REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PROCTER & GAMBLE DISTRIBUTING (PHILIPPINES), INC., *Petitioner,*	**CTA Case No. 9634**
	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson, and,* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 14 2020 1:29 pm

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RESOLUTION

MANAHAN, *J.:*

For this Court's resolution is respondent's *Motion for Partial Reconsideration* posted on July 30, 2020 with petitioner's *Comment (Re: Respondent's Motion for Partial Reconsideration)* filed on October 5, 2020.

Respondent prays for a partial modification of the Court's Decision dated July 9, 2020, the dispositive portion of which reads:

> "**WHEREFORE**, in lightof the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is ordered to refund to petitioner, or issue in its favor a tax credit certificate in the reduced amount of P332,037,660.73, representing excess and unutilized CWT for FY ended June 30, 2015.

SO ORDERED."

The arguments of respondent in his*Motion for Partial Reconsideration* revolve around a singular premise, i.e., that the Court erred in ruling that petitioner is entitled to the claim for refund of alleged excess and unutilized creditable withholding taxes (CWT) for fiscal year (FY) ended in June 2015.

Respondent primarily asserts that petitioner failed to exhaust administrative remedies before elevating an appeal with the Court because it did not submit the required documents to support its claim for refund in the administrative level. This alleged failure on the part of petitioner prevented the Bureau of Internal Revenue (BIR) to properly investigate and examine the veracity of the claim for refund and deprived the office an opportunity to ascertain the sufficiency of the documents to properly render a judicious decision.

Respondent maintains that petitioner failed to comply with the requirements set forth in Revenue Regulations (RR) No. 53-98 and RR 2-2006 which are esential to substantiate a claim for refund of alleged excess CWT. He further avers that petitioner's documentary evidence failed to sufficiently establish a direct linkage between the CWT and its income as reflected in its Annual Income Tax Return. He theorizes that if the income from which the CWT is attributed was not declared by petitioner, then there is no reason for the Court to grant the claim for refund.

Lastly, respondent alleges that petitioner should have proven actual remittance of the alleged withheld taxes to the BIR, otherwise no refund should be allowed.

In its *Comment,* petitioner opines that respondent's concept of the doctrine of exhaustion of administrative remedies as applied to claims for tax refund is misplaced. Petitioner believes that this doctrine finds application in Sections 204 and 229 of the 1997 National Internal Revenue

Code (NIRC), as amended, which requires that an administrative claim for refund with the BIR should be filed prior to filing a claim with the Court. Petitioner elaborates that the submission of complete documents in the administrative level is not a prerequisite to the grant of the judicial claim for refund because the latter is litigated *de novo* and decided based on what is formally offered by the parties and admitted by the Court. It then corrects the contention of respondent by stating that RR 53-98 cited by respondent does not exist and alleges that respondent might have referred to Revenue Memorandum Order (RMO) No. 53-98 which is an issuance directed to revenue examiners and not to the taxpayers.

Finally, petitioner cites several jurisprudence that provides that presentation of actual proof of remittance to the BIR of the withheld taxes, is not required in a claim for refund of alleged excess CWT.

RULING OF THE COURT

We shall first resolve the timeliness of the filing of respondent's *Motion for Partial Reconsideration* with the Court.

On July 9, 2020, the Court issued a Decision in the above-captioned case, partially granting petitioner's claim for refund of alleged excess CWT.

Contrary to the contention of respondent in his *Motion for Partial Reconsideration*, the records show that he received a copy of the Decision of the Court on July 14, 2020.[1] He then proceeded to post via registered mail, the aforesaid motion on July 30, 2020.

Counted from respondent's receipt of the decision on July 14, 2020, the posting of the Motion for Partial Reconsideration only on July 30, 2020 is beyond the fifteen (15) day period required under Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) which

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[1] BIR Stamped Received dated July 14, 2020, Court Docket.

provides that a party dissatisfied with a Decision of the Court must file a motion for reconsideration or new trial within fifteen (15) days from receipt thereof, and we quote:

> **Rule 15**
> **Motion for Reconsideration or New Trial**
>
> **Section 1.** *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision , resolution or order of the Court by filing a motion for reconsideration or new trial for fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

Applying the aforequoted provision of the RRCTA, the fifteen (15) day period is reckoned rfrom July 14, 2020, the date when a copy of the assailed Decision was received by respondent. Counting fifteen (15) days therefrom, he had until July 29, 2020 (which is a Wednesday) to file a motion for reconsideration. Respondent, however posted the instant *Motion for Partial Reconsideration* on July 30, 2020 or one (1) day late after the last day prescribed by Section 1 of Rule 15 of the RRCTA.

In the case of *Landbank of the Philippines vs. Court of Appeals,*[2] the Supreme Court illustrated the link between non-compliance to the rules as regards the time of filing of an appeal and the consequent loss of jurisdiction of the court as follows:

> "Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. **Thus the perfection of an appeal in the manner and period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgement final and executory."** (emphasis supplied)

In the case of *Francis M. Zosa, et.al. vs. Consilium, Inc.,*[3] the Supreme Court emphasized the importance of compliance

[2]G.R. No. 173342, October 13, 2010
[3]G.R. No. 196765, September 19, 2018.

with the provisions of the law and the rules concerning the manner and period to appeal, and we quote:

> **"Fundamental is the rule that the provisions of the law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements,** hence cannot simply be discounted under the guise of liberal construction." (emphasis supplied)

In the case of *Gregorio de Leon, doing business as G.D.L. Marketing vs. Hercules Agro Industrial Corporatio,*[4]the Supreme Court ruled that the requirements for perfecting an appeal must be strictly followed and that failure to timely file a *Motion for Reconsideration* within the reglementary period resulted to the finality of the decision. A decision that has attained finality becomes the law of the case regardless of any claim that it is erroneous.[5]

Having no jurisdiction to take cognizance of the motion filed by respondent, the Court can no longer delve on the merits of the substantial issues raised therein.

WHEREFORE, premises considered, the *Motion for Partial Reconsideration* filed by respondent with the Court is hereby **DISMISSED** for lack of jurisdiction.

The assailed Decision dated July 9, 2020 is hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[4]G.R. No. 183239, June 2, 2014.
[5]*Mayor Marcial Vargas and Engineer Raymundo del Rosario vs. Fortunato Cajucom,* G.R. No. 171095, June 22, 2015.

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice