REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

DNATA, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 842
(CTA Case No. 7780)

Present:
Castañeda, Jr., Acting P.J.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
MAR 18 2013 Apolinario 1:35 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed by Dnata, Inc., on November 2, 2011, pursuant to Rule 8 of the Revised Rules of the Court of Tax Appeals,[2] assailing the Decision

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[1] *Rollo*, CTA EB Case No. 842 (CTA Case No. 7780), pp. 1-67, with Annexes.
[2] RULE 8
PROCEDURE IN CIVIL CASES
SECTION 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
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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

promulgated by the First Division of the Court ("Court in Division") on July 18, 2011,[3] which dismissed the Petition for Review for lack of jurisdiction; and its Resolution issued on October 11, 2011,[4] which denied petitioner's Motion for Reconsideration and its Supplement to the Motion for Reconsideration.

The Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated July 18, 2011, as follows:

> Petitioner DNATA, Inc., alleges that it is a duly organized domestic corporation with principal address at the 4th Floor, International Passenger Terminal, Ninoy Aquino International Airport, Pasay City, and with Tax Identification No. 004-681-829-000.
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> It is legally created and licensed to operate, engage, and provide ground handling services to all private, military, domestic and international airlines, including, but not limited to, aircraft and/or ground support equipment repair, catering services, cargo warehousing, and generally to do any and all types of services necessary or related to the aviation industry.
>
> Respondent is the Commissioner of the Bureau of Internal Revenue (BIR) authorized to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith. She holds office at the 5th floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

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reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

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SEC. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

[3] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy, concurring; *Rollo*, pp. 20-99; *Annex "A."*

[4] *Ibid.*, pp. 40-49; *Annex "B."*

On September 12, 2007, respondent issued a Formal Assessment Notice (FAN) demanding that petitioner pay the assessed deficiency income tax, value-added tax, withholding tax on compensation, and expanded withholding tax for taxable year 2003 amounting to ₱3,744,523.50, ₱4,211,033.36, ₱6,159.33, and ₱344,658.94, respectively, inclusive of statutory increments, in the aggregate amount of ₱8,336,375.13.

On October 18, 2007, petitioner filed a Letter of Protest assailing the validity of the FAN and praying for its cancellation and withdrawal.

On March 18, 2008, respondent issued a Final Decision denying petitioner's protest on the ground that the latter failed to submit proof/documents necessary for the cancellation and withdrawal of the FAN within the reglementary period of sixty (60) days from the filing of the protest. The Final Decision was received by petitioner on March 27, 2008.

On April 28, 2008, petitioner filed the instant Petition for Review through registered mail which the Court received on May 5, 2008.

In her Answer filed on June 20, 2008 or within the period granted, respondent denies all the allegations in the Petition for Review except Paragraphs 6 and 7 pertaining to her personal circumstances. As a Special and Affirmative Defense, respondent contends that the questioned assessment has become final and executory per Section 3, 3.1.5 of Revenue Regulations No. 12-99 dated September 06, 1999, which requires a taxpayer protesting a tax assessment to submit documents in support of the protest within 60 days from filing. Respondent opines that petitioner failed to submit documents relevant to its protest, in violation of the cited Revenue Regulations, rendering the questioned assessment final and executory.

On September 1, 2008, the parties filed a Joint Stipulation of Facts and Issues raising the following issues for the resolution of the Court, to wit:

> "1. Whether or not Petitioner complied with Section 3 of Revenue Regulations No. 12-99 requiring that a tax protest should be accompanied with supporting documents within sixty (60) days from the date of filing of a protest.
>
> 2. Whether or not an alleged partial submission of supporting documents can result in the questioned assessment becoming final and executory in the absence of any communication from the BIR to Petitioner of the need for additional supporting documents.
>
> 3. Whether or not Petitioner is liable to pay for tax deficiencies in the total amount of ₱8,336,375.13 for taxable year 2003.
>
> 4 . Whether or not the tax assessment or deficiency is supported by substantial evidence.
>
> 5. Whether or not the Petition for Review states a cause of action."

In a Resolution dated September 8, 2008, the pre-trial conference was deemed terminated and the presentation of evidence proceeded.

Petitioner's first witness was its General Manager **Junard J. Cruz**. He testified that petitioner was formerly known as DNATA-WINGS AVIATION SYSTEMS CORPORTION. The corporate name was changed to DNATA, Inc. via an amendment to its Articles of Incorporation on June 02, 2004. Petitioner filed with the respondent its income tax returns (ITR) for 2003, 2004 and 2005.

On September 18, 2007, petitioner received from respondent a Formal Assessment Notice (FAN) to which it filed a formal protest on October 18, 2007.

On March 27, 2008, petitioner received the Final Decision on its formal protest. On April 28, 2008, petitioner sought the intervention of the Court through the instant Petition for Review.

Next on the witness stand was Court-commissioned **ICPA Oswaldo V. Umengan.** He testified that he conducted an examination in compliance with the audit and documentation requirement related to petitioner's alleged income tax deficiency of ₱3,774,523.50, VAT deficiency of ₱4,211,033.36, EWT deficiency of ₱344,658.94, and withholding tax on compensation deficiency of ₱6,159.33, or a total of ₱8,336,375.13, inclusive of interests and charges for the taxable year 2003 assessed by respondent. The audit was made to ascertain, among others, the correctness of the respondent's assessment which was based on the Audited Financial Statements/Income Tax Return (AFS/ITR) of petitioner.

On December 8, 2008, he submitted to the Court his report denominated as Audit Report by an Independent Certified Public Accountant as Commissioned by the Court of Tax Appeals - DNATA, Inc. Tax Case No. 7780 for the Taxable Year 2003. His report contains his findings on the various documents submitted to him by petitioner, all of which he examined and verified. The manner and results of his examination were explained in detail in compliance with the Court's directive.

In particular, his examination of pertinent documents on petitioner's alleged income tax deficiency for 2003 revealed that petitioner is not liable for the same. As explained in his report, petitioner's Net Operating Loss Carry-Over (NOLCO) and the tax credits sufficiently cover the disallowances due to under-withholding of taxes. Petitioner is however liable for deficiency output VAT in the amount of ₱73,345.62 for 2003, exclusive of interests and charges, and not in the amount of ₱4,211,033.36, as claimed by respondent.

Likewise valid is respondent's assessment for deficiency payment on withholding tax on compensation. After ascertaining the correct amount of salaries and wages and the corresponding tax due therein, there is an unremitted withholding tax of ₱3,524.86 due and payable. The total tax remittance for the twelve (12) months of 2003 is ₱1,790,888.12, while the total tax withheld and deducted on compensation is ₱1,794,412.98, thus an underpayment of the tax due. Petitioner is therefore liable for a basic withholding tax on compensation payment in the amount of ₱3,524.86.

Finally, various income payments revealed that the total corresponding deficiency for Expanded Withholding Tax (EWT) on disallowed income payment is ₱73,921.78. This is due to petitioner's failure to deduct and remit EWT on income payment for Rental expense, Professional Fees expense and Outside Services. The remainder of the total deficiency per respondent's investigation could be due to income payments differently classified for AFS/ITR presentation and for EWT purposes and erroneous assumption on the part of respondent. In any event, it appears that petitioner is liable for basic expanded withholding tax on income payments in the amount of ₱73,921.78.

After petitioner rested its case, respondent was declared to have waived the right to present evidence for failure to appear during the presentation of her evidence-in-chief.

On July 29, 2010, the Court issued a Resolution submitting the case for decision, taking into consideration petitioner's Memorandum filed on July 15, 2010, without respondent's Memorandum.[5]

[5] *Ibid.*, pp. 21-28.

The Ruling of the Court in Division

The Court in Division issued a Decision ruling as follows:

> **WHEREFORE,** the instant Petition for Review filed by DNATA, Inc., is hereby **DISMISSED,** for lack of jurisdiction.
>
> **SO ORDERED.**[6]

Aggrieved, petitioner filed a Motion for Reconsideration on August 9, 2011, and a Supplement to the Motion for Reconsideration on August 24, 2011, which were denied for lack of merit by the Court in Division in its Resolution promulgated on October 11, 2011.[7]

The Issue

Hence, the present Petition for Review, where petitioner assigns the sole issue of:

> WHETHER OR NOT THE PETITION SHOULD BE DISMISSED DUE TO PETITIONER'S FAILURE TO PAY THE FULL AMOUNT OF DOCKET FEE WITHIN THE PERIOD FOR FILING THE APPEAL - PARTIAL PAYMENT OF THE DOCKET FEE WAS MADE ON THE DATE OF THE FILING OF THE PETITION AND THE PAYMENT OF THE FULL AMOUNT WAS MADE SEVEN (7) DAYS THEREAFTER.[8]

Petitioner's Arguments

Petitioner claims that considering the attendant facts: that its case is meritorious; that the Petition for Review was not dismissed outright and it was only after trial on the merits that it was appraised of such defect; and that in the broader interest of justice and fair play

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[6] *Ibid.*, p. 78.
[7] *Ibid.*, p. 49.
[8] *Ibid.*, p. 6.

and the importance of deciding the case on the merits, the failure to pay the required docket fee does not automatically result to the dismissal of the appeal. Thus, it posits that the dismissal of a case on the ground of such defect is merely discretionary on the part of the appellate court.

Petitioner also asserts that for failure of the Court in Division to dismiss the Petition for Review outright, by allowing it to proceed with the trial and to present evidence to support its claim, the same are tantamount to an extension of time for the payment of the docket fee.

Petitioner finally argues that where the party did not deliberately intend to defraud the court in the payment of the required docket fee, the doctrine enunciating that a court only acquires jurisdiction upon payment of the prescribed docket fee does not apply. Thus, it prays for the leniency of the Court *En Banc* to resolve the case on the merits, and not on the ground as ruled by the Court in Division.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

In the case of *The Heirs of the Late Ruben Reinoso, Sr., v. Court of Appeals, et al.,*[9] the Supreme Court enunciated as follows:

> **The rule is that payment in full of the docket fees within the prescribed period is mandatory.**[10] In *Manchester v. Court of Appeals,*[11] it was held that a court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. The strict application of this rule was, however, relaxed two (2) years after in the case of *Sun Insurance Office, Ltd. v. Asuncion,*[12] wherein the Court decreed that **where the initiatory pleading is not**

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[9] G.R. No. 116121, July 18, 2011.
[10] *Ibid.*, citing *Pedrosa v. Hill, G.R. No. 120804, June 14, 1996, 257 SCRA 373.*
[11] *Ibid.*, citing *supra*, G.R. No. L-75919, May 7, 1987, 149 SCRA 562.
[12] *Ibid.*, citing *supra*, G.R. Nos. 79937-38 13, February 1989, 170 SCRA 274.

accompanied by the payment of the docket fee, the court may allow payment of the fee within a reasonable period of time, but in no case beyond the applicable prescriptive or reglementary period. This ruling was made on the premise that the plaintiff had demonstrated his willingness to abide by the rules by paying the additional docket fees required.[13] Thus, in the more recent case of *United Overseas Bank v. Ros*,[14] the Court explained that where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine enunciated in *Sun Insurance Office, Ltd.*, and not the strict regulations set in *Manchester*, will apply. It has been on record that the Court, in several instances, allowed the relaxation of the rule on non-payment of docket fees in order to afford the parties the opportunity to fully ventilate their cases on the merits. In the case of *La Salette College v. Pilotin*,[15] the Court stated:

> 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.[16] (*Boldfacing supplied.*)

From the foregoing, the Court may allow the payment of the fee within a reasonable period of time, but in no case beyond the applicable prescriptive or reglementary period; and the exercise of

[13] *Ibid.*, citing *supra*, note 12.
[14] *Ibid.*, G.R. No. 171532, August 7, 2007, 529 SCRA 334, 353.
[15] *Ibid.*, citing *supra*, G.R. No. 149227, December 11, 2003, 418 SCRA 380.
[16] *Ibid.*, citing *supra*, note 15.

such discretion is in accordance with the tenets of justice and fair play, as well as all the attendant circumstances.

In this wise, the Court *En Banc* notes the disquisition made by the Court in Division, to quote:

> Be that as it may, the strict application of the jurisdictional nature of the rule on payment of appellate docket fees may be mitigated under exceptional and meritorious circumstances to better serve the interest of justice. **In the case at bar however, there is no showing of any satisfactory reason to justify relaxation of what otherwise should be a stringent application of the rule on the payment of appellate docket and other lawful fees.**
>
> The liberal application of rules of procedure for perfecting appeals is still the exception, and not the rule; and it is only allowed in exceptional circumstances to better serve the interest of justice. Indeed, it is unfortunate that petitioner, which office is located only in Pasay City and could pay the required docket fees through postal money order, did not even bother to explain its delay and non-compliance with the Rules. **In other words, there is no compelling reason for the Court to deviate from the strict application of the law.**[17] (*Boldfacing supplied.*)

And a perusal of the arguments made, rather than admitting its lapses, it ascribes to the Court in Division that "it was only after the trial on the merits or after more than three (3) years that [p]etitioner was appraised of such defect in the Petition";[18] petitioner's failure to exercise due diligence in observing the basic rule of paying the required and/or correct docket fees is an omission which can only be attributed to itself.

Further, the term "substantial justice" is not a magic wand that would automatically compel the Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because

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[17] *Rollo*, pp. 36-37.
[18] *Id.*, at p. 8

their non-observance may result in prejudice to a party's substantive rights. Like all other rules, they are required to be followed, except only for the most persuasive of reasons when they may be relaxed to relieve litigants of an injustice not commensurate with the degree of their thoughtlessness in not complying with the procedure prescribed.[19]

Petitioner, in praying for leniency, states that it paid docket fees at the time it filed its Petition for Review on April 28, 2008, albeit insufficient; and with its willingness, even without waiting for a directive from this Court, paid the full amount after the Petition for Review was received on May 5, 2008.

However, the Court *En Banc* reiterates with approval the findings made by the Court in Division, that it is indeed unfortunate that petitioner, which office is located only in Pasay City and could pay the required docket fees through postal money order, did not even bother to explain its delay and non-compliance with the Rules; thus, its failure to show any satisfactory reason to justify relaxation of what otherwise should be a stringent application of the rule on the payment of appellate docket and other lawful fees, the sitting Court *En Banc* has no recourse but to dismiss the case at bench.

In sum, absent any cogent explanation to not comply with the rules, the rule must apply to the petitioner as they do to all.[20]

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. The Decision dated July 18, 2011, and Resolution dated October 11, 2011, promulgated by the First Division of the Court are hereby **AFFIRMED** *in toto*.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[19] Panay Railways, Inc. *v.* Heva Management and Development Corporation, G.R. No. 154061, January 25, 2012, citing *Far Corporation v. Magdaluyo*, G.R. NO. 148739, November 19, 2004, 485 Phil. 599, 610-611.
[20] Philippine National Bank *v.* Commissioner of Internal Revenue, CTA EB Case No. 145, Resolution April 19, 2006.

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice