 2023, and the Resolution, dated 12 April 2023, both promulgated by the Court in Division in CTA Case No. 10129, are hereby **AFFIRMED**.

SO ORDERED.



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:



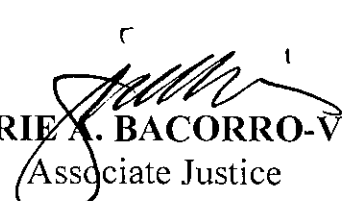
ROMAN G. DEL ROSARIO
Presiding Justice



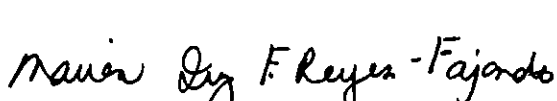
MA. BELEN M. RINGPIS-LIBAN
Associate Justice



CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIAN IVY F. REYES-FAJARDO
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