REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1994 (CTA CASE No. 9091)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
ERWIN CASACLANG, *Respondent.*	Promulgated: FEB 11 2019 2:15 p.m.

x---x

RESOLUTION

Records show that on January 14, 2019, petitioner Commissioner of Internal Revenue (CIR) filed, through registered mail, his "MOTION TO ADMIT PETITION FOR REVIEW,"[1] attaching thereto his Petition for Review.[2] It is noted that the filing of the said Motion is in relation to the appeal by the CIR of the Decision dated August 6, 2018 and the Resolution dated December 4, 2018, both promulgated by the Special Third Division of this Court in CTA Case No. 9091, entitled "*Erwin Casaclang vs. Commissioner of Internal Revenue (RDO 041 Mandaluyong City).*

In assailing the said Decision and Resolution of the Special Third Division, the CIR's recourse before this Court *En Banc* is governed by Section 18 of Republic Act (RA) No. 1125, as amended RA No. 9282, to wit:

---

[1] *En Banc Docket,* pp. 1-4.
[2] *Ibid.,* pp. 5-12.

"SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* - No civil proceeding involving matters 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*." (Underlining supplied.)

In relation thereto, Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provide, as follows:

"RULE 8
PROCEDURE IN CIVIL CASES

XXX XXX

SEC. 3. *Who may appeal; period to file petition.* -

XXX XXX XXX

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen (15) days from the expiration of the original period within which to file the petition for review.

XXX XXX XXX" (Underlining supplied.)

Based on the foregoing provisions, in order to successfully file a Petition for Review before the Court *En Banc*, a party litigant must file his Petition for Review, or a motion for extension of time to file the same, within fifteen (15) days from receipt of the questioned decision or resolution. Unfortunately for the CIR in this case, he failed to comply with the said reglementary period.

It is clear in his Motion to Admit Petition for Review that the CIR received a copy of the assailed Resolution denying his motion for reconsideration on December 7, 2018. Thus, pursuant to the above-quoted provisions of the RRCTA, he had fifteen (15) days from December 7, 2018, or until December 22, 2018, within which to file his Petition for Review, or a motion for extension of time to file the same. However, since the said last day for filing fell on a Saturday, while December 24 and 25 were declared as holidays, and December 26 was declared by the Supreme Court as non-working day for all courts, the CIR had until the next working day, *i.e.*, on December 27 within which to file the said pleading or motion. Records show, however, that the CIR filed the said Motion only on January 14, 2019, or eighteen (18) days beyond the prescribed period of fifteen (15) days. Consequently, the assailed Decision and Resolution of the Special Third Division in CTA Case No. 9091 became final and executory, in view of the CIR's fatal mistake of failing to timely file his Petition for Review.

As held by the Supreme Court in the case of *Apex Mining Co., Inc. vs. Commissioner of Internal Revenue*,[3] the right to file an appeal granted to litigants is merely statutory and strict compliance therewith is not only mandatory, but also jurisdictional, to wit:

> "To stress, the right to appeal is merely statutory and one who seeks to avail of it must comply with the statute or rules. <u>The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against</u>

---

[3] G.R. No. 122472, October 20, 2005.

> needless delays. Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory. And, just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party has the correlative right to enjoy the finality of a decision in his favor." (Underlining supplied.)

Finally, the Court notes that the Petition for Review likewise suffers from another infirmity, which is the failure to comply with the requirements set forth under Section 5, Rule 43 of the 1997 Rules of Civil Procedure, which is the submission of proof of service of a copy of the Petition for Review on the adverse party. Said Section 5 reads:

> "SEC. 5. *How appeal taken.*- Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency a quo. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.
>
> xxx xxx xxx."

Under Section 13, Rule 13 of the same Rules, if the service is made by registered mail, the following must be complied with, *viz:*

> "SEC. 13. *Proof of service.* - Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. xxx If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. xxx." *(*Underlining supplied.*)*

While the CIR was able to append the registry receipt to the Motion to Admit Petition for Review, attaching therein the Petition for Review, he failed to submit an Affidavit of

Service to prove proper service of the subject Petition for Review to the adverse party by registered mail. His failure to comply with the foregoing requirement shall be a sufficient ground for dismissal under Section 7, Rule 43 of the 1997 Rules of Civil Procedure, to wit:

> "SEC. 7. Effect of failure to comply with requirements. - The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, <u>proof of service of the petition</u>, and the contents of and the documents which should accompany the petition <u>shall be sufficient ground for the dismissal thereof.</u>" (Underlining supplied.)

WHEREFORE, premises considered, the Motion to Admit Petition for Review is **DENIED** for lack of merit, and the Petition for Review is hereby **DISMISSED** for being filed out of time and for petitioner's failure to comply with the proof of service requirement under Section 5, Rule 43 of the 1997 Rules of Civil Procedure in relation to Section 4(b), Rule 8 of the RRCTA.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice