

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,
Petitioner,

CTA EB No. 2749
(CTA Case No. 9725)

Present:

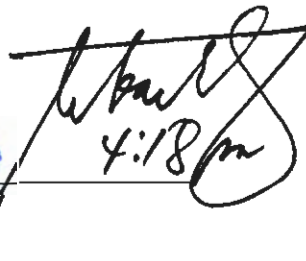
- versus -

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

COURT OF TAX APPEALS
THIRD DIVISION and FCF
MINERALS CORPORATION,
Respondents.

Promulgated:

AUG 13 2024



A handwritten signature in black ink is written over a blue date stamp that reads 'AUG 13 2024'. Below the signature, the time '4:18 pm' is handwritten in black ink.

x-----x

DECISION

FERRER-FLORES, J.:

This is a *Petition for Certiorari and Prohibition Under Rule 65 (Petition)* filed by the **Commissioner of Internal Revenue (CIR)** on May 2, 2023¹ seeking to set aside the Entry of Judgment dated October 12, 2022² and the Resolution dated February 15, 2023 (assailed Resolution),³ denying his *Petition for Relief from Judgment*, promulgated by the **public respondent Court of Tax Appeals Third Division**.

¹ *Rollo*, pp. 1 to 20.

² *Docket* – Vol. 4, p. 1793.

³ *Id.* at 1796 to 1802.

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PARTIES OF THE CASE

Petitioner is the respondent in CTA Case No. 9725 entitled “FCF Minerals Corporation vs. Commissioner of Internal Revenue”. He is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of said office including among others, the assessing and collecting of all national internal revenue taxes, fees, and charges, as provided by the National Internal Revenue Code (NIRC) of 1997,⁴ as amended.

Public respondent is now the Special Third Division of the Court of Tax Appeals (CTA), which promulgated the assailed Resolution, pursuant to Section 1, Rule VIII of the Internal Rules of the CTA.⁵

Private respondent FCF Minerals Corporation, Inc. is a domestic corporation duly organized and existing under laws of the Republic of the Philippines.

FACTUAL ANTECEDENTS

On June 4, 2021, public respondent promulgated a Decision granting private respondent’s *Petition for Review* thereby cancelling and setting aside the assessments for deficiency documentary stamp tax (DST) and administrative penalty for taxable year (TY) 2013 issued by petitioner against herein private respondent. The Decision was received by herein petitioner on June 18, 2021.

Herein petitioner filed a *Motion for Reconsideration* on July 5, 2021, which was denied by public respondent in the Resolution dated November 26, 2021. Said Resolution was received by herein petitioner on December 17, 2021, by herein private respondent’s counsel on March 21, 2022, and by the Office of the Solicitor General (OSG) on August 11, 2022.⁶

⁴ Republic Act (R.A.) No. 8424, as amended.

⁵

Rule VIII
Process of Adjudication

SECTION 1. *Case assigned to a Justice for study and report.* – Every Division case, whether appealed or original, assigned to a Justice for study and report shall be retained by him even if he is transferred to another Division. The Justice, though transferred, shall write the report with the other members of the Division to which the case was originally submitted for decision. Their Division shall be called Special (No.) Division.

⁶ Docket – Vol. 4, p. 1748.

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On August 18, 2022, the Judicial Records Division of public respondent issued a Records Verification Report stating that, as of said date, no appeal from the Resolution dated November 26, 2021 was filed before the CTA *En Banc* or the Supreme Court.⁷

The Special Third Division of the CTA issued a Resolution on September 12, 2022 ordering the issuance of an Entry of Judgment in view of the Decision promulgated on June 4, 2021 becoming final and executory.⁸

On October 12, 2022, the Special Third Division of the CTA notified the parties of the Entry of Judgment.⁹ The Entry of Judgment was received by herein petitioner on October 17, 2022, by herein private respondent's counsel on November 7, 2022, and by the OSG on November 8, 2022.

Herein petitioner filed, on December 16, 2022, a *Petition for Relief from Judgment*, with the CTA Special Third Division, informing the Court that there is a valid reason why he failed to file the Petition for Review before the *Court En Banc* and that he has a meritorious defense.¹⁰

In the assailed Resolution dated February 15, 2023, the CTA Special Third Division denied the Petition for Relief from Judgment ruling that such was filed out of time, as it was filed more than six (6) months from the date of receipt of the Resolution dated November 26, 2021. In the assailed Resolution, the Court also held that a client is bound by his counsel's mistake in handling the case.¹¹ Said assailed Resolution was received allegedly by herein petitioner on February 28, 2023.

Within sixty (60) days from the alleged receipt of the assailed Resolution, herein petitioner filed the instant *Petition* on May 2, 2023.¹²

Herein private respondent filed its *Comment* on July 11, 2023.¹³

On July 25, 2023, the case was then submitted for decision.¹⁴

⁷ *Id.* at 1761.

⁸ *Id.* at 1763.

⁹ *Id.* at 1764.

¹⁰ *Id.* at 1766 to 1784.

¹¹ *Id.* at 1796 to 1802.

¹² Sixtieth day is on April 29, 2023, which is a Saturday, and the next working day is May 2, 2023, which is a Tuesday. May 1, 2023 is a holiday.

¹³ *Rollo*, pp. 38 to 43.

¹⁴ *Id.* at 44.

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ISSUES

Petitioner raised the following grounds for the *Petition*:¹⁵

- I. There is a valid reason why petitioner failed to file the *Petition* for Review with the Honorable Court.
- II. Petitioner has meritorious defense.

ARGUMENTS

Petitioner argues that there is a valid reason why he failed to file the *Petition* for Review. According to petitioner, the original counsel handling the instant case, Atty. Marionn Phillbee Tejada, failed to file a *petition* for review and he had no knowledge that the same was not filed in view of the voluminous number of pleadings filed by the Litigation Division. Petitioner claims that he was surprised to receive an *Entry of Judgment* for the instant case. He likewise insists that his inability to file a motion for reconsideration was due to excusable negligence as he was not aware that it was not filed. He avers that he has no participatory negligence as it was entirely attributable to Atty. Tejada. Petitioner asserts that the rule, which states that the mistakes of the counsel bind the client, may not be strictly followed where its observance would result in outright deprivation of the client's liberty or property or where the interest of justice so requires.

Petitioner also contends that he has meritorious defense. He maintains that, under Revenue Memorandum Circular (RMC) No. 17-2013,¹⁶ the non-collection of the government's share during the recovery period of the Financial and Technical Assistance Agreement (FTAA) by the contractors, referred to in Republic Act (R.A.) No. 7942,¹⁷ is not tantamount to an express grant of tax exemption. Petitioner posits that FTAA contractors are liable to pay the taxes during and after their recovery period as compliance with their tax obligations and not in the nature of settling the government share under the FTAA.

Finally, petitioner argues that the Rules of Court should be liberally construed so as not to defeat substantial justice.

¹⁵ Grounds for the *Petition*, *Petition* for Certiorari and Prohibition Under Rule 65, *Id.* at 6.

¹⁶ SUBJECT: Clarifying the Taxes Due from Financial or Technical Assistance Agreement (FTAA) Contractors During "Recovery Periods", February 15, 2013.

¹⁷ AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION, AND CONSERVATION, otherwise known as Philippine Mining Act of 1995, March 3, 1995.

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On the other hand, herein private respondent counters that petitioner neither discussed nor proved the grave abuse of discretion on the part of the public respondent. It also maintains that the negligence of herein petitioner is not excusable. It emphasized that the Resolution was addressed not just to Atty. Tejada but also to Atty. Felix Paul R. Velasco III, Atty. Sylvia R. Alma Jose and Atty. Ayesha Hania B. Guiling-Matanog and that the Resolution was also served on the OSG.

Lastly, private respondent argues that petitioner's negligence is gross as he slept on his right to avail of any remedy to challenge the Resolution. According to private respondent, the Supreme Court has reiterated many times that, if the remedy of appeal has been lost, the special civil action of *certiorari* is not a substitute or tool to shield petitioner from the adverse consequence of his neglect or error in his choice of remedies.

RULING OF THE COURT EN BANC

We dismiss the Petition.

Petitioner failed to raise as an issue or include in the grounds for certiorari that the Court in Division acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Court agrees with private respondent when it argued that petitioner neither discussed nor proved how public respondent committed grave abuse of discretion in his arguments and discussions.

Under Section 1 of Rule 65 of the Rules of Court, a petition for *certiorari* is filed when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and petitioner alleges such facts with certainty, praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, to wit:

Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any

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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)

Prohibition, on the other hand, under Section 2 of the same Rule, is filed when petitioner wants the tribunal, corporation board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, whose proceedings are conducted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, to desist from further proceedings in the action or matter specified therein, *viz*:

Section 2. *Petition for prohibition.* — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are 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 other 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 commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise 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)

Essentially, in order to determine whether writs of *certiorari* and prohibition are warranted, petitioner must allege with certainty that the judicial tribunal acted with grave abuse of discretion. The Supreme Court held, in the case of *Marvin Cruz and Francisco Cruz, in his capacity as Bondsman vs. People of the Philippines*, in this wise:¹⁸

An essential requisite for filing a petition for certiorari is the allegation that the judicial tribunal acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion has been defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to

¹⁸ G.R. No. 224974, July 3, 2017.

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perform a duty enjoined by law." In order to determine whether the Court of Appeals erred in dismissing the Petition for Certiorari for being the wrong remedy, it is necessary to find out whether the Regional Trial Court acted with grave abuse of discretion as to warrant the filing of a petition for certiorari against it. (Emphasis supplied)

In the instant *Petition*, petitioner enumerated two (2) grounds. First, he contends that there is a valid reason why he failed to file the Petition for Review with Court *En Banc*. Second, he posits that he has meritorious defense.

A careful perusal of his *Petition* reveals that petitioner invokes that the public respondent acted contrary to jurisprudence, and necessarily, committed grave abuse of discretion when it denied petitioner's Petition for Relief from Judgment. Other than these statements, petitioner's grounds for and prayer in the *Petition* manifest that, what petitioner merely seeks is to annul the Resolution dated February 8 [sic], 2023,¹⁹ promulgated by the Court in Division and to enjoin the CTA Third Division from proceeding with the resolution of private respondent's petition. Instead of requesting to annul the proceedings of the public respondent, he further prays that the Court give due course to the instant *Petition* and that the Entry of Judgment dated October 12, 2022 be set aside and, another one be rendered giving due course to petitioner's Petition for Relief from Judgment and allowing him to elevate to the CTA *En Banc* via Petition for Review.

Rather than discussing how public respondent gravely abused its discretion in denying his Petition for Relief from Judgment, petitioner explained and revealed the lapses of one of his lawyers in the proper turnover of cases. Citing jurisprudence on the relaxation of the rules, petitioner requests that the Court apply said jurisprudence in order to allow him to file a Petition for Review with the Court *En Banc*. Moreover, he reiterated the discussion in his *Motion for Reconsideration* of the Decision of the Court in Division that respondent is liable for assessed deficiency Documentary Stamp Tax.

Clearly, the instant *Petition* lacks certain allegations of public respondent's grave abuse of discretion as required in Sections 1 and 2 of Rule 65 of the Rules of Court.

***The instant Petition must be dismissed
for failure of petitioner to file a motion***

¹⁹ The Resolution denying herein petitioner's Petition for Relief from Judgment was promulgated on February 15, 2023.

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***for reconsideration on the denial of his
Petition for Relief from Judgment.***

A special civil action for certiorari under Rule 65 of the Rules of Court is available only when the following essential requisites concur: (a) the petition must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (b) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (c) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.²⁰

Based on the foregoing, prior to the filing of a petition for *certiorari*, the petitioner must not have an appeal, or any plain, speedy and adequate remedy in the ordinary course of law available.

Under Section 4 of Rule 65 of the Rules of Court, if a motion for reconsideration is timely filed, whether required or not, the sixty (60)-day period to file a petition for *certiorari* shall be counted from the notice of the denial of said motion, to wit:

Section 4. *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Emphasis ours)

In the instant case, no motion for reconsideration of the denial of the Petition for Relief from Judgment was filed by herein petitioner before the Court in Division. The instant *Petition* was filed within sixty (60) days from

²⁰ *Jerzon Manpower and Trading, Inc. vs. Nato*, G.R. No. 230211, October 6, 2021, citing the case of *Philippine Airlines Employees Association vs. Cacdac*, G.R. No. 155097 (Resolution), September 27, 2010.

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petitioner's alleged receipt of the denial of his Petition for Relief from Judgment, which was on February 28, 2023.²¹

Jurisprudence is replete with cases requiring the filing of a motion for reconsideration, as the plain, speedy and adequate remedy in the ordinary course of law, prior to the filing of a petition for *certiorari*. This is to grant the court an opportunity to correct any actual or perceived error attributed to it.²²

In the case of *Juliet Vitug Madarang and Romeo Bartolome, represented by his attorneys-in-fact and acting in their personal capacities. Rodolfo and Ruby Bartolome vs. Spouses Jesus D. Morales and Carolina N. Morales (Madarang case)*,²³ the Supreme Court held that the Court of Appeals correctly denied the petition for *certiorari* for therein petitioner's failure to file a motion for reconsideration of the order denying the petition for relief from judgment. Citing the case of *Metro Transit Organization, Inc. vs. PIGLAS NFWU-KMU*,²⁴ the Supreme Court reiterated in the Madarang case that a motion for reconsideration is a plain, speedy and adequate remedy in the ordinary course of law referred to in Section 1 of Rule 65 of the Rules of Court, *viz*:

In *Metro Transit Organization, Inc. v. PIGLAS NFWU-KMU*, this court ruled that **a motion for reconsideration is the plain, speedy, and adequate remedy in the ordinary course of law alluded to in Section 1, Rule 65 of the 1997 Rules of Civil Procedure. A motion for reconsideration is required before a petition for certiorari is filed "to grant [the court which rendered the assailed judgment or order] an opportunity . . . to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case."**

In this case, **a motion for reconsideration of the order denying the petition for relief from judgment is the plain, speedy, and adequate remedy in the ordinary course of law.** Petitioners failed to avail themselves of this remedy. Thus, the Court of Appeals correctly dismissed petitioners' petition for *certiorari*. (Emphasis ours)

In the more recent case of *Del Monte Land Transport Bus Company and Narciso O. Morales vs. Carlito T. Abergos*,²⁵ the Supreme Court enumerated the exception to the requirement of a motion for reconsideration prior to the filing of a petition for *certiorari*. It ruled that the Court of Appeals should have dismissed the petition outright for failure of Abergos to file a

²¹ Counting sixty (60) days from February 28, 2023, petitioner had until April 29, 2023 within which to file his petition for *certiorari*. April 29, 2023 is a Saturday and May 1, 2023 is a holiday.

²² *Rep. of the Phils. v. Bayao, et al.*, G.R. No. 179492, June 5, 2013.

²³ G.R. No. 199283, June 9, 2014.

²⁴ G.R. No. 175460, April 14, 2008.

²⁵ G.R. No. 245344, December 2, 2020.

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motion for reconsideration and for failure to provide justification for not doing so, to wit:

A motion for reconsideration is required before filing a petition for certiorari.

The records show that Abergos failed to file a motion for reconsideration prior to filing the petition for certiorari assailing the NLRC's Resolution dated May 24, 2017. The 2011 NLRC Rules of Procedure, as amended (2011 NLRC Rules), allows the filing of a motion for reconsideration of the NLRC decision, as follows:

SECTION 15. Motions for Reconsideration. — Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained.

It is settled that a motion for reconsideration, when allowed to be filed, is an indispensable condition to the filing of a petition for certiorari. As the Court held in *Sim v. National Labor Relations Commission*:

Under Rule 65, the remedy of filing a special civil action for certiorari is available only when there is no appeal; or any plain, speedy, and adequate remedy in the ordinary course of law. A "plain" and "adequate remedy" is a motion for reconsideration of the assailed order or resolution, the filing of which is an indispensable condition to the filing of a special civil action for certiorari. This is to give the lower court the opportunity to correct itself.

There are, however, exceptions to this rule, as follows:

(a) where the order is a patent nullity, as where the court a quo has no jurisdiction;

(b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;

(d) where, under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

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(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and

(i) where the issue raised is one purely of law or public interest is involved.

Here, Abergos failed to provide any reason in his petition for certiorari for his failure to file a motion for reconsideration. Curiously, despite being apparent in the CA's narration of facts that Abergos did not file a motion for reconsideration before filing the petition for certiorari, the CA did not discuss how the failure to move for reconsideration affected the propriety of the petition for certiorari. The CA even proceeded to rule on the merits and nullify the NLRC's Resolution. This is error.

In a similar case, the Court found that the CA correctly dismissed a petition for certiorari that was filed without the filing of a motion for reconsideration before the trial court. The Court held in *Cervantes v. Court of Appeals*:

An examination of the records, specifically the petition for certiorari filed with the Court of Appeals, reveals that petitioner not only failed to explain his failure to file a motion for reconsideration of the August 27, 2004 Order of the trial court; he also failed to show sufficient justification for dispensing with the requirement. Neither did he show that the case falls under any of the above exceptions. It was only in the motion for reconsideration of the November 22, 2004 Resolution of the Court of Appeals and in the instant petition that he explained why he dispensed with the filing of prior motion for reconsideration.

It must be emphasized that a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do. Thus, the Court of Appeals correctly dismissed the petition.

Similarly, the CA should have dismissed the petition for certiorari outright. There is nothing on record to justify a relaxation of the rules. Just like in *Cervantes*, Abergos failed to provide any justification for not filing a motion for reconsideration or that his case falls under any of the exceptions. Abergos, who sought the extraordinary writ of certiorari,

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must apply for it in the manner and strictly in accordance with the provisions of the law and the Rules of Court. He failed to show any concrete, compelling and valid reason for dispensing with the motion for reconsideration.

Likewise, the CA disregarded a requirement without any explanation for such action. A relaxation of the rules may be done only in the most persuasive of reasons and strict compliance is always enjoined to facilitate the orderly administration of justice. In this regard, the CA committed an error.

Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. Although a relaxation of the rules may be allowed, it was never intended that such relaxation benefit erring litigants who violate it with impunity, much less without any explanation. And while litigation is not a game of technicalities, it is also true that each case must be prosecuted in accordance with the prescribed procedure, especially here where Abergos sought to avail of an extraordinary remedy of certiorari. His failure to comply with the requirements to avail of such remedy is fatal to his petition.

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It is in the context of the foregoing that the only remedy available to a party aggrieved in a decision of the NLRC is a petition for certiorari before the CA, and for which the petitioner must show that such remedy is the only plain, speedy, and adequate remedy. **As shown above, Abergos's failure to file a motion for reconsideration meant that when he filed his petition for certiorari, it was not the only plain, speedy, and adequate remedy available.**

Having failed to perfect the remedy available to him, the Court is constrained to reinstate the NLRC Resolution dated May 24, 2017, which, following the 2011 NLRC Rules as quoted above, should have already attained finality and executed, as there is no indication in the records that the CA had issued any injunction.

Here, petitioner merely asserts that his counsel's inability to file a motion for reconsideration was due to the fact the he was kept in the dark regarding his counsel's gross negligence in failing to file the motion for reconsideration in the instant case. According to him, he lacks knowledge that the same was not filed in view of the voluminous number of pleadings filed by the Litigation Division.

The Court finds petitioner's excuses unacceptable and not among the enumerated exceptions to the non-filing of a motion for reconsideration prior to the filing of a petition for certiorari.

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The Resolution dated August 13, 2014 of the Supreme Court regarding the reckoning period of the sixty (60)-day period to file a petition for certiorari is instructive, *viz*:

Petitioners did not show that their bringing of the special civil action for certiorari was timely, i.e., within the 60-day period provided in Section 4, Rule 65 of the Rules of Court, to wit:

Section 4. When and where position filed. – The petition shall be filed not later than sixty (60) days from notice of judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

As the rule indicates, **the 60-day period starts to run from the date petitioner receives the assailed judgment, final order or resolution, or the denial of the motion for reconsideration or new trial timely filed, whether such motion is required or not.** To establish the timeliness of the petition for certiorari, the date of receipt of the assailed judgment, final order or resolution or the denial of the motion for reconsideration or new trial must be stated in the petition; otherwise, the petition for certiorari must be dismissed. The importance of the dates cannot be understated, for such dates determine the timeliness of the filing of the petition for certiorari. As the Court has emphasized in *Tambong v. R. Jorge Development Corporation*:

There are three essential dates that must be stated in a petition for certiorari brought under Rule 65. First, the date when notice of the judgment or final order or resolution was received; second, when a motion for new trial or reconsideration was filed; and third, when notice of the denial thereof was received. Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal of the petition. Substantial compliance will not suffice in a matter involving strict observance with the Rules. (Emphasis supplied)

As such, for failure of petitioner to file a motion for reconsideration of the assailed Resolution, the instant *Petition* cannot be considered as timely and properly filed.

WHEREFORE, premises considered, the instant **Petition for Certiorari and Prohibition Under Rule 65 is DISMISSED.**

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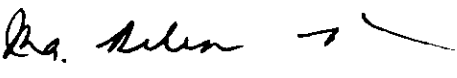
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SO ORDERED.



CORAZON G. FERRER-FLORES
Associate Justice

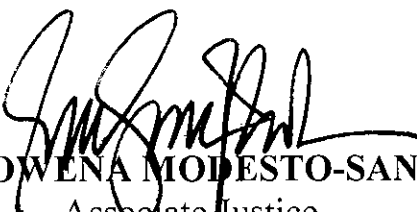
WE CONCUR:


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


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Official Business)

MARIAN IVY F. REYES-FAJARDO
Associate Justice

DECISION

*COMMISSIONER OF INTERNAL REVENUE vs. COURT OF TAX APPEALS THIRD DIVISION
and FCF MINERALS CORPORATION*

CTA EB No. 2749 (CTA Case No. 9725)

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LANEE S. CUI-DAVID
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