REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

MACARIO LIM GAW, JR.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Crim Case No. 026
(CTA Crim. Case No. O-206 & O-207 and CTA Case No. 8503)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 02 2016 3:05p.m.

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RESOLUTION

This resolves petitioner's "Motion for Reconsideration (Re: Decision dated 22 December 2014)", taking into consideration respondent's Comment that the Court has already meticulously discussed, passed upon and considered the arguments petitioner raised in the motion and to discuss them again would be superfluous.

Petitioner is asking the Court *En Banc* to reconsider its Decision dated December 22, 2014 on the following grounds:

1. Based on applicable laws and jurisprudence, as affirmed by the Honorable Court in its past pronouncements in the subject cases, this Honorable Court has already acquired jurisdiction over CTA Case no. 8503, and therefore could not be divested of such jurisdiction until final judgment;

2. The Clerk of Court's zero-filing fee assessment in CTA Case No. 8503 is consistent with applicable law and jurisprudence, as affirmed by this Honorable Court in its past pronouncements in the subject cases;

3. Petitioner was deprived of his right to due process when his petition was dismissed for failure to pay docket fees, without first being afforded a fair opportunity to comply with any court assessment prescribing filing fees in an amount other than zero; and

4. These are compelling reasons for this Honorable Court to dispose of this case on the merits to prevent patent injustice.

In sum, petitioner is arguing that his non-payment of the appeal docket fees for CTA Case no. 8503 is due to the June 6, 2012 Resolution of this Court's former First Division in the criminal cases prior to consolidation and the zero assessment, payment exemption issued by the Clerk of Court which he relied on in good faith. Moreover, petitioner argues that his non-payment of docket fees is a non-fatal lapse, or a non-jurisdictional defect which this Court should overlook in order to attain substantial justice especially since he is willing to pay such docket fees.

The issues raised by petitioner in its Motion for Reconsideration are not new. They have been exhaustively studied and considered by this Court prior to rendering our Decision dated December 22, 2014.

As the Court observed in the Decision, petitioner's vacillation and hesitation to pay docket fees in CTA Case No. 8503 has unfortunate consequences he must bear. We stated in the Decision:

> "Petitioner further alleged willingness to pay the proper docket fees. Mere willingness, however, cannot substitute for actual and full payment of the proper docket fees, the amount of which the petitioner's counsel could have determined or at least approximated from the provisions of Rule 141 of the Rules of Court. **Appellate docket and other lawful fees are required to be paid within the same period for taking an appeal,**[1] **<u>without need for a court order</u>**. The rules prescribe the period for the payment of the docket fees precisely because the time of payment cannot be left to the petitioner's or appellant's willingness that is not time-bound. **The consequence of emptily declaring willingness to pay, followed by actual failure to pay the correct docket fee with the period prescribed, must be borne by the petitioner alone**. Thus, the First Division correctly dismissed the petition in CTA Case No. 8503 for failure of the petitioner to comply with the jurisdictional requirement.

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[1] Section 4, Rule 41, Rules of Court.

Most instructive and *appropos* to the case at bar is the reminder of the Supreme Court *en banc* in *Re: Petition for Recognition of the Exemption of the Government Service Insurance System from Payment of Legal Fees*[2] --

> 'Indeed, payment of legal (or docket) fees is a jurisdictional requirement. It is not simply the filing of the complaint or appropriate initiatory pleading but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject-matter or nature of the action. <u>Appellate docket and other lawful fees are required to be paid within the same period for taking an appeal. Payment of docket fees in full within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory</u>.' (citations omitted; underscoring added for emphasis)

It is thus the ineluctable conclusion of this Court that the assailed resolutions of the First Division are consistent with the applicable laws and rules. Civil Case No. 8503 was validly dismissed, even after having been set for pre-trial, on the ground of the First Division's failure to acquire jurisdiction due to the petitioner's failure to pay the prescribed docket fees."

First, there is no argument that the payment of the correct docket fees is indispensable to the perfection of an appeal, pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), the Rules of Court, and established jurisprudence.

The Supreme Court has categorically ruled on this in ***Far Corporation v. Renato Magdaluyo, et. al.***[3] in this wise:

"Rule 41, Section 4, of the 1997 Rules on Civil Procedure provides:

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[2] A.M. No. 08-2-01-0, 11 February 2010.
[3] G.R. NO. 148739. November 19, 2004.

> **SEC.** 4. *Appellate court docket and other lawful fees.* **Within the period for taking an appeal**, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal. (Emphasis supplied)

The aforecited rule is not merely directory, as the payment of the docket and other legal fees within the prescribed period is both mandatory and jurisdictional.[4] It bears stressing that an appeal is not a right, but a mere statutory privilege.[5]

An ordinary appeal from a Decision or final order of the RTC to the Court of Appeals must be made within fifteen (15) days from notice.[6] And **within this period**, the full amount of the appellate court docket and other lawful fees must be paid to the clerk of the court which rendered the judgment or final order appealed from.

The requirement of paying the full amount of the appellate docket fees within the prescribed period is not a mere technicality of law or procedure.[7]

Time and again, this Court has consistently held that the payment of docket fees **within the prescribed period** is mandatory for the perfection of an appeal. **Without such payment, the appeal is not perfected. The appellate court does not acquire jurisdiction over the subject matter of the action and the Decision sought to be appealed from becomes final and executory.**[8]

The nonpayment of the docket and other lawful fees within the reglementary period as provided under Section 4 of

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[4] *Id.*, citing Lazaro v. Court of Appeals, G.R. No. 137761, 06 April 2000, 330 SCRA 208.
[5] *Id.* at Note 3, citing Badillo v. Tayag, G.R. No. 143976 and No. 145846, 03 April 2003, 400 SCRA 494.
[6] *Id.* at Note 3, citing Rule 41, Section 3, 1997 Rules on Civil Procedure.
[7] *Id.* at Note 3, citing Manalili v. De Leon, G.R. No. 140858, 27 November 2001, 370 SCRA 625.
[8] *Id.* at Note 3, citing Navarro v. Metropolitan Bank and Trust Co., G.R. No. 138031, 27 May 2004, citing Alfonso v. Andres, G.R. No. 139611, 04 October 2002, 390 SCRA 465.

Rule 41 is a ground for the dismissal of an appeal, as provided for under Section 1(c) Rule 50, to wit:

> '**SECTION 1**. *Grounds for dismissal of appeal.*- An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
>
> x x x
>
> c. Failure of the appellant to pay the docket and other lawful fees as provided in Section 4 of Rule 41; x x x'

Rules of Procedure must be faithfully followed. But the rules may be relaxed, for persuasive and weighty reasons, to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure.[9] In the case of *La Salette College v. Victor Pilotin*[10], we held:

> 'Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognize **that its strict application is qualified by the following**: ***first***, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; ***second***, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.'

In petitioner's Memorandum, our ruling in the case of *Mactan Cebu International Airport Authority (MCIAA) v. Mangubat,*[11] where we held that [l]ate payment of docket fees may be admitted when the party showed willingness to abide by the Rules by **immediately paying** the required fees,[12] was cited. This doctrine cannot be applied in the case at bar

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[9] *Supra* at Note 8.
[10] *Id.* at Note 3, citing G.R. No. 149227, 11 December 2003, 418 SCRA 381, 387.
[11] *Id.* at Note 3, citing G.R. No. 136121, 16 August 1999, 312 SCRA 463.
[12] *Ibid.*

> because, in the *MCIAA* case, the Solicitor General, as counsel for the petitioner, paid the appellate docket fees six (6) days after the timely filing of the notice of appeal. In the instant case, the payment of the appellate docket fees was made 132 days after the lapse of the reglementary period to take an appeal. It is also worthy to note that when the Solicitor General filed the notice of appeal, the 1997 Rules had been in effect only for fourteen (14) days, and that is why we ruled that the omission of the Solicitor General to pay docket fees together with the filing of the notice of appeal fourteen (14) days after the effectivity of the new rules may be excused.[13]
>
> The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal.[14] In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.[15] **Inasmuch as the payment of the appellate docket fees in this case was made 132 days after the expiration of the period for the perfection of an appeal, the Court of Appeals did not acquire jurisdiction over the case, except to order its dismissal.** Thus, the Decision rendered by the RTC, Branch 137, Makati City, in Civil Case No. 97-2745, dated 21 December 1998, became final and executory by operation of law."

While petitioner justifies his failure to pay the docket fees in CTA Case No. 8503 with this Court's First Division's Resolution dated June 6, 2012, it is worthy to note that: one, the Resolution merely confirmed that the civil action for the recovery of civil liability for taxes and penalties is deemed instituted already in the criminal cases -- which is necessarily limited to the taxes and penalties subject of the criminal cases; and two, the Resolution made no express or categorical mention of exempting petitioner from paying the required docket fees to perfect his appeal for CTA Case No. 8503, especially considering the fact that the taxes and penalties subject of the same is different from the criminal cases; hence, the qualification in the said Resolution that it was **"without prejudice to the right of the accused to avail of whatever additional legal remedy he may have, to prevent the said FDDA from becoming final and executory for taxable year 2008."**[16]

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[13] *Id.*
[14] *Id.* at Note 3, citing Rodillas v. COMELEC, G.R. No. 119055, 10 July 1995, 245 SCRA 702, citing Dorego v. Perez, G.R. No. L-24922, 02 January 1968, 22 SCRA 8, and Bello v. Fernando, G.R. No. L-16970, 30 January 1962, 4 SCRA 135.
[15] *Ibid.*, citing Acda v. Minister of Labor, G.R. No. L-51607, 15 December 1982, 119 SCRA 306.
[16] *Docket*, CTA Crim. Case Nos. O-206 & O-207, p. 3108.

Another justification being invoked by petitioner is the zero assessment computation made by the Clerk of Court, allegedly on the basis of the June 6, 2012 Resolution. However, the fact that the said Resolution made no express mention of any exemption whatsoever as regards additional remedies petitioner would pursue should have been a red flag for petitioner and should have prompted him to investigate further into the matter in the diligent pursuit of the perfection of his appeal.

As *We* explained in the Decision:

> "A careful reading of Section 7(b)(1) of R.A. No. 9282 would establish that the civil action deemed instituted with the criminal action is not just any civil action, but 'the *corresponding* civil action for the recovery of civil liability for taxes and penalties.' Clearly, what this provision contemplates is not a civil action by the taxpayer, but by the taxing authority on whose behalf a criminal action is filed.
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> x x x   x x x   x x x
>
> [T]hat civil action must *correspond* to or with the criminal action – which would exclude any other civil action. The civil action under Section 7(b)(1) of R.A. No. 9282 is necessarily one initiated and prosecuted by the People, for the recovery of civil liabilities *from* the accused -- rather than a civil action *by* the accused, against State. Conceivably, the accused can pray for civil remedies, through his Answer, by way of a counterclaim, and thus dispense with the need to file a separate civil action, but if his counterclaim is permissive it will be subject to the payment of legal fees,[17] **the rule in permissive counterclaims being that 'for the trial court to acquire jurisdiction, the counterclaimant is bound to pay the prescribed docket fees.**'[18]" *(Emphasis supplied)*

In addition to the foregoing, the fact remains that there has been no payment of the mandatory and jurisdictional docket fee made within the reglementary period within which to complete the appeal and jurisdiction has not been acquired by the Court. The case, therefore, was rightfully dismissed.

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[17] See *Tiu Po, et al. vs Hon. Pedro JL Bautista, et al.*, G.R. No. L-55514, 17 March 1981.
[18] *Government Service Insurance System vs. Heirs of Fernando F. Caballero*, G.R. No. 158090, 4 October 2010.

WHEREFORE, considering all of the foregoing premises, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice