REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

MERCK SHARP & DOHME (I.A.) LLC-PHILIPPINE BRANCH,
Respondent.

CTA EB NO. 2696
(CTA Case No. 9803)

Present:

DEL ROSARIO, *P.J.*,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, *JJ.*

Promulgated:
NOV 18 2022
11:30am

x--x

RESOLUTION

On October 3, 2022, a Petition for Review was filed by petitioner Commissioner of Internal Revenue, assailing the Amended Decision dated May 11, 2022 *(Assailed Amended Decision)* and the Resolution dated August 18, 2022 *(Assailed Resolution)* rendered by the Court in Division in the case entitled *Merck Sharp & Dohme (I.A.) LLC-Philippine Branch vs. Commissioner of Internal Revenue*, docketed as CTA Case No. 9803.

A perusal of the Petition for Review discloses that the same is wanting of allegations showing that this Court has jurisdiction over the case as required under Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals *(RRCTA)*.[1] Specifically, the said Petition for Review failed to state the specific material dates showing that it was filed within the period as required under Section 6, Rule 43 of the Rules

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[1] SEC. 2. Petition for review; contents. - The petition for review shall **contain allegations showing the jurisdiction of the Court**, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition. *(Boldfacing supplied)*

of Court.[2] Such failure of the petitioner shall be sufficient ground for the dismissal of the Petition for Review.[3]

At any rate, even if the Court were to overlook petitioner's non-compliance with the mandatory requirements of the aforesaid Rule of the RRCTA and the Rules of Court, still, the Petition for Review must be dismissed outright.

Section 3(b) in relation to Section 4(b) of Rule 8 of the RRCTA gives the party adversely affected by a decision or resolution of the Court in Division a period of fifteen (15) days from receipt of the copy of the questioned decision or resolution within which to appeal before this Court, *viz.:*

> "SEC. 3. Who may appeal; period to file petition. - 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 days from the expiration of the original period within which to file the petition for review."
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> xxx xxx xxx
>
> "SEC. 4. Where to appeal; mode of appeal. - xxx
>
> (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.**"
> *(Boldfacing supplied)*

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[2] Section 6. *Contents of the petition.* — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall **state the specific material dates showing that it was filed within the period** fixed herein. *(Boldfacing supplied)*

[3] Section 7, Rule 43 of the Rules of Court states that **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, proof of service of the petition, and **the contents** of and the documents which should accompany the petition **shall be sufficient ground for the dismissal** thereof. *(Boldfacing supplied)*

The Notice of Resolution reveals that petitioner received the Assailed Resolution on September 5, 2022.[4] Pursuant to Section 3(b), Rule 8 of RRCTA, petitioner had fifteen (15) days, or until **September 20, 2022**, within which to file her Petition for Review before this Court. Petitioner filed her Petition for Review only on **October 3, 2022**. Clearly, petitioner belatedly filed her Petition for Review.

It has been ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[5]

At this juncture, it is apt to point out that as petitioner failed to timely appeal within the fifteen-day reglementary period, the Assailed Amended Decision and Assailed Resolution of the Court in Division automatically became final and executory.

Judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected.[6]

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Commissioner of Internal Revenue on October 3, 2022 is **DISMISSED** for failure to comply with the requirements of the Revised Rules of the Court of Tax Appeals and the Rules of Court, and for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

[4] CTA EB Docket, p. 36.
[5] Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.
[6] Barrio Fiesta Restaurant, et al. vs. Helen C. Beronia, G.R. No. 206690, July 11, 2016.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Official Business)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice