REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LEPANTO CONSOLIDATED MINING COMPANY, *Petitioner,*	**CTA Case No. 9359**
	Members:
	CASTAÑEDA, JR., *Chairperson,* **CASANOVA,** and **MANAHAN,** *JJ.*
- versus -	
HON. KIM J. HENARES, in her capacity as the COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 17 2017 8:40 a.m

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This case involves a Petition for Revival of Judgment[1] filed pursuant to Section 6 of Rule 39 of the Rules of Court by Lepanto Consolidated Mining Company, which seeks the revival of judgment of

[1] Docket, pp. 10-16.

this Court's former First (1st) Division[2] in the consolidated case entitled *Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue* and docketed as CTA Case Nos. 6368 and 6480.

THE FACTS

Petitioner Lepanto Consolidated Mining Company is a corporation duly organized and existing under Philippine laws, with office address at 21st Floor Lepanto Building, 8747 Paseo de Roxas, 1226 Makati City. It is a large-scale underground domestic mining company engaged in the exploration, development, and extraction of gold and copper ore from its mine site in Mankayan, Benguet.[3]

Respondent, on the other hand, is the former Commissioner of the Bureau of Internal Revenue (BIR) and is impleaded in her capacity as such, with office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On December 20, 2001, petitioner filed a Petition for Review *Ex Abundanti Ad Cautelam* with the Court to question the disallowance by the BIR, through respondent's predecessor, of petitioner's application for tax refund/credit for input tax payments for the first (1st) quarter of 2001, which was docketed as CTA Case No. 6368.[4]

Thereafter, on May 15, 2002, petitioner filed another Petition for Review with the Court seeking to reverse the disallowance by the BIR, through respondent's predecessor, of its application for tax refund/credit for its input tax payments for the second (2nd) quarter of 2001, which was docketed as CTA Case No. 6480.[5]

The two petitions were consolidated and heard by the former First (1st) Division of the Court (Court in Division).[6]

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[2] Composed of Presiding Justice Ernesto D. Acosta as Chairperson, Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova as members.
[3] Par. 1, Petition for Review, Docket, p. 10.
[4] Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 214.
[5] Par. 3, Stipulation of Facts, JSFI, Docket, p. 215.
[6] Par. 4, Stipulation of Facts, JSFI, Docket, p. 215.

On December 15, 2004, the Court in Division rendered its Decision[7] in the consolidated case granting petitioner's tax credit claim, albeit in the reduced amount of ₱424,844.20[8], the dispositive portion of which reads:

> **"WHEREFORE**, premises considered, petitioner's claims for tax credit are hereby **GRANTED** in the reduced amount of P424,844.20, computed as follows:
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> | | | |
> |---|---|---|
> | Amount Claimed | | |
> | First Quarter of 2001 | P2,769,081.78 | |
> | Second Quarter of 2001 | 4,037,000.00 | P6,806,081.78 |
> | Less: Disallowances: | | |
> | Per Commissioned Independent CPA Report | P 560,373.71 | |
> | Per Court's Determination: | | |
> | Invoices/Ors dated 'outside the period of claims' | 5,820.863.87 | 6,381,237.58 |
> | **Amount Refundable** | | P 424,844.20 |
>
> Accordingly, respondent is **ORDERED to ISSUE a TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P424,844.20 representing unutilized input VAT on domestic purchases of goods and services for the first and second quarters of taxable year 2001.
>
> **SO ORDERED."**[9]

On January 19, 2005, petitioner filed a Motion for Reconsideration seeking the reversal of the above Decision. Unfortunately, the same was denied.[10]

The denial of its Motion for Reconsideration prompted petitioner to file a Petition for Review with the Court of Tax Appeals (CTA) *En Banc* on May 6, 2005, docketed as CTA EB No. 84. However, the Petition for Review was dismissed on August 11, 2005[11], for having been filed beyond the reglementary period.[12] Petitioner's Motions for Reconsideration were similarly denied in the Resolutions[13] dated October 7, 2005 and December 14, 2005.

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[7] Docket, pp. 73-85.
[8] Par. 5, Stipulation of Facts, JSFI, Docket, p. 215.
[9] Docket, p. 84.
[10] Par. 6, Stipulation of Facts, JSFI, Docket, p. 215.
[11] Par. 7, Stipulation of Facts, JSFI, Docket, p. 215.
[12] Docket, p. 129.
[13] Docket, pp. 130-135 and pp. 136-139, respectively.

On January 4, 2006, petitioner filed a Petition for Review with the Supreme Court, docketed as G.R. No. 170814, seeking the reversal of the Resolutions dismissing the Petition for Review filed before the CTA *En Banc*. However, the Supreme Court denied the Petition for Review in a Resolution[14] dated February 1, 2006. Petitioner's Motion for Reconsideration was likewise denied by the Supreme Court in the Resolution[15] dated May 2, 2006.[16]

The Supreme Court issued an Entry of Judgment[17] stating that its Resolution dated February 1, 2006 denying petitioner's Petition for Review became final and executory on June 23, 2006.[18]

On May 26, 2016, petitioner filed the present Petition for Revival of Judgment[19].

On June 15, 2016, respondent filed her Answer[20] and alleged by way of special and affirmative defenses that once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from the date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five years, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint within ten years from the time the judgment becomes final pursuant to Articles 1144(3) and 1152 of the Civil Code and Section 6 of Rule 39 of the Rules of Court.

Hence, respondent avers that in the Resolution promulgated on August 11, 2005 by the CTA *En Banc*, the Petition for Review filed by petitioner was dismissed for being filed out of time. As stated in the said Resolution, the Decision and the Resolution of the Court in Division have become final and executory. Thus, when petitioner filed the complaint for revival of judgment on March 26, 2016[21], it was already

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[14] Docket, p. 165.
[15] Docket, p. 166.
[16] Par. 8, Stipulation of Facts, JSFI, Docket, p. 215.
[17] Docket, p. 167.
[18] Par. 8, Stipulation of Facts, JSFI, Docket, p. 215.
[19] Docket, pp. 10-16.
[20] Docket, pp. 170-173.
[21] The present Petition for Revival of Judgment was actually filed on **May 26, 2016**.

eleven (11) years from the finality of the judgment it sought to revive. Clearly, the statute of limitations had set in.

Thereafter, a Notice of Pre-Trial Conference[22] was issued by the Court on June 20, 2016, setting the case for pre-trial conference on July 21, 2016. Accordingly, respondent's Pre-Trial Brief[23] was filed on July 7, 2016; while petitioner's Pre-Trial Brief[24] was filed on July 18, 2016.

On August 22, 2016, the parties submitted their Joint Stipulation of Facts and Issues (JSFI)[25]. Thereafter, a Pre-Trial Order[26] was issued on August 30, 2016, approving the parties' JSFI and terminating the pre-trial.

During trial, petitioner presented Mr. Teofilo Sacpa, petitioner's Chief Accountant, as its lone witness.[27] On the other hand, respondent's counsel manifested that she will not be presenting any evidence.[28] Thus, the Court granted the parties thirty (30) days from receipt of the Court's Resolution[29] dated October 5, 2016 to file their respective memoranda.

The case was submitted for decision on November 8, 2016, considering respondent's Memorandum[30] filed on October 11, 2016 and petitioner's Memorandum[31] filed on November 4, 2016.[32]

THE ISSUE

The sole issue to be resolved is whether the revival of the Court's Decision dated December 15, 2004 in CTA Case Nos. 6368 and 6480 is proper.[33]

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[22] Docket, pp. 175-176.
[23] Docket, pp. 177-180.
[24] Docket, pp. 187-194.
[25] Docket, pp. 214-218.
[26] Docket, pp. 220-222.
[27] Minutes of the Hearing dated September 7, 2016, Docket, p. 225; Judicial Affidavit of Teofilo Sacpa dated August 4, 2016, Docket, pp. 207-212.
[28] Minutes of the Hearing dated September 7, 2016, Docket, p. 225.
[29] Docket, p. 231.
[30] Docket, pp. 232-236.
[31] Docket, pp. 238-246.
[32] Docket, p. 247.
[33] Issue, JSFI, Docket, p. 216.

THE PARTIES' ARGUMENTS

Petitioner argues that pursuant to Section 6 of Rule 39 of the Rules of Court in relation to paragraph 3 of Article 1144 of the Civil Code, it has ten (10) years from the finality of the CTA Decision on June 23, 2006, or until June 23, 2016, within which to file the present action for revival of judgment. Since the present Petition was filed within the said period, petitioner is entitled to the revival of the CTA Decision.

Petitioner maintains that its right of action to file the present Petition for Revival of Judgment accrued on June 23, 2006, the date when the Supreme Court's Resolution dated February 1, 2006 in G.R. No. 170814 became final and executory, as certified by the Entry of Judgment issued by the Supreme Court. Hence, with the finality of the said Resolution, the CTA Decision also became final and executory on the same day. Thus, the 10-year prescriptive period is counted from June 23, 2006 and petitioner had until June 24, 2016 within which to file the present Petition.

On the other hand, respondent asserts that in the Resolution promulgated on August 11, 2005 by the CTA *En Banc*, the Petition for Review filed by petitioner was dismissed for being filed out of time. As stated in the said Resolution, the Decision and the Resolution of the former CTA First (1st) Division have become final and executory. Thus, when petitioner filed a complaint for revival of judgment on March 26, 2016[34], it was already eleven (11) years from the finality of the judgment it sought to revive. Clearly, the statute of limitations had set in.

In reply to respondent's assertion, petitioner contends that a decision becomes final and executory when no further appeal can be made.[35] In the case of the CTA Decision, it did not become final and executory when the CTA *En Banc* issued its Resolution dated August 11, 2005 because petitioner still had the right to appeal to the Supreme Court, as it did exercise said right, through Rule 45 of the Rules of Court. Due to the filing of the Petition for Review with the Supreme Court, the Resolutions dated August 11, 2005 and October 7, 2005 of the CTA *En Banc* did not become final and executory yet, considering

[34] The present Petition for Revival of Judgment was actually filed on **May 26, 2016.**
[35] Petitioner's Memorandum, p. 6, Docket, p. 243.

that the appeal to the Supreme Court is a continuation of the consolidated case.[36]

THE COURT'S RULING

The Petition is bereft of merit.

An action for revival of judgment is governed by paragraph 3 of Article 1144, and Article 1152 of the Civil Code in relation to Section 6 of Rule 39 of the Rules of Court.[37]

Articles 1144 and 1152 of the Civil Code state:

> ART. 1144. The following actions must be brought within **ten years from the time the right of action accrues**:
>
> (1) Upon a written contract;
> (2) Upon an obligation created by law;
> (3) **Upon a judgment.**
>
> ART. 1152. The period for prescription of actions to demand the fulfillment of obligation declared by a judgment **commences from the time the judgment became final.** *(Emphasis supplied)*

On the other hand, Section 6 of Rule 39 of the Rules of Court provides:

> SEC. 6. *Execution by motion or by independent action.* – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. **After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.** The revived judgment may also be enforced by motion within five (5) years from the

[36] *Id.*
[37] *Villeza vs. German Management and Services, Inc., et al.,* G.R. No. 182937, August 8, 2010, 625 SCRA 425.

> date of its entry and thereafter by action before it is barred by the statute of limitations. *(Emphasis supplied)*

Based on the aforequoted provisions, once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from the date of entry of judgment.[38] If the prevailing party fails to have the decision enforced by a motion after the lapse of five years, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint within ten years from the time the judgment becomes final.[39]

An action for revival of judgment is a new and independent action wherein the cause of action is the judgment itself and not the merits of the action upon which the judgment sought to be enforced is rendered.[40] Its purpose is not to re-examine and re-try the issues already decided but only to revive the judgment.[41]

Thus, an action for revival of judgment only requires proof of a final judgment which has not prescribed and has remained unexecuted after the lapse of five (5) years but not more than ten (10) years from its finality.[42]

Revival of judgment is based on the premise that the decision to be revived is already final and executory.[43] Accordingly, in the present case, there is a need to inquire: (1) whether the Decision in CTA Case Nos. 6368 and 6480, the decision sought to be revived, has already become final and executory; and (2) if such decision has definitely become final and executory, what is the exact date of its finality.

In *Juco v. Heirs of Tomas Siy Chung Fu*,[44] the Supreme Court defined a final and executory decision as follows:

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[38] *Id.*
[39] *Rubio et. al. v. Alabata,* G.R. No. 203947, February 26, 2014, 717 SCRA 559.
[40] *Filipinas Investment and Finance Corporation v. Intermediate Appellate Court*, G.R. Nos. L-66059-60, December 4, 1989, 179 SCRA 738.
[41] *Id.*
[42] *Enriquez, et al. vs. Hon. Court of Appeals, et al.,* G.R. No. 137391, December 14, 2001, 372 SCRA 376.
[43] *Saligumba v. Palanog*, G.R. No. 143365, December 4, 2008, 573 SCRA 16.
[44] G.R. No. 150233, February 16, 2005, 451 SCRA 474.

> "A decision issued by a court is final and executory when such decision disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, **such as when after the lapse of the reglementary period to appeal, no appeal has been perfected.**"

As a corollary, the Supreme Court in the case of *Testate Estate of Maria Manuel Vda. De Biascan v. Biascan,*[45] held that:

> "It is well-settled that judgment or orders become final and executory by operation of law and not by judicial declaration. **Thus, finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or motion for reconsideration or new trial is filed. The trial court need not even pronounce the finality of the order as the same becomes final by operation of law.**"

Indeed, in situations where a judgment has become final and executory, the prevailing party is entitled to a writ of execution, and the issuance thereof is a ministerial duty of the court.[46]

Incidentally, Section 2 of Rule 36 of the Rules of Court provides that the date of finality of the judgment shall be deemed to be the date of its entry.[47] The said provision makes the finality and entry of judgment simultaneous by operation of law.

In the present case, it was established that the CTA *En Banc* dismissed petitioner's appeal of the Court in Division's Decision in CTA Case Nos. 6368 and 6480 for having been filed beyond the reglementary period. In denying petitioner's appeal, the CTA *En Banc* held as follows:[48]

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[45] G.R. No. 138731, December 11, 2000 347 SCRA 630.
[46] *City of Manila v. Hon. Court of Appeals and The Army & Navy Club, Inc.*, G.R. No. 100626, November 29, 1991, 204 SCRA 362.
[47] *Philippine Veterans Bank v. Solid Homes, Inc.*, G.R. No. 170126, June 9, 2009, 589 SCRA 40.
[48] Docket, p. 125.

> "Petitioner received the Court's Resolution denying its Motion for Reconsideration on April 6, 2005. Since the Rules of Court only provides a fifteen-day period for a litigant to file an appeal, petitioner had only until April 21, 2005 within which it could have seasonably filed an appeal to the CTA *en banc*. This Petition for Review was filed on May 6, 2005 which is clearly beyond the reglementary period."

Accordingly, the CTA *En Banc* held that the Court in Division's Decision in CTA Nos. 6368 and 6480 had become final and executory.[49]

Consistent with the findings of the CTA *En Banc* in its Resolution dated August 11, 2005, this Court also finds that the Court in Division's Decision in CTA Case Nos. 6368 and 6480 became final and executory on **April 22, 2005**, after the lapse of the 15-day reglementary period to appeal. Petitioner's failure to file an appeal within the foregoing period due to its mistaken notion that it has thirty (30) days within which to file an appeal before the CTA *En Banc,* and which it expressly admitted in its Petition for Review,[50] rendered the Court in Division's Decision in CTA Case Nos. 6368 and 6480 final and executory.

Having determined that the decision sought to be revived in the present case already became final and executory on April 22, 2005, the Court shall now ascertain whether the present Petition for Revival of Judgment is filed within the ten (10) year prescriptive period.

In this regard, the ruling of the Supreme Court in *Lancita v. Magbanua*[51] should be taken in account. As held in the said case:

> "**In computing the time limited for suing out of an execution**, although there is authority to the contrary, **the general rule is that there should not be included the time when execution is stayed**, either by agreement of the parties for a definite time, by injunction, **by the taking of an appeal or writ of error so as to operate as a supersedeas**, by the death of a party, or otherwise. Any interruption or delay occasioned by the

[49] Docket, pp. 125 and 129.
[50] Docket, p. 100.
[51] G.R. No. L-15467, January 31, 1963, 7 SCRA 46.

> debtor will extend the time within which the writ may be issued without *scire facias.*" *(Emphasis supplied)*

In view of the foregoing rule, this Court holds that the period of time covering the pendency of petitioner's Petition for Review on *Certiorari* before the Supreme Court, *i.e.*, from the date of its filing on January 4, 2006 until the same was denied with finality on June 23, 2006, should be excluded in the computation of the prescriptive period. The filing of such petition before the Supreme Court effectively stayed the execution of the Court in Division's Decision in CTA Case Nos. 6368 and 6480 because as aptly explained by the Supreme Court in *Quiambao and Pilapil v. People*,[52] to wit:

> "We held in *PAA v. Court of Appeals* that **an appeal to this Court via a Petition for Review on *Certiorari* stays the judgment, award or order appealed from**. Thus, until after the appeal of the defendant shall have been resolved by this Court with finality, and its records transmitted to the court of origin, the judgment, award or order appealed from cannot be executed, enforced, much less, modified by the court of origin. Once the case has been appealed and given due course by this Court, the lower court or the court of origin could no longer take cognizance of the issue under review. **It cannot execute the judgment appealed from because to do so would constitute encroachment on the exclusive appellate jurisdiction of this Court.**" *(Emphasis supplied and citation omitted)*

On the other hand, the period of time during which petitioner's appeal to the CTA *En Banc* was pending cannot be deducted because, unlike the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, such appeal does not stay the execution of the award or judgment sought to be reviewed. This is expressly provided under Section 12 of Rule 43 of the Rules of Court which states:

> "SEC. 12. *Effect of appeal.* — **The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed** unless the Court of Appeals shall

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[52] G.R. No. 185267, September 17, 2014, 735 SCRA 353.

direct otherwise upon such terms as it may deem just." *(Emphasis supplied)*

The table below summarizes the relevant dates in the present case and their corresponding intervals:

Date of finality of CTA Division decision	22-Apr-05	8 months, 13 days
Filing of petition with the Supreme Court	4-Jan-06	
Date of finality of SC decision denying the petition	23-Jun-06	9 years, 11 months, 3 days
Date of filing of Petition for Review	26-May-16	
Total		**10 years, 7 months, 16 days**

Counting from April 22, 2005 (date of finality of the Court in Division's Decision) up until January 4, 2006 (date of filing of the Rule 45 Petition before the Supreme Court), a period of eight (8) months and thirteen (13) days had elapsed. On the other hand, from June 23, 2006 (date of finality of the denial of the Rule 45 Petition) up until May 26, 2016 (date of filing of the present Petition), a period of nine (9) years, eleven (11) months, and three (3) days had elapsed. Accordingly, a total of ten (10) years, seven (7) months, and sixteen (16) days had passed from date of finality of the decision sought to be revived until the filing of the present Petition for its revival. Considering that petitioner only has 10 years to revive, the present Petition for Revival of Judgment is clearly seven (7) months and sixteen (16) days late.

The purpose of the law in prescribing time limitations for enforcing judgments by action is to prevent obligors from sleeping on their rights.[53] The rule is based on the equitable principle of laches which is defined as the failure of or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence, could or should have been done earlier, or to assert a right

[53] *Macias v. Lim*, G.R. No. 139284, June 4, 2004, 431 SCRA 38.

within reasonable time, warranting a presumption that the party entitled thereto has either abandoned it or declined to assert it.[54] In the present case, petitioner had more than enough time and opportunity to assert its right but failed to do so. Laches had clearly set in.

WHEREFORE, the present Petition for Revival of Judgment is **DENIED** for being time-barred.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

[54] *Velez, Sr., et. al. v. Demeterio, et. al.*, G.R. No. 128576, August 13, 2002, 387 SCRA 236-237.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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