REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL POWER CORPORATION,
Petitioner,

CTA EB No. 963
(CBAA Case No. L-84)

Present:

-versus-

Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.:*

THE LOCAL BOARD OF ASSESSMENT APPEALS OF THE PROVINCE OF IFUGAO, THE PROVINCE OF IFUGAO AND THE PROVINCIAL ASSESSOR OF IFUGAO,
Respondents.

Promulgated:
FEB 06 2013 4:15pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is petitioner's second Motion for Extension of Time to File Petition for Review filed by registered mail on December 20, 2012 requesting the Court *en banc* additional period to file its Petition for Review until January 4, 2013.

In the case of *City of Manila, et al. v. Coca-Cola Bottlers Philippines, Inc.*[1], the City of Manila and its officials received on April 20, 2007, a copy of the 4 April 2007 Regional Trial Court ("RTC")

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[1] G.R. No. 181845, August 4, 2009, 595 SCRA 299.

Order denying their Motion for Reconsideration of the November 16, 2006 Order. The latter Order decreed the cancellation and withdrawal of the assessment against Coca-Cola Bottlers Philippines, Inc. On May 4, 2007, the City of Manila and its officials filed with the Court of Tax Appeals ("CTA") a Motion for Extension of Time praying for additional fifteen (15) days to file its Petition for Review or until May 20, 2007. However, prior to this period, they sought another ten (10) days within which to file their Petition. However, the CTA in Division dismissed the same for failure of the City of Manila and its officials to timely file their Petition for Review on May 20, 2007.

In disagreeing with the RTC's posture, the Supreme Court held that the Petition for Review was filed within the extended 15 day period allowed by the rules. Pertinent excerpts of the Coca-Cola Bottlers case read:

> From 20 April 2007, the date petitioners received a copy of the 4 April 2007 Order of the RTC, denying their Motion for Reconsideration of the 16 November 2006 Order, petitioners had 30 days, or until 20 May 2007, within which to file their Petition for Review with the CTA. Hence, the Motion for Extension filed by petitioners on 4 May 2007 – grounded on their belief that the reglementary period for filing their Petition for Review with the CTA was to expire on 5 May 2007, thus, compelling them to seek an extension of 15 days, or until 20 May 2007, to file said Petition – was unnecessary and superfluous. Even without said Motion for Extension, petitioners could file their Petition for Review until 20 May 2007, as it was still within the 30-day reglementary period provided for under Section 11 of Republic Act No. 9282; and implemented by Section 3 (a), Rule 8 of the Revised Rules of the CTA.
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> **The Motion for Extension filed by the petitioners on 18 May 2007, prior to the lapse of the 30-day reglementary period on 20 May 2007, in which they prayed for another extended period of 10 days, or until 30 May 2007, to file their Petition for Review, was in reality, only the first Motion for Extension of petitioners.** The CTA First Division should have granted the same, as it was sanctioned by the rules of procedure. In fact, petitioners were only praying for a

> 10–day extension, five days less than the 15-day extended period allowed by the rules. **Thus, when petitioners filed via registered mail their Petition for Review in C.T.A. AC No. 31 on 30 May 2007, they were able to comply with the reglementary period for filing such a petition.** (Emphasis supplied.)

Here, on November 20, 2012, petitioner received the Order dated October 24, 2012 denying the Motion for Reconsideration of the CBAA's Decision. The CBAA Decision dismissed petitioner's appeal.[2]

Counting from November 20, 2012, petitioner had thirty (30) days or until December 20, 2012 within which to appeal the CBAA's Order dated October 24, 2012 to the CTA *en banc* pursuant to Section 9 of R.A. 9282 and Section 3(c), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended.

Under Rule 43 of the 1997 Rules of Civil Procedure supplementary to R.A. 9282, and in relation to the CTA Rules, an additional 15 days is allowed in the filing of the Petition for Review.

Petitioner's second Motion for Extension praying for an additional 15 day period or until January 4, 2013 within which to file its Petition for Review was actually its first Motion for Extension.[3] But to date, petitioner did not appeal by way of a Petition for Review before the CTA *en banc* within the extended 15 day period sought for.

Appeal is not a constitutional right but a mere statutory privilege. Hence, parties who seek to avail of the privilege must comply with the statutes or rules allowing it. The perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well. Failure to perfect an appeal renders the judgment appealed from final and executory.[4]

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[2] Rollo, pp. 1-2.
[3] Rollo, p.7.
[4] *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. No. 172458, December 14, 2011, 662 SCRA 424 citing *Air France Philippines v. Hon. Emilio Leachon*, G.R. No. 134113, October 12, 2005, 472 SCRA 439.

A decision that has acquired finality becomes immutable and unalterable. As such, it may no longer be modified.[5] Thus, the Court of Tax Appeals *en banc* is devoid of jurisdiction to review the CBAA's Order dated October 24, 2012 which has become final due to petitioner's failure to appeal within the prescribed period.

Moreover, the Motion for Extension of time is insufficient as only eight copies were furnished to this Court in violation of Section 4 Rule 5 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, stating:

RULE 5
FORM AND STYLE OF PAPERS

> Sec. 4. Number of copies. – **The parties shall file eleven signed copies of every paper for cases before the Court *en banc*** and six signed copies for cases before a Division of the Court in addition to the signed original copy, except as otherwise directed by the Court. xxx

WHEREFORE, premises considered, petitioner's "MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW" filed by registered mail on December 20, 2012 is hereby **DENIED** and the case is **DISMISSED** due to its failure to file the Petition for Review on time.

SO ORDERED.

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

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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[5] *Kukan International Corporation v. Hon. Amor Reyes, et al.*, G.R. No. 182729, September 29, 2010 citing *Republic v. Tango*, G.R. No. 161062, July 31, 2009, 594 SCRA 560, 568.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON- VICTORINO
Associate Justice

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

AMELIA R. COTANGCO- MANALASTAS
Associate Justice