REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LEPANTO CONSOLIDATED MINING CO.,
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 84
(C.T.A. Case Nos. 6368 & 6480)

Members:
Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

Promulgated:

AUG 1 1 2005 ___

x--x

RESOLUTION

This is an appeal, by way of Petition for Review with the Court *en banc* pursuant to Section 11 of Republic Act No. 9282, from the Decision dated December 15, 2004 promulgated by the First Division of the Court of Tax Appeals and its Resolution dated March 30, 2005 denying petitioner's Motion for Reconsideration in C.T.A. Case Nos. 6368 & 6480 both entitled

"*Lepanto Consolidated Mining Company versus Hon. Rene G. Bañez, in his capacity as Commissioner of Internal Revenue*".

The decretal portion of the assailed Decision reads as follows:

> **WHEREFORE**, premises considered, petitioner's claim for tax credit are hereby GRANTED in the reduced amount of P424,844.20, computed as follows:

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 Per Court's Determination:	P 560,373.71	
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.

The foregoing ruling was affirmed by the First Division of this Court in its Resolution dated March 30, 2005.

On page three of its Petition for Review, filed on May 6, 2005, petitioner stated the material dates involved in this appeal as follows:

> "On January 6, 2005, petitioner received a copy of the assailed Decision promulgated by the Honorable Court of Tax Appeals – First Division. On January 19, 2005, petitioner filed a Motion for Reconsideration thereto dated January 18, 2005.
>
> On April 6, 2005, petitioner received a copy of the assailed Resolution denying its Motion for Reconsideration to the assailed Resolution.
>
> Under Section 9 and 11 of R.A. No. 9282, petitioner has thirty (30) days from April 6, 2005, or until May 6, 2005, within which to file a verified petition for review.
>
> Hence, this Petition."

From the foregoing statement of material dates, it can be readily seen that the appeal was filed beyond the fifteen-day period allowed by Rule 43 of the Rules of Court.

Petitioner's impression that it had thirty days from receipt of the Court's Resolution denying its Motion for Reconsideration within which to appeal to the Court *en banc* is erroneous. Under Section 4 of Rule 43 of the Rules of Court, an appeal from the decision of the Court of Tax Appeals shall be taken within fifteen days from receipt of the decision. Section 4 of Rule 43 reads, in part, as follows:

> "SEC. 4. *Period of appeal.* - The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. xxx"

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 Court *en banc*. This Petition for Review was filed on May 6, 2005 which is clearly beyond the reglementary period. "On this technical ground, this petition will likewise not prosper"[1].

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[1] Allied Banking Corporation v. Guillermo L. Parayno, Jr., in his official capacity as the Commissioner of Internal Revenue, et.al, C.T.A. E.B. No. 69, July 11, 2005.

The applicable provision to petitioner's appeal is Section 11 of Republic Act No. 9282 otherwise known as "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES" which provides:

> "SEC. 11. Section 18 of the same Act is hereby amended as follows:
>
> SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving a 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*."

The foregoing provision provides that a party litigant adversely affected by a Resolution of a Division may appeal to the Court of Tax Appeals *en banc*. It amends SEC. 18 of Republic Act No. 1125, as amended.

Originally, the second paragraph of Section SEC. 18. of Republic Act No. 1125 provides:

> "SEC. 18. *Appeal to the Supreme Court.* – xxx xxx xxx
>
> Any party adversely affected by any ruling, order or decision of the Court of Tax Appeals may appeal therefrom to the Supreme Court by filing with the said Court a notice of appeal and with the Supreme Court a petition for review, *within thirty days* from the date he receives notice of said ruling, order or decision. If, within the aforesaid period, he fails to

perfect his appeal, the said ruling, order or decision shall become final and conclusive upon him.

xxx xxx xxx"

Thereafter, Batas Pambansa Blg. 129, known as The Judiciary Reorganization Act of 1980 was enacted. Section 9 of Chapter I and Section 39 of Chapter IV thereof, in part, provides:

"Chapter I. - THE INTERMEDIATE APPELLATE COURT

Sec. 9. Jurisdiction. - The Intermediate Appellate Court shall exercise:

(1) xxx xxx xxx

(2) xxx xxx xxx; and

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders, or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

xxx xxx xxx

Chapter IV. - GENERAL PROVISIONS

Sec. 39. Appeals. - The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from: Provided however, That in habeas corpus cases, the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from.

xxx xxx xxx"

In view of the reorganization of the Judiciary under B.P. Blg. 129, jurisdiction over appeals from the decisions of the Court of Tax Appeals was transferred to the Intermediate Appellate Court and the period of Appeals from orders, resolutions, awards, judgments, or decisions of ***any court*** in all cases had been standardized at fifteen (15) days from notice.

The Supreme Court later issued *CIRCULAR NO. 1-91* dated February 27, 1991 captioned *"Prescribing the Rules Governing Appeals to the Court of Appeals from a Final Order or Decision of the Court of Tax Appeals and Quasi-Judicial Agencies"*. Paragraph 4 thereof provides:

> 4. Period of Appeal. – The appeal shall be taken within fifteen (15) days from notice of the ruling, award, order, decision, or judgment or from the date of its last publication, if publication is required by law for its effectivity. One (1) motion for reconsideration of said ruling, award, order, decision, or judgment may be allowed. If the motion is denied, the movant may appeal during the remaining period for appeal reckoned from notice of the resolution of denial.

When the 1997 Rules of Civil Procedure was adopted, the fifteen-day period for appeals from decisions and final orders of the Court of Tax Appeals to the Court of Appeals under *CIRCULAR NO. 1-91* was incorporated in Sec. 4 of Rule 43 of the Rules of Court.

Therefore, prior to the enactment of Republic Act No. 9282, appeals from the decisions, resolutions, and final orders of the Court of Tax Appeals were filed with the Court of Appeals within fifteen days from notice pursuant to Rule 43 of the Rules of Court.

Then came Republic Act No. 9282 which expressly provides that the CTA *en banc* is now the proper forum for appeals from a Resolution of a Division of the CTA on a motion for reconsideration or new trial. However, Republic Act No. 9282 did not modify or change the reglementary period of fifteen days within which a party may file an appeal from a decision or resolution of a Division of the Court of Tax Appeals. Hence, an appeal from the Resolution of a Division of the CTA on a motion for reconsideration shall still be taken within fifteen days from notice of the Resolution. In this regard, the petitioner failed.

WHEREFORE, the Petition for Review filed by the petitioner on May 6, 2005 is hereby **DISMISSED** for having been filed beyond the reglementary period. Accordingly, the assailed Decision and Resolution dated December 15, 2004 and March 30, 2005, respectively, have become final and executory.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.,
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice