SECOND DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **28 July 2021** *which reads as follows:*

"**G.R. No. 256566 (8199 Convenience Corporation *v.* Commissioner of Internal Revenue).** – After a judicious study of the case, the Court resolves to **DENY** the instant petition[1] and **AFFIRM** the Court of Tax Appeals (CTA) *En Banc* Decision[2] dated September 3, 2020 and the Resolution[3] dated March 3, 2021 in CTA *EB* No. 1912 for failure of petitioner 8199 Convenience Corporation (petitioner) to show that the CTA *En Banc* committed any reversible error in upholding the deficiency income tax and value-added tax assessment against it for the taxable year 2009.

As correctly ruled by the CTA *En Banc*, it cannot be compelled to entertain a new argument raised for the first time on appeal. It is an established principle that '[a]n issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal [as it is] offensive to the basic rules of fair play and justice.'[4] According to the Rules of Court,[5] a belatedly raised argument is deemed waived considering that the same, through due diligence, could have been raised in previous pleadings.[6] Notably, it appears that the CTA *En Banc* still relaxed these technicalities in favor of substantial justice. Upon a thorough review of the records, the CTA *En Banc* still found that the assessments were validly issued through the efforts of the duly authorized revenue officers under Letter of Authority No. 2009-00022985.[7] It is settled that the CTA *En Banc*'s findings can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, the Court must presume that the CTA *En Banc* rendered a Decision

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[1] See Petition for Review on *Certiorari* dated July 14, 2021; *rollo*, pp. 30-46.

[2] Id. at 10-22. Penned by Associate Justice Jean Marie A. Bacorro-Villena with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, and Maria Rowena Modesto-San Pedro, concurring.

[3] Id. at 24-27.

[4] *CIR v. Eastern Telecommunications Philippines, Inc.*, 638 Phil. 334, 346 (2010).

[5] Entitled '1997 RULES OF CIVIL PROCEDURE, AS AMENDED' (July 1, 1997).

[6] See *CIR v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, 802 Phil. 636, 655 (2016).

[7] It appears that the attached annexes referring to the said Letter of Authority is also Letter of Authority No. 2007 00022985.

which is valid in every respect,[8] as in this case. Therefore, the deficiency tax assessments against petitioner must be upheld.

SO ORDERED." (Rosario, *J.*, designated additional member per Special Order No. 2835 dated July 15, 2021).

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:

MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

1 4 SEP 2021

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(CTA Case No. 8853)

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GR256566. 07/28/21(34)URES

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[8] *CIR v. GJM Philippines Manufacturing, Inc.*, 781 Phil. 816, 825 (2016).

(34)URES