REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1197
(CTA Case No. 8695)

- versus -

Present:

Del Rosario, *PJ,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

PHILIPPINE AIRLINES, INC.,
Respondent.

Promulgated:
JUL 01 2015
3:50 p.m.

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DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner, Commissioner of Internal Revenue (CIR), assailing the *Resolution*[1] dated March 27, 2014 and the *Resolution*[2] dated June 23, 2014 of the Third Division of the Court granting respondent's Motion for Summary Judgment and Petition for Revival of Judgment in relation to the previously decided case entitled "Philippine Airlines, Inc. vs. Commissioner of Internal Revenue" (CTA Case No. 6734, CTA EB No. 242 and G.R. No. 180151).

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[1] *Rollo*, pp. 20-31.
[2] *Rollo*, pp. 32-34.

The Facts

The facts, as culled from the records, are as follows:

Petitioner CIR is the head of the Bureau of Internal Revenue (BIR), a government agency tasked with the assessment and collection of all national internal revenue taxes, fees and charges, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Respondent, on the other hand, is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.[4]

On October 13, 2006, the former Second Division of the Court rendered a Decision[5] in CTA Case No. 6734 entitled "Philippine Airlines, Inc. vs. Commissioner of Internal Revenue" granting respondent's claim for refund in the amount of P1,048,375.132, the dispositive portion of which reads as follows:

> "**WHEREFORE,** premises considered, the present Petition For Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby directed to refund to petitioner PAL the reduced amount of P1,048,375.132, representing the 20% and 7½% final income tax withheld by depository banks on petitioner's interest income which were remitted to respondent, or in the alternative, to allow the petitioner a tax credit in the same amount.
>
> SO ORDERED."

Aggrieved, petitioner CIR moved for the reconsideration of the said Decision, which was denied by the former Second Division of the Court in a Resolution[6] dated December 8, 2006.

Petitioner appealed the Decision to the Court *En Banc*, docketed as CTA EB No. 242. The Court *En Banc* rendered a Decision[7] dated September 11, 2007 denying the petition, thus,

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[3] Par. I (2), Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), division docket, p. 244.
[4] Par. I (1), Stipulation of Facts, JSFI, division docket, p. 244.
[5] Annex "B", Petition for Revival of Judgment, division docket, pp. 28-56.
[6] Annex "C", Petition for Revival of Judgment, division docket, pp. 57-59.
[7] Annex "D", Petition for Revival of Judgment, division docket, pp. 60-69.

affirming the assailed decision and resolution of the Court in Division.

Petitioner then appealed the case to the Supreme Court docketed as G.R. No. 180151. In a Minute Resolution[8] dated January 28, 2008, the Supreme Court granted petitioner CIR's motion to withdraw appeal and considered the case closed and terminated. An Entry of Judgment[9] was issued, declaring the said resolution final and executory on March 11, 2008.

On August 13, 2013, respondent filed a Petition for Revival of Judgement[10] in relation to CTA Case No. 6734 above-mentioned. Considering that respondent was unable to file a motion for issuance of a writ of execution before the lapse of the five (5) year period after the date of entry of judgment on March 11, 2008, respondent prayed for the revival of judgment rendered in relation to CTA Case No. 6734 (CTA EB No. 242, G.R. No. 180151), pursuant to Section 6, Rule 39 of the Revised Rules of Civil Procedure and Article 1144 of the New Civil Code.

On October 31, 2013, petitioner filed her Answer[11] and alleged by way of special and affirmative defenses that Section 6, Rule 39 of the Revised Rules of Civil Procedure and Article 1144 of the New Civil Code are not applicable in the present case; that what is explicitly provided in Section 7, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) is execution of judgment "as a matter of right, on motion" and does not involve enforcement by independent action after the lapse of the period to execute the same; and that the subject petition is barred by laches.

On November 4, 2013, the Court issued a Notice of Pre-Trial Conference, informing the parties that a pre-trial conference is set on January 30, 2014.[12] Consequently, the parties filed their pre-trial briefs[13] and thereafter, their Joint Stipulation of Facts and Issues[14] on February 10, 2014.

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[8] Annex "E", Petition for Revival of Judgment, division docket, p. 70.
[9] Annex "F", Petition for Revival of Judgment, division docket, p. 71.
[10] Division docket, pp. 14-19.
[11] Division docket, pp. 91-97.
[12] Division docket, p. 99.
[13] Pre-Trial Brief for Petitioner (now respondent), division docket, pp. 168-181 and Respondent's (now petitioner) Pre-Trial Brief, division docket, pp. 230-233.
[14] Division docket, pp. 244-248.

Meanwhile, on January 22, 2014, respondent filed a Motion for Summary Judgment [15] alleging that petitioner's Answer raises no genuine issue as to any material fact in the petition.

The Court in Division, in its assailed *Resolution*[16] dated March 27, 2014, granted respondent's Motion for Summary Judgment and Petition for Revival of Judgment.

The Motion for Reconsideration[17] filed by petitioner was denied in the assailed *Resolution*[18] dated June 23, 2014.

Aggrieved, petitioner filed the instant Petition for Review.

Respondent was ordered to file its comment within ten (10) days from receipt of the Resolution[19] dated September 2, 2014. Respondent filed its Comment [on the Petition for Review][20] on September 23, 2014.

The Court *En Banc* resolved to give due course to the petition and ordered the parties to submit their respective memoranda[21].

Respondent filed its Memorandum [22] on November 27, 2014 while petitioner filed a Manifestation[23] on December 4, 2014 stating that she is adopting her Petition for Review as her Memorandum. Thus, the above-captioned case was submitted for decision on March 5, 2015.

The Issues

The issues[24] presented by petitioner are as follows:

a. Whether or not Section 6, Rule 39 of the Revised Rules of Civil Procedure and Article 1144 of the New Civil Code of the Philippines are applicable in the present case.

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[15] Division docket, pp.107-111.
[16] *Supra*, Note 1.
[17] Division docket, pp. 267-272.
[18] *Supra*, Note 2.
[19] *Rollo*, pp. 39-40.
[20] *Rollo*, pp. 41-47.
[21] *Rollo*, pp. 50-51, Resolution dated October 20, 2014.
[22] *Rollo*, pp. 52-60.
[23] *Rollo*, pp. 61-62.
[24] *Rollo*, p. 11.

b. Whether or not the subject Petition for Revival of Judgment is barred by laches.

The Ruling of the Court

The Petition for Review has no merit.

A cursory reading of the issues and arguments raised by petitioner in the instant petition readily reveals that the same were already thoroughly discussed and passed upon by the Third Division in its assailed Resolutions. Be that as it may, the Court *En Banc* shall briefly address the arguments of petitioner.

Petitioner insists that Section 6 of Rule 39 of the Revised Rules of Civil Procedure and Article 1144 of the New Civil Code are not applicable in the present case and that the petition for review is barred by laches.

Section 7 of Rule 14 of the RRCTA provides for the rule on execution of judgment, *to wit*:

> "SECTION 7. *Execution of Judgment.* — Upon the expiration of the period to appeal from a judgment or order that disposes of the action or proceeding and no appeal has been duly perfected, execution shall issue as a matter of right, on motion.
>
> If an appeal has been duly perfected and finally resolved, execution may be forthwith applied for in the court of origin, on motion of the judgment obligee, submitting therewith a certified true copy of the judgment or final order sought to be enforced and of its entry, with notice to the adverse party."

Unfortunately, as observed by the Court in Division, the above provision is silent as to when and how can a judgment which has long attained finality be revived and executed. Thus, Section 6 of Rule 39 of the Revised Rules of Civil Procedure applies suppletorily in this case, pursuant to Section 3 of Rule 1 of the RRCTA which provides that "[t]he Rules of Court in the Philippines shall apply suppletorily to these Rules." Suppletory is defined as "supplying deficiencies." It means that the provisions in the Rules of

Court will be made to apply only where there is an insufficiency in the applicable rule.[25]

Section 6 of Rule 39 of the Revised Rules of Civil Procedure provides:

> "Sec. 6. *Execution by motion or by independent action.* — **A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.** The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations." *(Emphasis Supplied)*

In relation thereto, Article 1144 of the New Civil Code provides:

> "Article 1144. The following actions must be brought within **ten years** from the time the right of action accrues:
>
> (1) Upon a written contract;
> (2) Upon an obligation created by law;
> (3) **Upon a judgment**." *(Emphasis Supplied)*

From the foregoing, once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from the date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five years, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint within ten years from the time the judgment becomes final. [26]

Thus, an action to revive judgment only requires proof of a final judgment which has not prescribed and has remained unexecuted after the lapse of five (5) years but no more than ten (10) years from its finality.[27]

We agree with the findings of the Court in Division that respondent has complied with the requirements for the revival of judgment, as follows:

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[25] *Government Service Insurance System, et. al. vs. Villaviza, et. al.*, G.R. No. 180291, July 27, 2010.
[26] *Villeza vs. German Management and Services, Inc, et. al.*, G.R. No. 182937, August 8, 2010.
[27] *Enriquez vs. Court of Appeals*, G.R. No. 137391, December 14, 2001.

> "In the present case, the Entry of Judgment certified by Ma. Lourdes C. Perfecto, Deputy Clerk of Court and Chief of Judicial Records Office of the Supreme Court indicated that the Resolution by the Second Division of the Supreme Court in the case entitled *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180151 dated January 28, 2008 became final and executory and was recorded in the Book of Entries of Judgment on March 11, 2008. Furthermore, records show that the same has not yet been executed up to this time. On the other hand, the instant *Petition for Revival of Judgment* was filed on August 13, 2013 which was more than five years from the date of Entry of Judgment. Also, counting from March 11, 2008, petitioner has ten years or until March 10, 2018 to apply for the revival of judgment. Therefore, the revival of judgment filed by petitioner on August 13, 2103 is well within the prescriptive period provided by law."

With regard to petitioner's argument that the petition for review is barred by laches, again, *We* agree with the findings of the Court in Division, *to wit*:

> "As to the allegation interposed by respondent in her *Answer* that the *Petition* is barred by laches and that the lapse of more than five years from the Entry of Judgment on March 11, 2008 should convince the Court that petitioner failed to exercise due diligence to assert its right, let it be reiterated that an action to revive judgment only requires proof of final judgment and that the same remained unexecuted after the lapse of five years but not more than ten years from its finality. Laches can never set in since the *Petition for Revival of Judgment* was filed within the period set by the Rules."[28]

Finding no reversible error, *We* affirm the assailed *Resolution* dated March 27, 2014 and *Resolution* dated June 23, 2014 of the Third Division of the Court.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[28] Citing *Enriquez vs. Court of Appeals,* G.R. No. 137391, December 14, 2001 and *Republic of the Philippines vs. Unimex Micro-Electronics GmBH*, G.R. Nos. 166309-10, March 9, 2007.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
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
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice