

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, CTA **EB NO. 2607**
(CTA Case No. 9329)

Petitioner,

Present:

-versus-

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

AG COUNSELORS
CORPORATION,

Respondent.

Promulgated:

FEB 01 2024

4:30 pm

X- - - - - X

DECISION

MANAHAN, J.:

Before the Court of Tax Appeals (CTA) *En Banc* is the instant *Petition for Review* posted on May 4, 2022 and received by the Court on May 11, 2022 seeking the reversal of two (2) Resolutions issued by the Second Division of the Court (Court in Division), quoted hereunder, thus:

Resolution dated September 30, 2021

“**WHEREFORE**, premises considered, respondent’s **Petition for Relief from Judgment** is **DENIED**, for lack of merit.” 

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Resolution dated March 29, 2022

“WHEREFORE, premises considered, respondent’s **Motion for Reconsideration**, filed through registered mail on November 2, 2021, is **DENIED**, for lack of merit.”

THE PARTIES

Petitioner Commissioner of Internal Revenue (CIR) is the duly appointed head of the Bureau of Internal Revenue (BIR) vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and other tax laws, rules and regulations. His principal office address is at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes of this Court.

Respondent is a domestic corporation engaged in the business of providing advisory, consultancy, assistance and other allied services relating to the organization and operation of any productive enterprise, venture, or project of any business, industry or person.¹ It holds office at Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.

THE FACTS

On October 25, 2019, the Court in Division promulgated a Decision partially granting the claim for refund of AG Counselors Corporation (hereinafter referred to as respondent) for its excess and unutilized creditable withholding tax (CWT) for calendar year (CY) 2013 in the amount of Php10,992,786.35.

In response to the Decision of the Court in Division, respondent filed a Motion for Reconsideration on November 11, 2019 while the CIR (hereinafter referred to as petitioner) filed a Motion for Partial Reconsideration on November 8, 2019.

¹ Division Decision, EB Docket, pp. 53-75. 

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Both motions were denied for lack of merit in a Resolution issued by the Court in Division on March 2, 2020.²

On July 29, 2020, the Court ordered the issuance of an Entry of Judgment in CTA Case No. 9329 entitled, “AG Counselors Corporation vs. Commissioner of Internal Revenue,” taking note that no appeal has been taken by both parties on the Decision and Resolution dated October 25, 2019 and March 2, 2020, respectively, within the prescribed period.

On September 30, 2020, petitioner filed (via registered mail) a Motion for Reconsideration (On the Resolution promulgated on July 29, 2020) seeking the reconsideration of the Court’s ruling (to issue an Entry of Judgment) and to recall the Resolution dated July 29, 2020.

On January 27, 2021, the Court issued a Resolution denying petitioner’s Motion for Reconsideration (On the Resolution promulgated on July 29, 2020) for lack of merit.

On March 8, 2021, petitioner filed a Petition for Relief from Judgment with the Court in Division which was subsequently denied in a Resolution dated September 30, 2021.

Aggrieved by the denial of its Petition for Relief from Judgment, petitioner filed a Motion for Reconsideration on November 2, 2021 and received by the Court on November 19, 2021 seeking the reversal of the Court in Division’s Resolution dated September 30, 2021.

In a Resolution dated March 29, 2022, the Court upheld its Resolution dated September 30, 2021 and consequently denied petitioner’s Motion for Reconsideration for lack of merit.

Petitioner then posted the instant Petition for Review with the Court *En Banc* on May 4, 2022 and docketed as CTA EB No. 2607.

On May 11, 2022, petitioner filed a Manifestation and Motion stating that the Petition for Review filed with the Court *En Banc* was erroneously captioned as “People of the Philippines vs. AG Counselors Corporation” and sought that it be given an

² EB Docket, pp. 85-96. 

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opportunity to correct the error and change it to “Commissioner of Internal Revenue vs. AG Counselors Corporation.”

In a Resolution dated June 22, 2022, the Court took note of petitioner’s Manifestation and Motion and ordered petitioner’s counsel to submit an amended first page of the Petition for Review reflecting the correct title of the instant case and to likewise submit a corrected Verification and Certification pursuant to the Court’s observation that it refers to a different CTA Case Number.

On July 11, 2022, petitioner submitted its Compliance attaching a Petition for Review with the correct caption.

On September 1, 2022, the Court took note of petitioner’s Compliance as to the amended caption of the Petition for Review but observed that paragraph 2 of the Verification and Certification still refers to a different CTA Case Number. The Court further directed petitioner to correct the discrepancy in the CTA Case Number within five (5) days from notice.

On September 7, 2022, petitioner filed and submitted the corrected Verification and Certification which was noted and admitted by the Court in a Resolution dated November 29, 2022. In this same Resolution, the Court directed the respondent to file its comment on the instant Petition for Review within ten (10) days from notice.

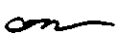
The Records Verification dated January 9, 2023 indicated that respondent failed to file its comment within the time prescribed by the Court.³

On February 1, 2023, the Court En Banc submitted the case for decision.

ISSUES

The arguments raised by the petitioner in his Petition for Review are as follows:

1. The Court of Tax Appeals En Banc has jurisdiction over the instant Petition;

³ EB Docket, p. 205. 

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2. Petitioner's counsel committed an excusable negligence;
3. February 9, 2021, the date when the petitioner obtained knowledge of the judgment to be set aside should be the reckoning of the 60-day period provided under Section 3, Rule 38 of the 1997 Rules of Court; and
4. The Court failed to consider the existence of a fortuitous event that is present and obtaining in this case.

Petitioner calls upon the compassion and understanding of the Court for its failure to file a timely appeal on the assailed Decision and Resolution of the Court in Division attributing it to the excusable negligence of his counsel. He narrates that when his counsel received the Court's Resolution promulgated on July 29, 2020 ordering the issuance of an Entry of Judgment, he was of the impression that the Motion for Partial Reconsideration filed on November 8, 2019 was not received by the Court and it was only when said counsel received the Court's Resolution dated January 27, 2021 that he became aware of the Court's Resolution dated March 2, 2020 denying the Motion for Partial Reconsideration. Petitioner submits that this misappreciation of the facts and proceedings that transpired resulted to his failure to make a timely appeal on the subject Resolution dated March 2, 2020.

Petitioner then pays particular attention to the alleged error of the Court in Division that the Petition for Relief from Judgment was filed out of time. He maintains that the sixty (60)-day period provided under Section 3, Rule 38 of the Revised Rules of Court should be reckoned from February 9, 2021 which is the date he obtained knowledge of the judgment to be set aside, thus, rendering the filing of the said Petition on March 8, 2021 well within the said period and not filed out of time as concluded by the Court in Division. Petitioner stresses that it was erroneous on the part of the Court to count the 60-day period from the actual receipt of the denial of his Motion for Partial Reconsideration on March 4, 2020.

In summary, petitioner ascribes the narrated lapses on the part of his counsel and the misappreciation of dates and proceedings to fortuitous events brought about by the pandemic and the numerous lock-downs declared by the government authorities and the ensuing work-from-home arrangements 

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during that time. He likens the extraordinary situation to an insuperable cause that deserves the understanding of the Court on the ground of substantial justice.

As earlier mentioned, respondent failed to file its comment to the instant Petition for Review.

THE COURT EN BANC'S RULING

We deny the Petition for Review on the ground that petitioner availed of the wrong remedy.

In a long line of cases, the Supreme Court has declared that the denial of a petition for relief from judgment or an order disallowing or dismissing an appeal may only be challenged through the special civil action of certiorari under Rule 65.⁴ This is pursuant to the provisions of Section 1 (b) of Rule 41 of the Revised Rules of Court which we quote hereunder, thus:

"Rule 41

Appeal From the Regional Trial Court

Section 1. *Subject of appeal.* – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by the Rules to be appealable.

No appeal may be taken from:

- (a) **An order denying a petition for relief or any similar motion seeking relief from judgment;**
- (b) An interlocutory order;
- (c) An order disallowing or dismissing an appeal;
- (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress or any other ground vitiating consent;
- (e) An order of execution;
- (f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
- (g) An order dismissing an action without prejudice.

⁴ *Spouses Pedro M. Regalado and Zanita F. Regalado*, G.R. No. 134154, February 28, 2006; *Dionisio B. Azucena vs. Foreign Manpower Services, et.al.*, G.R. No. 147955, October 25, 2004; *Dana S. Santos vs. Leodegario R. Santos*, G.R. No. 214593, July 17, 2019. 

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In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.” (*emphasis supplied*)

A reading of the disquisition of petitioner in the instant Petition for Review glaringly reveals that it is a replication of the arguments raised in its Motion for Reconsideration filed on November 2, 2021 which were resolved and denied by the Court in Division in its Resolution dated September 30, 2021 and reiterated in the Resolution dated March 29, 2022. We quote significant portions of the assailed Resolution dated September 30, 2021 denying petitioner’s Petition for Relief from Judgement, to wit:

“As borne out by the records, respondent received a copy of the October 25, 2019 Decision on October 28, 2019. Thus, respondent filed a Motion for Partial Reconsideration through registered mail on November 8, 2019 and the same was received by the Court on November 19, 2020 (*sic*). On March 4, 2020, he received a copy of the March 2, 2020 Resolution, denying the parties’ respective motions for reconsideration of the said Decision. There being no *En Banc*/SC appeal filed by any of the parties herein on the March 2, 2020 Resolution, the Court ordered the issuance of Entry of Judgment in its Resolution dated July 29, 2020. As such, the 60-day period to file a petition for relief from judgment should be reckoned from the actual receipt of the denial of his Motion for Partial Reconsideration on March 4, 2020, pursuant to the Supreme Court’s ruling in the *City of Dagupan vs. Maramba*, or at the latest from the receipt of the July 29, 2020 Resolution, ordering the issuance of Entry of Judgment in the instant case, on September 23, 2020. Thus, the filing of the instant petition for relief on March 8, 2021 was already more than 60 days from the knowledge of either the March 2, 2020 Resolution or July 29, 2020 Resolution.

In view thereof, there is no basis for respondent to claim that the 60-day period to file a petition for relief should be counted from February 9, 2021, the date he received the January 27, 2021 Resolution of the Court, denying his second Motion for Reconsideration, as the same is not the final order contemplated under Section 3, Rule 38 of the 1997 Rules of Civil Procedure.”

As borne by the facts of this case, petitioner filed a Motion for Reconsideration on the above Resolution on November 2, 2021 which was denied by the Court in Division in a Resolution dated March 29, 2022. Petitioner then filed the instant Petition for Review with the Court En Banc on May 4, 2022. *on*

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It bears stressing that the special civil action of certiorari under Rule 65 of the Revised Rules of Court is distinct from the ordinary modes of appeal as the issues under the former are limited only to errors of jurisdiction or grave abuse of discretion.⁵ Rule 65 of the Revised Rules of Court reveals the nature of the special civil action for certiorari, thus:

“Rule 65 Certiorari, Prohibition and Mandamus

SECTION 1. *Petition for certiorari.* – **When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion** amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.”
(*emphasis supplied*)

In the case of *Dionisio B. Azucena vs. Foreign Manpower Services, K.S. Kasmito and Fortune Life & General Assurance Co., Inc.*,⁶ the Supreme Court further distinguished the contents of the petition for certiorari under Rule 65 and the ordinary mode of appeal via a Petition for Review under Rule 45, and we quote:

“This Court may not treat the present petition as a special civil action for certiorari under Rule 65 **since the petition instead of alleging grave abuse of discretion on the part of the Court of Appeals, in denying the petition for relief from judgment, assigns reversible errors in the November 17, 2000 Decision.**” (*emphasis supplied*)

It is clear from a cursory perusal of the contents of the instant Petition for Review that the questions raised do not

⁵ *Philam Homeowners Association, Inc. and Marcia Caguiat vs. Sylvia de Luna and Nenita Bundoc*, G.R. No. 209437, March 17, 2021.

⁶ G.R. No. 147955, October 25, 2004. *Am*

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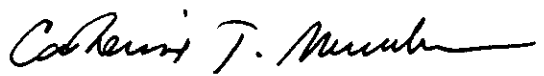
involve issues of jurisdiction or grave abuse of discretion but limited to assigned errors in the conclusions reached by the Court in Division.

In resolving a petition for certiorari from a denial of a petition for relief from judgment, the Supreme Court in the case of *Dana S. Santos vs. Leodegario R. Santos*,⁷ however, imposed a special function on the appellate courts in resolving the issues, and we quote:

“The 1997 Rules of Civil Procedure changed the nature of denial of a petition for relief from judgment, making it unappealable and, hence, assailable only *via* a petition for certiorari. Nevertheless, the appellate court in deciding such petitions against denials of petitions for relief, remains tasked with making a factual determination, *i.e.*, whether or not the trial court committed grave abuse of discretion in denying the petition. To do so, it is still obliged, as *Service Specialists* instructs, to “*determine not only the existence of any of the grounds relied upon whether it be fraud, accident, mistake or excusable negligence, but also and primarily the merit of petitioner’s cause of action or defense, as the case may be.*”

WHEREFORE, premises considered, the Petition for Review is **DENIED** on the ground that petitioner availed of the wrong remedy.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

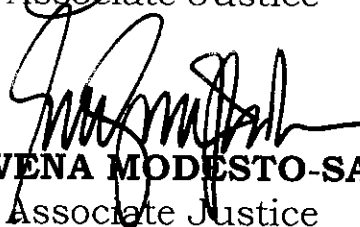
⁷ G.R. No. 214593, July 17, 2019.

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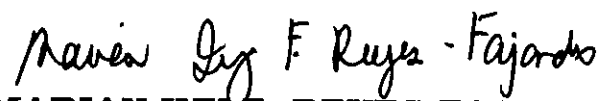
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JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



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

