REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BASES CONVERSION AND DEVELOPMENT AUTHORITY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 900
(CTA Case No. 8263)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, Jr.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO- MANALASTAS, *JJ.*

Promulgated:
OCT 10 2012 Ma.Apolinario 2:00 p.m.

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RESOLUTION

Acosta, PJ:

Rule 43 of the Rules of Court of the Philippines, which applies to an appeal from a decision or resolution of the Court in Division to the Court En Banc[1], states in its Section 10 that—

> **Section 10.** *Due course.* — If upon the filing of the comment or such other pleadings or documents as may be required or allowed by the Court of Appeals or upon the expiration of the period for the filing thereof, and on the records the Court of Appeals finds *prima facie* that the court or agency concerned has committed errors of fact or law that would warrant reversal or modification of the award, judgment, final order or resolution sought to be reviewed, it may give due course to the

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[1] Section 4(C), Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended.

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> petition; otherwise, it shall dismiss the same. The findings of fact of the court or agency concerned, when supported by substantial evidence, shall be binding on the Court of Appeals.

After a perusal of the Petition for Review filed by petitioner on 04 May 2012, sans any Comment from respondent despite due notice, this Court resolves that it cannot give due course to the same as it does not contain *prima facie* allegations that the Court in Division committed an error that would warrant a reversal or modification of the assailed resolutions.

The original Petition for Review before the Court in Division was timely posted on 16 February 2011, the last day for filing the appeal from an adverse decision of the Bureau of Internal Revenue. However, as there was no payment of docket fees, such filing was not sufficient to vest this Court with jurisdiction over the case. The petition was then thereby dismissed and was re-filed by petitioner on 07 April 2011, this time with the corresponding payment of docket fees. The re-filed petition was dismissed by the Court in Division via a Resolution dated 03 February 2012. Petitioner's Motion for Reconsideration of such dismissal was denied for lack of merit on 13 April 2012.

In *Metropolitan Bank and Trust Co. vs. Perez*, GR No. 181842, 05 February 2010, the Supreme Court, citing past jurisprudence, clearly settled that—

> In *Manchester Development Corporation v. Court of Appeals,* GR No. L-75919, 07 May 1987, the Court held that a pleading which does not specify in the prayer the amount sought shall not be admitted or shall be expunged, and <u>that a court acquires jurisdiction only upon payment of the prescribed docket fee.</u> This rule was relaxed in *Sun Insurance Office, Ltd. v. Asuncion* G.R. Nos. 79937-39, 13 February 1989 which

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was echoed in the 2005 case of *Heirs of Bertuldo Hinog v. Melico*, GR No. 140954, 12 April 2005, the pertinent portion of the decision in the latter case reads:

> Plainly, while the payment of prescribed docket fee is a jurisdictional requirement, even its non-payment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is **paid within the applicable prescriptive or reglementary period**, more so when the party involved demonstrates a willingness to abide by the rules prescribing such payment. Thus, when insufficient filing fees were **initially paid** by the plaintiffs **and** there was **no intention to defraud the government**, the Manchester rule does not apply. (Emphasis and underscoring supplied)

From the bare facts of the instant case, the prescribed fee was paid beyond the reglementary period for perfecting an appeal and, moreover, as found by the Court in Division, a willingness on the part of petitioner to abide by the rules was clearly lacking. This En Banc Court notes that it took petitioner over a month to pay the prescribed fee from the time it was informed that its petition cannot be properly filed due to non-payment of docket fees. Hence, even a lenient application of the technical rules of procedure will not prevent this Court's outright dismissal of petitioner's case.

As to the issue on the exempt status of petitioner, this has already been settled by the certification dated 20 January 2011 issued by Ma. Lourdes C. Perfecto, Deputy Clerk of Court and Chief of the Judicial Records Office of the Supreme Court, which stated that petitioner is not exempt from paying the prescribed legal fees for petitions it file with the Supreme Court.

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WHEREFORE, premises considered, the Petition for Review is hereby **DENIED DUE COURSE** for lack of merit and is, accordingly, **DISMISSED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA COTANGCO- MANALASTAS
Associate Justice