

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. THE COURT OF TAX APPEALS AND HOTEL SPECIALIST [TAGAYTAY], INC., RESPONDENTS.

G.R. No. 267111, August 06, 2025

Ponente: INTING, J.

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INTING, J.:

Before the Court is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court assailing the CTA En Banc's Resolutions promulgated on October 12, 2022,^[2] and March 16, 2023,^[3] in consolidated cases CTA EB Nos. 2084 and 2092. In the assailed resolutions, the CTA En Banc granted the request of the Office of the Solicitor General (OSG) to receive an amount equal to 5% of the total compromise amount paid by herein private respondent Hotel Specialist [Tagaytay], Inc. (HSTI).

For the Court's review is the scope of the CTA En Banc's authority to direct the Commissioner of Internal Revenue (CIR) to remit a portion of the proceeds from a court-approved compromise agreement to the OSG.

The Antecedents

This case stemmed from an assessment issued by the CIR, finding HSTI liable for deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT) relative to taxable year 2009.

HSTI protested the assessment administratively and judicially. The case was docketed as CTA Case No. 9349.

On January 18, 2019, the CTA Special Second Division (CTA Division) affirmed the CIR's assessment, ordering HSTI to pay an aggregate amount of PHP 27,777,586.05, comprised of deficiency income tax of PHP 17,350,792.92, deficiency VAT of PHP 9,780,127.69, deficiency EWT of PHP 542,523.63, and deficiency WTC of PHP 104,141.81, inclusive of surcharge and interest.

The case eventually reached the CTA En Banc via the parties' respective petitions for review. However, the CTA En Banc denied both petitions and affirmed the CTA Division's ruling.

Thereafter, HSTI and the Bureau of Internal Revenue (BIR) executed a Judicial Compromise Agreement (JCA),^[4] wherein HSTI offered the amount of PHP 7,288,481.52 (Compromise Amount) as full and final settlement of the tax assessment case, which the BIR accepted. Upon the parties' joint motion, the CTA En Banc approved the JCA in a Judgment Based on Compromise^[5] promulgated on April 19, 2022.

The OSG moved for partial reconsideration^[6] of the Judgment Based on Compromise, insisting that it was entitled to 5% of the total compromise amount for having represented the CIR before the CTA, as mandated by Section 11(i) of Republic Act No. 9417.^[7]

The Ruling of the CTA En Banc

In the first assailed resolution, the CTA En Banc ruled in favor of the OSG. The court a quo recognized that the Solicitor General has the primary responsibility to appear for the government in appellate proceedings. However, by virtue of a Memorandum of Agreement (MOA) dated May 17, 2010, the OSG had deputized lawyers from the BIR to litigate the appeal before the CTA En Banc.

Nevertheless, based on the pronouncement in *Republic v. Viaje*,^[8] the deputization did not divest the OSG of control over the case; neither did the deputized special attorney become the counsel of record. Furthermore, the CTA En Banc held that the OSG's entitlement to 5% of the total monetary award, representing total deficiency taxes paid, was already settled in *Kepco Philippines Corporation v. Commissioner of Internal Revenue*.^[9] Thus, it disposed as follows:

WHEREFORE, the Office of the Solicitor General's "Ex Abudanti Ad Cautelam Motion for Partial Reconsideration" is hereby GRANTED. Accordingly, the Bureau of Internal Revenue is DIRECTED TO REMIT to the Office of the Solicitor General 5% of the total compromise amount paid by Hotel Specialist (Tagaytay), Inc. pursuant to their Judicial Compromise Agreement.

SO ORDERED.^[10]

Aggrieved, the CIR moved for reconsideration.

In the second assailed resolution, the CTA En Banc upheld the OSG's entitlement to 5% of the total compromise amount. It rejected the CIR's theory that the OSG shall be entitled to a success fee only if it actively participated in the litigation, and that such entitlement does not apply when the case was settled via court-approved compromise agreement in which the OSG had no involvement, as in the present case. The CTA En Banc underscored that the OSG's entitlement includes monetary awards resulting from court-approved compromise agreements.^[11]

Hence, the CIR filed the present certiorari petition.

Petitioner CIR's Arguments

The CIR imputes grave abuse of discretion on the part of the CTA En Banc in directing the remittance of an amount equal to 5% of the compromised amount in favor of the OSG. It opines that allowing this would be the height of injustice for every Filipino that its hard-earned money paid to the government would be taken solely for the benefit of the OSG who have never participated in the case. It explains as follows:

First, the OSG did not act as its counsel before the CTA; neither did it actively participate in the proceedings therein. It asserts that lawyers from the BIR's own Litigation Division appeared before the CTA and represented the CIR in said proceedings.^[12]

Second, the OSG's entitlement to a success fee pursuant to Section 11(i) of Republic Act No. 9417 is contingent upon its active participation in securing a favorable judgment that yielded a monetary award. The CIR maintains that the present case involved a disputed assessment, not an action for the recovery of a monetary claim. It defines the term "monetary award," as contemplated in Section 11(i) of Republic Act No. 9417, as a reimbursement, return or restoration of money to the OSG's client which, in the case, is the BIR. The CIR points out that the compromise amount, representing deficiency taxes due from HSTI, does not redound to the BIR's benefit because it is payable to the government, not to the BIR directly.^[13] It, thus, concludes that the OSG is not so entitled here because, in the first place, the case did not involve any monetary award.^[14]

The OSG's Counter-Arguments

In its Comment,^[15] the OSG counters as follows:

First, the instant Rule 65 petition is the wrong remedy. The proper remedy to assail a decision promulgated by the CTA En Banc is a petition for review on certiorari under Rule 45 of the Rules of Court, pursuant to Section 11 of Republic Act No. 9282 and Section 1, Rule 16 of the Revised Rules of the CTA (RRCTA).[16]

Second, the CIR failed to implead the OSG, which is an indispensable party, considering that the subject matter of the present action directly concerns the OSG's entitlement to a portion of the compromise amount. The CIR's failure renders the petition procedurally infirm.[17]

Third, the alleged errors on the part of the CTA En Banc do not constitute grave abuse of discretion. In any case, a judgment clearly founded on law and jurisprudence does not meet the higher standard of grave abuse of discretion, an essential requisite for the issuance of a writ of certiorari.[18]

The Issues

Based on the parties' submissions, the Court restates the issues for resolution as follows: First, is a Rule 65 petition the proper remedy to question the CTA En Banc's directive to remit a portion of the compromise amount to the OSG? Second, did the CIR's failure to implead the OSG render the instant petition fatally defective? Third, in any case, did the CTA En Banc commit grave abuse of discretion when it directed the CIR to remit 5% of the compromise amount in favor of the OSG?

The Ruling of the Court

The Court resolves to dismiss the petition.

The present petition is fatally flawed. Not only is a Rule 65 petition the wrong remedy, but the CIR also failed to allege bona fide imputations of grave abuse on the part of the CTA En Banc in issuing the assailed Resolutions. Further, the CIR challenges the OSG's court-ordered entitlement but neglected to implead it in the present petition. In any case, the CTA En Banc was authorized to direct the remittance of a portion of the compromise amount to the OSG, pursuant to Section 11(i) of Republic Act No. 9417.

A petition for certiorari under Rule 65 is the wrong remedy.

It is basic that certiorari proceedings are resorted to only when there is no other plain, speedy, or adequate remedy available.[19] Here, the CIR challenges the CTA En Banc's resolutions, finding in favor of the OSG's entitlement to a success fee. It is clear under the Republic Act No. 1125, as amended,[20] and the RRCTA,[21] that the party adversely affected by a ruling rendered by the CTA En Banc may pursue an appeal by certiorari under Rule 45. The availability of the remedy proscribes the resort to certiorari proceedings under Rule 65.

Neither is there any reason to be liberal in the Court's application of the rules and to treat the instant petition as a Rule 45 petition. The CIR utilized the full 60-day period allowed under Rule 65 to file the present petition after it received the second assailed resolution on March 20, 2023. Certainly, the filing is well-beyond the applicable reglementary period under Rule 45.[22] It even appears from the circumstances that the present petition is an attempt to take the place of a lost appeal.[23]

The CIR did not implead the OSG, the real party in interest.

The action originated from an assessment case, which, later on, was settled through a Judgment Based on Compromise. However, the primary issue being raised by the CIR here has nothing to do with the merits of the compromise. It questions the CTA En Banc's directive to remit a portion of the compromise amount to the OSG, which falls outside the compromise's terms and conditions.

To be sure, the CIR opposes the OSG's entitlement to a portion of the compromise amount, as compensation for

legal services rendered. In other words, the CIR's cause of action is against the OSG, not HSTI.

Failure to implead the real party in interest also renders the petition defective.

The CTA En Banc did not commit grave abuse of discretion.

At the outset, it is dear that the arguments raised by petitioner are not bona fide imputations of grave abuse of discretion. At best, they concern errors of judgment, which cannot be the subject of certiorari proceedings.

Be that as it may, the Court finds no grave abuse of discretion on the part of the CTA En Banc.

To recall, after the promulgation of the Judgment Based on Compromise, the OSG moved for the remittance of 5% of the compromise amount. It was still within the CTA En Banc's jurisdiction to act upon and rule favorably on the motion, as held in *De Tolentino v. Hon. Escalona*,^[24] viz.:

Then again, it is well-settled that a claim for attorney's fees may be asserted either in the very action in which the services in question have been rendered, or in a separate action. If the first alternative is chosen, the Court may pass upon said claim, even if its amount were less than the minimum prescribed by law for the jurisdiction of the court over the subject-matter of the case, so long as the main action is within the jurisdiction of said court, upon the theory that the right to recover attorney's fees is but an incident of the case in which the services of counsel have been rendered.^[25] (*Italics supplied*)

In any case, the CIR cannot deprive the OSG of its entitlement to 5% of the compromise amount.

First, as explained, by the CTA En Banc, this is supported by law (i.e., Section 11(i) of Republic Act No. 9417) and jurisprudence (i.e., *Kepeco*).

Second, the CIR's theory that only the BIR lawyers were the ones who actively represented petitioner throughout the proceedings is erroneous; it ignores that, in the first place, the BIR lawyers' authority to represent the CIR in CTA proceedings is merely derivative from the OSG's mandate as the "principal law officer and legal defender of the Government," which includes representation of the CIR "sued in [its] official capacity in all cases brought before the CTA in the exercise of its appellate jurisdiction."^[26]

Verily, the OSG is empowered to deputize legal officers of government bureaus—such as BIR lawyers through a MOA^[27]—"to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases."^[28] However, as settled in *Viaje*, the OSG shall continue to exercise supervision and control over such legal officers.

ACCORDINGLY, the Petition for Certiorari is DISMISSED.

SO ORDERED.

Caguioa (Chairperson), Gaerlan, and Dimaampao, JJ., concur.
Singh,^[*] J., on leave.

[*] On leave.

[1] Rollo, pp. 3-16. Denominated as "Petition for Review on Certiorari" in the petition.

[2] *Id.* at 24-30. Penned by Associate Justice Jean Marie A. Bacorro-Villena and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, and Maria Rowena Modesto-San Pedro; Associate Justice Marian Ivy F. Reyes-Fajardo (on leave);

Associate Justice Lanee S. Cui-David inhibited.

[3] Id. at 32-38. Penned by Associate Justice Jean Marie A. Bacorro-Villena and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Maria Rowena Modesto-San Pedro, Marian Ivy F. Reyes-Fajardo, Lanee S. Cui-David, and Corazon G. Ferrer-Flores.

[4] Id. at 45-50.

[5] Id. at 56-59. Penned by Associate Justice Jean Marie A. Bacorro-Villena and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Maria Rowena Modesto-San Pedro, and Marian Ivy F. Reyes-Fajardo. Associate Justice Lanee S. Cui-David inhibited.

[6] Id. at 7 and 82. Denominated as an "Ex Abudanti Ad Cautelam Motion for Partial Reconsideration."

[7] Titled, "An Act to Strengthen the Office of the Solicitor General, by Expanding and Streamlining its Bureaucracy, Upgrading Employee Skills and Augmenting Benefits, and Appropriating Funds Therefor and For Other Purposes, approved on March 30, 2007.

[8] 779 Phil. 405 (2016).

[9] 878 Phil. 244 (2020).

[10] Rollo, p. 29. (Emphasis omitted)

[11] Id. at 27-29. (Emphasis omitted)

[12] Id. at 9.

[13] Id. at 10.

[14] Id. at 9-10.

[15] Id. at 110-134.

[16] Id. at 116-117.

[17] Id. at 121-122.

[18] Id. at 125.

[19] Republic v. Court of Appeals, 379 Phil. 92, 97 (2000).

[20] Republic Act No. 1125, sec. 19, as amended by Republic Act No. 9262.

[21] RRCTA, Rule 16, sec. 1.

[22] See Republic v. Court of Appeals, *supra* note 19, at 98.

[23] See Commissioner of Internal Revenue v. Court of Tax Appeals (Third Division), 843 Phil. 178, 189 (2018).

[24] 136 Phil. 13 (1969).

[25] Id. at 18.

[26] RRCTA, Rule 9, sec. 10.

[27] Revenue Memorandum Circular No. 025-10, March 17, 2010.

[28] Presidential Decree No. 478, sec. 1(h), Office of the Solicitor General. Approved on June 4, 1974.

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