REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

THE COURT OF TAX APPEALS-FIRST DIVISION and YI WINE CLUB, INC.
Respondent.

CTA *EB* NO. 2127
(CTA Case No. 8809)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
OCT 07 2019 11:15 am

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RESOLUTION

Before the Court is a Petition for Certiorari filed by petitioner Commissioner of Internal Revenue seeking to set aside the 29 March 2019 Resolution of the First Division dismissing his Petition for Relief from Judgment for being filed out of time and the 27 June 2019 Resolution denying his Motion for Reconsideration.

Petitioner received the Resolution denying his Motion for Reconsideration on 3 July 2019 and filed the instant Petition for Certiorari on 2 September 2019.

The issue begging for resolution at this stage is whether or not the ordinary remedy of appeal was available to petitioner as to make his resort to Certiorari improper.

As may be gleaned from the Petition, this case originated from the filing of a Petition for Review by respondent Yi Wine Club, Inc. on 25 April 2014 against the 13 March 2014 Decision of the Commissioner of Internal Revenue. Following trial, the First Division issued its 4 August 2017 Decision partially granting the Petition. Herein petitioner's Motion for Partial Reconsideration was denied in the 15 December 2017 Resolution of the Court. Despite receipt of the same on 21 December 2017, no appeal was filed by herein petitioner. Thus, an Entry of Judgment was issued in the case on 28 February 2018.

On 31 October 2018, petitioner filed a Petition for Relief from Judgment with the Court and on 29 March 2019, the First Division issued its now questioned Resolution dismissing the Petition for being filed out of time. This was followed by the 27 June 2019 Resolution denying petitioner's Motion for Reconsideration.

As mentioned above, petitioner received a copy of the Resolution denying his Motion for Reconsideration on 3 July 2019.

Section 3b, Rule 8 of the Revised Rules of the Court of Tax Appeals provides, as follows –

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. xxx.

Thus, petitioner only had until 18 July 2019 within which to file a Petition for Review against the Resolution of the First Division which denied his Motion for Reconsideration. The records show that no such Petition or appeal was filed with the Court, however.

Instead, petitioner filed the instant Petition for Certiorari under ***Rule 65 of the Rules of Court.***

In ruling on whether petitioner's resort to Certiorari is proper, we find guidance from the case of **Bureau of Internal Revenue v. Acosta, et al.**[1], to wit –

> Time and again, this Court emphasized that the special civil action for *certiorari* is a limited form of review and a remedy of last recourse. Section 1, Rule 65 of the Rules of Court provides that the special civil action of *certiorari* may only be invoked when there is no appeal, nor any plain, speedy and adequate remedy in the course of law.
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> A writ of *certiorari* is not a substitute for a lost appeal. When an appeal is available, *certiorari* will not prosper especially if the appeal was lost because of one's own negligence or error in the choice of remedy, even if the ground is grave abuse of discretion.
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> Under the Rules of Court, the remedy against a final judgment or order is an appeal. In *Pahila-Garrido v. Tortogo, et al.* [671 Phil. 320 (2011)], the Court has held that a final judgment disposes of the subject matter in its entirety or terminates a particular proceeding or action. A final judgment or

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[1] G.R. No. 195320, 23 April 2018.

order leaves nothing more to be done except to enforce by execution what the court has determined.

For cases before the CTA, **a decision rendered by a division of the CTA is appealable to the CTA En Banc** as provided by Section 18 of R.A. No. 1125, as amended by R.A. No. 9282. It reads as follows:

> **SEC. 18.** *Appeal to the Court of Tax Appeals En Banc.* - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *En Banc*.

Section 2 of Rule 4 of the Revised Rules of the CTA also states that the CTA *En Banc* has exclusive appellate jurisdiction relative to the review of the court divisions' decisions or resolutions on motion for reconsideration or new trial, in cases arising from administrative agencies such as the BIR.

> **SEC. 2.** *Cases within the jurisdiction of the Court En Banc.* - The Court En Banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
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> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
>
> (1) Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, x x x.

It must be stressed that the Resolution dated December 3, 2010 of the CTA-Special First Division which declared its Decision dated July 12, 2010 final and executory is a final judgment. It disposed of the case on the merits.

The main issue resolved by the CTA-Special First Division in the Decision dated July 12, 2010 was Chevron's entitlement to refund or credit because of its overpayment of excise taxes on imported finished unleaded premium gasoline and diesel fuel. In its decision, the CTA-Special First Division found sufficient basis for Chevron's claim and partially granted the petition. The BIR was ordered to refund One Hundred Eight Million Five Hundred Eighty-Five Thousand One Hundred Sixty-Two and Ninety-Five Centavos (P108,585,162.95), representing the excess excise tax paid tor November 2003.

After the BIR's Motion for Reconsideration on the Decision dated July 12, 2010 was denied in the Resolution dated September 24, 2010 of the CTA-Special First Division, the BIR again filed a motion for the reconsideration of this resolution. Significantly, in its Resolution dated December 3, 2010, the CTA-Special First Division ruled on the merits of the motion and denied the BIR's argument as to the liberal application of the rules.

> Clearly, the CTA-Special First Division disposed of the case in its entirety and no other issues were left to further rule upon. Therefore, the appropriate remedy to challenge the Resolution dated December 3, 2010 is an ordinary appeal, not a petition for *certiorari.*
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> BIR had every opportunity to elevate the matter to the CTA En Banc but chose not to avail itself of this remedy. Even on this ground alone, the Court may already dismiss the present petition. (Emphasis in the original; citations omitted)

Here, the assailed Decision and Resolution of the First Division similarly disposed of the case in its entirety, and no other issues were left to further rule upon. As such, they were proper subjects of appeal. The Rules are clear that **"a decision rendered by a division of the CTA is appealable to the CTA *En Banc*."** The existence and availability of such right of appeal prohibit the resort to Certiorari because one of the requirements for the latter remedy is the unavailability of appeal.[2]

It also appears to the Court that resort to Certiorari was made because of petitioner's failure to timely file an appeal. As stated above, petitioner only had until 18 July 2019 within which to file a Petition for Review against the Resolution of the First Division which denied his Motion for Reconsideration. Instead of an appeal, petitioner filed the instant Petition for Certiorari on 2 September 2019, 59 days after its receipt of the questioned Resolution. This is fatal to the petitioner since "it is elementary in remedial law that the use of an erroneous mode of appeal is cause for dismissal of the petition for *certiorari* and it has been repeatedly stressed that a petition for *certiorari* is not a substitute for a lost appeal."[3]

Erasing any doubt on the matter is the recent ruling of the Supreme Court in ***Commissioner of Internal Revenue v. Court of Tax Appeals, et al.***[4], where the High Court elucidated thus –

> The foregoing notwithstanding, the Court finds the petitioner's recourse in filing this petition for certiorari improper.
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> The assailed resolution denied the petitioner's Motion for Partial Reconsideration in connection with the June 7, 2012, which completely disposed of CTA Case No. 7065 on the merits. As such, the petitioner's remedy was to file an appeal before the CTA en banc by way of a petition for review under Rule 43 of the Rules of Court, pursuant to Sections 3(b) and 4(b), Rule 8 of the Revised Rules of the CTA (RRCTA), which states:
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>> **SEC. 3.** *Who may appeal; period to file petition.* — x x x.
>>
>> (b) A party adversely affected by a decision, or resolution of a Division of the Court on a motion for reconsideration or new trial **may appeal to the Court by filing before it a**

[2] Nuque v. Aquino, et al., G.R. No.193058, 8 July 2015.
[3] See Republic v. Fetalvero, G.R. No. 198008, 4 February 2019.
[4] G.R. No. 203403, 14 November 2018.

> **petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** x x x.
>
> x x x x
>
> **SEC. 4.** *Where to appeal; mode of appeal.* x x x.
>
> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. **The Court *en banc* shall act on the appeal.**

Having received a copy of the Resolution on August 1, 2012, the petitioner had fifteen (15) days or until August 16, 2012 to file an appeal before the CTA *en banc*. Instead, the petitioner filed the instant petition for *certiorari* under Rule 65 of the Rules of Court only on October 1, 2012. Notably, the Decision dated December 7, 2012 became final and executory on August 19, 2012 without any appeal being taken thereon.

It is evident that the petitioner resorted to the instant petition because she failed to take an appeal within the prescribed reglementary period. Such a recourse cannot be done.

In the case of *Government Service Insurance System Board of Trustees and Cristina V. Astudillo v. The Hon. Court of Appeals-Cebu City and Former Judge Ma. Lorna P. Demonteverde* citing *Butuan Development Corporation (BDC) v. The Twenty-First Division of the Honorable Court of Appeals (Mindanao Station), Max Arriola, Jr., De Oro Resources, Inc., (DORI) and Louie A. Libarios*, the Court reiterated the well-entrenched rule that the special civil action of certiorari under Rule 65 of the Rules of Court cannot be allowed when a party fails to file an appeal despite availability of that remedy:

> A special civil action under Rule 65 of the Rules of Court **will not be a cure for failure to timely file an appeal under Rule 43 of the Rules of Court.** Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies. As this Court held in *Butuan Development Corporation v. CA*:
>
>> A party cannot substitute the special civil action of certiorari under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of *certiorari*. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of

> the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. **Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion**. (Citation omitted and emphasis and underscoring Ours)

> Neither can it be averred that the only question raised in this case is a jurisdictional question. As already mentioned, certiorari lies only where there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. There is no reason why the issue of grave abuse of discretion could not have been raised on appeal." (Emphasis in the original; citations omitted)

Then, too, the questioned Resolutions, involving dismissal of the Petition before the First Division, are not proper subjects of Certiorari. Indeed, "an order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings are terminated; it leaves nothing more to be done by the lower court. Therefore, the remedy of the petitioner is to appeal the order".[5]

All told, considering petitioner's failure to timely resort to the available mode of appeal, his resort to Certiorari cannot be countenanced.

It does not escape the attention of the Court that it is effectively the second time for the petitioner to fail to file an appeal on time. While the Court is cognizant of the many cases demanding the petitioner's attention, it must reiterate the Supreme Court's directive for the petitioner "to adopt mechanisms, procedures, or measures that can effectively monitor the progress of cases being handled by its counsels in order to avoid losing its opportunity to appeal."[6]

WHEREFORE, premises considered, the Petition for Certiorari is hereby **DISMISSED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

[5] Madrigal Transport, Inc. v. Lapanday Holdings, Corp. et al., G.R. No. 156067, 11 August 2004; cited in Medina, et al. v. Spouses Lozada, G.R. No. 185303, 1 August 2018.

[6] See Commissioner of Internal Revenue v. Kepco Ilijan Corporation, G.R. No. 199422, 21 June 2016.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate 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