REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

AICHI FORGING COMPANY OF ASIA, INC.,
Respondent.

EB No. 328
(CTA Case No.7120)

Present:
ACOSTA, *PJ.*
CASTAÑEDA JR.,
BAUTISTA
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ*:

Promulgated:

FEB 13 2008 GAApolinario 3:25 p.m.

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RESOLUTION

Casanova, J.

On November 19, 2007, Petitioner-Commissioner of Internal Revenue (CIR) filed a "Motion for Extension of Time to File Petition for Review" praying that the petitioner be given thirty (30) days from November 21, 2007 or until December 21, 2007, within which to file a Petition for Review with the *CTA En Banc*. In En Banc Resolution No. 01-04-05-CTA, as amended by En Banc Resolution No. 02-2207 dated November 21, 2007, petitioner was granted a final and non-extendible period of fifteen (15) days only from November 21, 2007 or until December 6, 2007 within which to file a Petition for Review.

On December 11, 2007, petitioner filed a "Motion for Reconsideration" praying that the *CTA En Banc* reconsider its Order dated November 21, 2007 and further prayed that the Court grant petitioner's prayer for thirty (30) days from November 21, 2007 or until December 21, 2007, within which to file said petition. On December 18, 2007, the *CTA En Banc* promulgated a Resolution denying petitioner's "Motion for Reconsideration". Notwithstanding the said denial, petitioner filed the instant "Petition for Review" on December 20, 2007. On the other hand, respondent-AICHI Forging Company of Asia, Inc. (AICHI) filed a Comment (to the Motion for Reconsideration dated December 11, 2007) on December 21, 2007.

Respondent-AICHI's Comment is hereby rendered **MOOT** and **ACADEMIC** since petitioner's Motion for Reconsideration has already been resolved by the *CTA En Banc* in its Resolution dated December 18, 2007.

With regard to the instant Petition for Review, the Court found that the same was filed out of time.

As resolved by the CTA En Banc in its December 18, 2007 Resolution, and We reiterate, to wit:

> *"Acting on petitioner's 'Motion for Reconsideration' filed on December 11, 2007, the Court hereby resolves to DENY the same. It is expressly provided under the Revised Rules of the CTA, Rule 8, Sec. 3(b) thereof, that 'the Court may grant an additional period <u>not exceeding fifteen</u> days from the expiration of the original period within which to file the petition for review.' It is in the light of this provision that the Court in its Minute Resolution on November 21, 2007 granted to petitioner a <u>final and non-extendible period of fifteen (15) days only</u> from November 21, 2007 or until December 06, 2007 within which to file her intended petition for review.*
>
> *The aforequoted provision of Section 3(b), Rule 8 of the Revised Rules of the CTA was taken from Rule 42, Sec. 1a of the rules of Court which provides, to wit:*
>
> > *'x x x Upon proper motion and the payment of the full amount of the docket and lawful fees and the deposit for costs before the expiration of the reglementary period,*

> *the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days' (Underscoring supplied)*

From the foregoing, the Court may grant further extension in no case to exceed fifteen (15) days if petitioner's counsel has the most compelling reason for his request. That the preparation and filing of the petition requires more time as the reason given by petitioner's counsel is not compelling and acceptable to the Court. If all the other lawyers of petitioner can comply with the 15-day extension required for the filing of petition with the Court En Banc, the Court sees no valid reason why the present counsel cannot also do the same.

Moreover, it is not lost to the Court that the pending incident is actually another motion for extension of time to file petition in the guise of a motion for reconsideration. Be that as it may, it has been filed out of time on December 11, 2007, the extension of fifteen (15) days having expired on December 06, 2007."

Having been resolved in the negative the 'Motion for Reconsideration" filed by the petitioner thus, giving her a final and non-extendible period of only fifteen (15) days from November 21, 2007 or until December 6, 2007 within which to file a Petition for Review with the CTA En Banc, it is clear from the foregoing that the instant petition was filed beyond the extension given to her.

WHEREFORE, premises considered, the petitioner's Petition for Review is hereby **DISMISSED** for being filed out of time.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

I join the dissent of Justice Enriquez

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

I JOIN THE DISSENT OF J. ENRIQUEZ

ERLINDA P. UY
Associate Justice

See Dissenting Opinion

OLGA PALANCA-ENRIQUEZ
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

AICHI FORGING COMPANY OF ASIA, INC.,
Respondent.

C.T.A. EB NO. 328
(C.T.A. CASE NO. 7120)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

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x -- x

DISSENTING OPINION

PALANCA-ENRIQUEZ, J.:

With all due respect to my esteemed colleague, Justice Caesar A. Casanova, I enter my dissent to the Resolution dismissing the Petition For Review for the broader interest of substantial justice.

Records show:

1) On November 19, 2007, petitioner Commissioner of Internal Revenue filed a "Motion for

Extension of Time To File Petition for Review" praying for thirty (30) days extension from November 21, 2007, or until December 21, 2007 to file the Petition for Review;

2) In a Resolution dated November 21, 2007, the majority, however, granted the petitioner only fifteen (15) days to file the Petition for Review, or until December 6, 2007, which resolution was received by petitioner on November 27, 2007;

3) On December 11, 2007, petitioner filed a "Motion for Reconsideration" of the Resolution dated November 21, 2007 reiterating its prayer for thirty (30) day extension to file the Petition for Review, or until December 21, 2007;

4) In a Resolution dated December 18, 2007, the majority denied petitioner's "Motion for Reconsideration"; and

5) On December 20, 2007, petitioner filed the Petition For Review. Apparently, when the Petition For

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Review was filed on December 20, 2007, petitioner has not yet received the Resolution dated December 18, 2007, denying her "Motion for Reconsideration".

Petitioner Bureau of Internal Revenue is a government entity, and it is of public knowledge that like all government entities and instrumentalities, it is undermanned and saddled with heavy pressure of work, which was the reason given by the petitioner in requesting for thirty (30) days extension. This, in my humble opinion, is a valid and compelling reason for Us to grant the 30-day requested period.

Furthermore, it is well-settled that as much as possible a case should be decided on its merits and not on technicalities; that every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from unacceptable plea of technicalities; that the Supreme Court, in the exercise of equity jurisdiction, decided to disregard technicalities in order to resolve the case on its merits based on evidence.

WHEREFORE, for all the foregoing, and in the broader interest of substantial justice, I therefore vote to **ADMIT** the Petition for Review.

OLGA PALANCA-ENRIQUEZ
Associate Justice