

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 1, 2019** which reads as follows:*

“G.R. No. 248070 (Commissioner of Internal Revenue v. Macario Lim Gaw, Jr.)- The petitioner’s motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

After a judicious study of the case, the Court resolves to **DENY** the instant petition¹ and **AFFIRM** the September 20, 2018 Decision² and the July 3, 2019 Resolution³ of the Court of Tax Appeals *En Banc* (CTA *EB*) in CTA *EB* No. 1601 for failure of petitioner Commissioner of Internal Revenue (CIR) to sufficiently show that the CTA *EB* committed any reversible error in dismissing its petition⁴ for lack of proper verification and certification of non-forum shopping as required by the Rules of Court (Rules).⁵

As correctly ruled by the CTA *EB*, the CIR’s failure to comply with the rules on verification and certification of non-forum shopping

¹ *Rollo*, pp. 11-29.

² *Id.* at 39-55. Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justices Juanito C. Castañeda Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, and Catherine T. Manahan, concurring; while Presiding Justice Roman G. Del Rosario inhibited. Associate Justice Cielito N. Mindaro-Grulla, is on official business.

³ *Id.* at 57-63. Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justices Juanito C. Castañeda Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Catherine T. Manahan, concurring; while Presiding Justice Roman G. Del Rosario inhibited.

⁴ Not attached to the *rollo*.

⁵ See Sections 5 and 6, Rule 43 of the Rules.

warrants the dismissal of its petition.⁶ While the existence of compelling reasons or special circumstances has been recognized as valid reasons for the relaxation of the Rules, such does not obtain in this case, considering that the CIR failed to rectify the procedural error despite having ample opportunity to do so, and no timely attempt at substantial compliance was made.⁷

In any event, the CIR's apparent concern that the dismissal of its petition would endanger the entirety of its deficiency assessment against respondent in the amount of ₱7,016,541,855.80,⁸ representing alleged undeclared income tax, value-added taxes, interests and surcharge for taxable years 2007 and 2008,⁹ is clearly unfounded. A perusal of the September 2, 2016 CTA First Division Decision¹⁰ in CTA Case No. 8502, which was appealed to the CTA *EB*, would show that the issues raised by respondent Macario Lim Gaw, Jr. pertained solely to the inclusion of taxable year 2007, as falling within the term "unverified prior years," in the Letter of Authority (LOA) and resulting assessment issued by the CIR.¹¹ It is settled that when a LOA authorizes an examination for a taxable year and "unverified prior years," in contravention of Revenue Memorandum Order No. 43-90, it is not void in its entirety and shall be valid as to the declared taxable year.¹² It is for this reason that the CTA First Division correctly limited its disposition to the cancellation of the deficiency income tax assessment for taxable year 2007 amounting to ₱1,295,855,151.89, as found in FDDA No. 2012-0001.¹³

⁶ See Notice of Resolution in *Lumbis v. Israel*, G.R. No. 243593, March 13, 2019; See also Notice of Resolution in *Cabatit, Jr. v. SB Cards Corporation*, G.R. No. 232046, August 23, 2017. See further *rollo*, p. 49.

⁷ See *Spouses Melo v. Court of Appeals*, 376 Phil. 204, 215 (1999).

⁸ *Rollo*, pp. 24-25.

⁹ See *id.* at 42; see also portions of the Final Decision on Disputed Assessment dated May 18, 2012, signed by CIR Kim S. Jacinto-Henares, *id.* at 101-111.

¹⁰ *Id.* at 65-100. Penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justice Erlinda P. Uy, concurring; while Presiding Justice Roman G. Del Rosario inhibited.

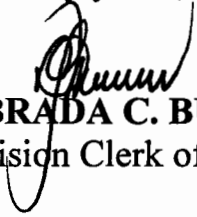
¹¹ *Id.* at 93.

¹² *CIR v. Lancaster Philippines, Inc.*, 813 Phil. 622, 641 (2017), citing *CIR v. De La Salle University, Inc.*, 799 Phil. 141, 175-176 (2016).

¹³ See dispositive portion of the CTA First Division Decision; see *id.* at 101.

SO ORDERED.” *Zalameda, J., designated as Additional Member per Special Order No. 2712 dated September 27, 2019. Carandang, J., on official leave.*

Very truly yours,


LIBRADA C. BUENA *b*
Division Clerk of Court *w/s*
15-A

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(CTA EB No. 1601)
(CTA Case No. 8502)

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