REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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MANILA ELECTRIC COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7348

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

NOV 07 2007, 1:25PM

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DECISION

BAUTISTA, J.:

Before Us is a Petition for Revival of Judgment involving the Decision of this Court's Interim Division in the case of **Manila Electric Company, et al. vs. Commissioner of Internal Revenue**, CTA Case No. 4833, promulgated on October 2, 1995, where the judgment finding petitioner entitled to refund of the amount of P12,743,397.45 remains unsatisfied.

Petitioner Manila Electric Company is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines; engaged in the business of distributing and supplying of electric power within its franchise area. Its principal office

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address is at Lopez Building, Ortigas Avenue, Pasig City.[1] It is also a registered taxpayer with TIN 000-101-528-000 and Certificate of Registration No. OCN8RC0000016119.[2]

The Commissioner of Internal Revenue (Respondent), on the other hand, is the officer duly authorized by law to assess and collect all national internal revenue taxes, fees, and charges, including the power to decide refunds of internal revenue taxes, fees or other charges. Respondent's office address is at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

On July 24, 1992, petitioner filed before this Court a Petition claming for tax refund or tax credit of the amount of P12,743,397.45, docketed as "**Manila Electric Company and Manila Electric Company Pension Fund, represented by its Agent and Assistant Secretary, Lourdes D. Torres vs. The Commissioner of Internal Revenue, *CTA Case No. 4833.***"[4] In response to the Petition, respondent filed his Answer dated October 9, 1992 on October 13, 1992.[5]

After trial on the merits, this Court's Interim Division rendered Its Decision[6] dated October 2, 1995 on said case, the dispositive portion of which states:

> "**WHEREFORE**, We find and so hold that petitioner is entitled to a refund of the amount of P12,743,397.45 representing final withholding tax on interest income from its money market placements pursuant to Sec. 56(b), now Sec. 54(b), of the Tax Code.
>
> **SO ORDERED.**"

The Notice of the Decision was received by respondent, through counsel on October 5, 1995 and through the Commissioner's Office and the Litigation Section of the Bureau of Internal Revenue on October 9, 1995.[7]

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[1] Paragraph 1, Stipulation of Facts, *Rollo*, page 52.
[2] Paragraph 3, Stipulation of Facts, *Rollo*, page 52; Exhibit "A", *Rollo*, page 80.
[3] Paragraph 2, *Ibid., Rollo,* page 52.
[4] Exhibit "B", *Rollo,* pages 81-88.
[5] Exhibit "D", *Rollo,* pages 94-96.
[6] Exhibit "E", *Rollo,* pages 97-107.
[7] Exhibits "F", "F-1", "F-2", and "F-3", *Rollo,* page 108.

Inasmuch as the said Decision was left unappealed, it became final and executory on October 24, 1995, as evidenced by the corresponding Entry of Judgment.[8]

On October 5, 2005, respondent received petitioner's letter dated October 5, 2005, seeking satisfaction of the Court's Decision.[9] Respondent, however, failed to comply with the final judgment and to refund the amount of P12,743,397.45, despite demand.[10]

Hence, petitioner filed the instant Petition with this Court on October 21, 2005, praying that the judgment rendered in CTA Case No. 4833 be revived and that respondent be ordered to refund the amount of P12,743,397.45.

Respondent Commissioner raised the following defenses[11] in his Answer:

> "xxx xxx xxx
>
> 4. Petitioner must prove that such alleged judgment dated 2 October 1995 was promulgated by the Honorable Court in its favor and that respondent failed to refund to petitioner the alleged judgment amount despite demand;
>
> 5. Petitioner must prove that the alleged judgment was entered into the book of entries of judgment on the date so alleged;
>
> 6. Petitioner must prove that the present action was filed within the prescribed period and before it is barred by the statute of limitations as provided in Section 6, Rule 39 of the Revised Rules of Court."

In order to prove its claim, petitioner submitted testimonial and documentary evidence proving receipt by respondent of the Decision in CTA Case No. 4833 and the entry of judgment making it final and executory.

Respondent, other than his Answer, did not participate in the trial by waiving his rights to cross examine[12] petitioner's witnesses and to present his evidence.[13]

This case was submitted for decision on August 6, 2007 after considering petitioner's Memorandum sans respondent's Memorandum.

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[8] Exhibit "G", *Rollo,* page 109.
[9] Paragraph 8, *Ibid.*, page 53; Exhibit "H" and "H-1".
[10] Transcript of Stenographic Notes, March 21, 2006 Hearing, page 24.
[11] Paragraphs 4-6, Answer, *Rollo*, pages 35-36.
[12] Transcript of Stenographic Notes, May 23, 2006 Hearing, page 4.
[13] Transcript of Stenographic Notes, May 8, 2007, page 5.

The parties interposed the following issues[14] for the Court's consideration:

1. Whether the alleged judgment dated 2 October 1995 was promulgated by the Honorable Court in petitioner's favor and respondent failed to refund to petitioner the alleged judgment amount;

2. Whether the alleged judgment was entered in the book of entries on the date so alleged; and

3. Whether the present action was filed within the prescribed period and not barred by the statute of limitations as provided in Section 6, Rule 39 of the Revised Rules of Court.

The Court finds for petitioner.

Anent the first issue, a certified true copy of the subject Decision finding petitioner entitled to refund of the amount of P12,743,397.45 was submitted by petitioner. A review of the records of CTA Case No. 4833 indicates that no satisfaction of judgment was made. In addition, petitioner's demand letter sent to respondent on October 5, 2005, demanding refund of the adjudged amount of P12,743,397.45, remains unsatisfied. Hence, the first issue is resolved in petitioner's favor.

Regarding the issue of proof that the subject Decision was entered in the Book of Entries of Judgment on October 24, 1995, petitioner submitted to this Court the certified true copy of the Entry of Judgment proving that the subject Decision became part of the Book of Entries of Judgments on October 24, 1995.[15] This fact was undisputed and even stipulated by the parties.[16]

As to the matter of prescription, this Court resolves that the Petition was filed within the ten-year period given by law.

At this juncture, this Court reckons to address the issue of the period allowed within which to enforce the execution of judgment via Court action. Pertinent to this are Section 6 of Rule 39 of the Revised Rules of Court and Article 1144 of the New Civil Code, which are hereunder quoted for easy reference, to wit:

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[14] Resolution dated February 22, 2006, *Rollo*, page 55.
[15] Exhibit "G", *Rollo*, page 109.
[16] Paragraph 7, Joint Stipulation of Facts, *Rollo*, page 53.

> "**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 date of its entry and thereafter by action before it is barred by the statute of limitations."
>
> "**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."

From the foregoing, the winning party to an action may seek enforcement of the judgment award within ten (10) years from date of entry of the Decision after the same becomes final and executory.

The following discussion of the Honorable Supreme Court in the case of **Enriquez vs. Court of Appeals**[17] corroborates the above opinion:

> "Sec. 6, Rule 39 of the Rules of Court states that an action to revive judgment only requires proof of a final judgment which has not prescribed and has remained unexecuted after the lapse of five (5) years but no more than ten (10) years from its finality.
>
> xxx. An action to revive judgment is not meant to retry the case all over again. Its cause of action is the judgment itself and not the merits of the original action."

A Decision is considered "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* .[18]

This Court finds nothing in the records of CTA Case No. 4833 to indicate any appeal was ever filed. Hence, the lapse of the period of appeal and the entry of judgment on October 24, 1995 made the subject Decision final and executory from that date.

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[17] 372 SCRA 372 (2001).
[18] Juco vs. Heirs of Tomas Siy Chung Fu, 451 SCRA 464.

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In sum, petitioner's right to enforce judgment by court action is well within the ten-year prescriptive period. Taking into consideration that the date of entry of judgment to be revived is October 24, 1995 and the Petition before this Court was filed on October 21, 2005, the Petition is clearly not filed out of time.

WHEREFORE, petitioner's instant Petition is hereby **GRANTED**. Accordingly, the Decision rendered in CTA Case No. 4833 is hereby **REVIVED** and the Commissioner of Internal Revenue is hereby **ORDERED to REFUND** to petitioner the amount of P12,743,397.47.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division