REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

A. SORIANO COPORATION,
Petitioner,

C.T.A. EB No. 71
(C.T.A. Case No. 4803)

-versus-

Members:
Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 07 2005 GAApolinario

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

This is an appeal by way of a Petition for Review before the Court of Tax Appeals *En Banc* filed on March 16, 2005 seeking a review of the Resolution dated 14 October 2004 of the then Court of Tax Appeals as well as the Resolution dated 23 February 2005 rendered by the Second

Division of the Court of Tax Appeals in C.T.A. Case No. 4803 entitled "A. Soriano Corporation vs. Commissioner of Internal Revenue".

The assailed October 14, 2004 Resolution granted respondent's Motion for the Issuance of a Writ of Excecution, the dispositive portion thereof reads as follows:

> "**WHEREFORE**, premises considered, respondent's **Motion for Issuance of Writ of Execution** is hereby **GRANTED**. Accordingly, let the corresponding "Writ of Execution" be served against petitioner A. Soriano Corporation pursuant to the Decision the court promulgated on July 1, 1997."

Petitioner filed a Motion for Reconsideration praying for the reversal of the abovementioned ruling. The Court's Second Division denied petitioner's Motion for Reconsideration in the second assailed Resolution for lack of merit. The Court's Second Division ruled:

> "In the instant case, no supervening event occurred which would warrant amendment of the judgment. The imposition of interest and penalty surcharge on deficiency income assessment for taxable year 1985 based on the 1997 National Internal Revenue Code (NIRC) should have been raised by petitioner as an issue when it appealed to the Court of Appeals and before the Court's ruling on the matter became final and executory.
>
> When a decision becomes final and executory, it becomes valid and binding upon the parties and their successors-in-interest. Such decision or order can no longer be disturbed or reopened no matter how erroneous it may have been. Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts must at some point of time fixed by law become final. Otherwise, there will be no end to litigation." (Citations omitted)

The facts as culled from the records of the case are as follows:

On July 1, 1997, the then Court of Tax Appeals promulgated its Decision in the afore-mentioned C.T.A. Case No. 4803. The lone issue raised by the petitioner in said case was the propriety of the disallowance by the Commissioner of Internal Revenue of its Bad Debts and Interest Expenses as deductions from its gross income for the year 1985. The Court ruled that respondent's disallowance of bad debts expense from petitioner's 1985 income was proper but the disallowance of interest expense was erroneous. The dispositive portion of the Court's Decision reads:

> "**WHEREFORE**, in view of all the foregoing, the 1985 Deficiency Income Tax Assessment issued by the respondent against the petitioner is hereby **MODIFIED**. Petitioner is hereby ordered to pay respondent the amount of P6,735,539.20, representing deficiency income tax for the year 1985, plus 25% surcharge and 20% annual interest from April 15, 1989 until fully paid pursuant to Sections 282 and 283 (now 248 and 249, respectively) of the Tax Code, and costs of suit."

Petitioner filed a Motion for Reconsideration on July 18, 1997 which was denied by the Court in a Resolution promulgated on September 16, 1997. Hence, petitioner appealed to the Court of Appeals by filing a Petition for Review, docketed as CA-G.R. SP No. 45515. Petitioner made the following assignment of errors:

1. THE RESPONDENT COURT ERRED IN FINDING THAT THE BAD DEBTS CLAIMED BY PETITIONER AS DEDUCTIBLE EXPENSE FOR THE TAXABLE YEAR 1985 ARE NOT WORTHLESS.

2. THE RESPONDENT COURT ERRED IN FINDING THAT BAD DEBT EXPENSE CLAIMED BY PETITIONER AS DEDUCTION FOR THE TAXABLE YEAR 1985 DID NOT COMPLY WITH THE REQUIREMENTS FOR DEDUCTIBILITY.

On January 20, 2003, the Fourteenth Division of the Court of Appeals promulgated its Decision in CA-G.R. SP NO. 45515 which affirmed *in toto* the ruling of the Court of Tax Appeals. Petitioner filed a Motion for Reconsideration on March 26, 2003 with the Court of Appeals raising no other issues and arguments except those pertaining to the deductibility of its bad debts expense. On August 20, 2003, the Former Fourteenth Division of the Court of Appeals promulgated its Resolution denying petitioner's Motion for Reconsideration for lack of merit.

Petitioner appealed to the Supreme Court through a Petition for Review filed on October 1, 2003, docketed as G.R. No. 159711. Petitioner made the following assignment of errors:

I. The Honorable CA erred in not considering the numerous statements of accounts sent by PETITIONER to the debtor companies as demands for payment for the debts owed to PETITIONER;

II. The Honorable CA erred in requiring PETITIONER to prove and show that the debtor companies have insufficient properties to pay its creditors contrary to law and prevailing jurisprudence as well as rules and regulations issued by the BIR then existing at the time when the debts in question were written-off;

III. The Honorable CA erred in not considering the following facts as sufficient compliance with the requirement that the taxpayer should ascertain the debt to be worthless – 1.) That at the time that the bad debts in question were claimed as deductions, such debts were already outstanding for more than 2 years, 2.) Despite the sending of numerous statements of accounts constituting demands for payment, the debts remained unpaid, 3.) The debtor companies because of insolvency subsequently ceased their respective operations, and 4.) The debts owed by the debtor companies were all unsecured debts, hence, would not have enjoyed preference over the claims of the secured creditors of the debtor companies;

IV. The Honorable CA erred in applying the case of *Philippine Refining Co. vs. Court of Appeals (G.R. No. 118794 dated May 8, 1996)* in affirming the Decision of the Honorable CTA finding PETITIONER liable for deficiency income tax for taxable year 1985.

V. The Honorable CA erred in not considering that the evidence presented by PETITIONER as borne by the records of the case substantially complies with the requirements for deductibility of bad debts.

VI. The Honorable CA erred in sustaining the Decision of the Honorable CTA disallowing the bad debts claimed by PETITIONER as deduction from its gross income for taxable year 1985; and

VII. The Honorable CA erred in finding that Petitioner is liable for deficiency income tax for taxable year 1985.

Before filing the abovementioned petition with the Supreme Court, petitioner filed a Motion for Extension of Time to File Petition for Review dated September 18, 2003 praying for an additional fifteen (15) days from September 19, 2003, or until October 4, 2003.

On October 6, 2003, the Supreme Court through its Second Division promulgated its Resolution denying petitioner's Motion for Extension of Time. Petitioner filed a Motion for Reconsideration dated November 24, 2003.

However, on November 17, 2003, the Supreme Court's Second Division rendered a Resolution ***denying*** petitioner's Petition for Review on Certiorari "for petitioner's failure to take the appeal within the reglementary period of fifteen (15) days in accordance with Section 2, Rule 45 in relation to Section 5(a), Rule 56, in view of the denial of the motion for extension of time to file petition in the resolution dated October 6, 2003".

Petitioner filed a Motion for Reconsideration dated December 22, 2003. Subsequently, petitioner filed a Motion to Withdraw Petition for Review dated March 4, 2004 in view of the filing of its "application for abatement of interest and penalties" with Bureau of Internal Revenue.

In a Resolution dated 26 January 2004, a copy of which was received by this Court on March 17, 2004, the Supreme Court denied petitioner's motions with finality. The Resolution reads as follows:

> "G.R. No. 159711 (A. SORIANO CORPORATION VS. COMMISSIONER OF INTERNAL REVENUE). – Acting on petitioner's motions for reconsideration of the resolution dated 6 October 2003 which denied petitioner's motion for extension to file petition for review on certiorari for lack of showing that petitioner has not lost the fifteen (15)-day reglementary period to appeal, and the resolution dated 17 November 2003 which denied the petition for review on certiorari for late filing, the Court Resolves to **DENY** the motions with **FINALITY**, no compelling reason having been adduced to warrant the reconsideration sought."

Consequently, an Entry of Judgment was issued by the Second Division of the Supreme Court proclaiming that the Resolution dated November 17, 2003 denying the petition for review has on March 18, 2004 become final and executory and recorded in the Book of Entries of Judgments.

In a Resolution dated 31 March 2004, the Supreme Court stated that "petitioner's motion to withdraw petition for review on certiorari dated 4 March 2004 is NOTED WITHOUT ACTION, the petition having been denied in the Resolution dated 17 November

2003 and the motion for reconsideration thereof denied with finality in the resolution dated 26 January 2004".

On July 23, 2004, the respondent filed a Motion for Issuance of Writ of Execution with the Court of Tax Appeals asserting that the judgment has become final and executory on March 18, 2004 per Entry of Judgment issued by the Supreme Court and further alleging that up to the date of filing of his Motion, no part of said judgment has been paid and the whole thereof still remains unpaid and unsatisfied.

According to the petitioner, on September 30, 2004 it paid a total of P11,197,833.72 to the Bureau of Internal Revenue for what it believed as its deficiency income tax liability for 1985.

As stated at the outset, on October 14, 2004 respondent's Motion for the Issuance of Writ of Execution was granted and petitioner's Motion for Reconsideration was subsequently denied.

Unsatisfied with the rulings in both Resolutions, petitioner filed a Petition for Review with this Court *En Banc* praying for the modification of the assailed Resolutions dated October 14, 2004 and February 23, 2005.

Petitioner made a lone assignment of error in its petition:

"THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN RULING THAT THE EXECUTION OF THE JUDGMENT IS NOT UNJUST AND INEQUITABLE UNDER THE CIRCUMSTANCES"

Petitioner argues that the applicable law is the 1985 Tax Code, as amended by PD 1705, thus:

"25. It is undisputed that the Respondent's assessment pertains to the taxable year 1985. In view of the non-retroactivity of laws, the applicable provisions that should govern the computation of Petitioner's deficiency tax assessment are those found in the 1985 Tax Code, as amended by PD 1705 which, under Section 51 thereof, provides among others, as follows –

(d) *Interest on deficiency*. – Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner and shall be collected as a part of the tax at the rate of twenty per centum per annum from the date prescribed for the payment of the tax, (or, if the tax is paid in installment from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: Provided, That the maximum amount that may be collected as interest on the deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.

(e) Additions to the tax in case of non-payment. – (1) xxx

(2) *Deficiency.* - Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any addition to the taxes provided for in Section seventy-two of this Code is not paid in full within thirty days from the date of notice and demand from the Commissioner of Internal Revenue, there shall be collected upon the unpaid amount as part of the tax, interest at the rate of twenty per centum per annum from the date of such notice and demand until it is paid: Provided, That the maximum amount that may be collected as interest on deficiency shall in case *(sic)* exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.

(3) *Surcharge.* – If any amount of the tax shown on the return is not paid in full on or before the date prescribed for its payment under paragraph (a) of this Section, any amount of deficiency, and any interest assessed in connection therewith, is not paid in full within the period prescribed in the assessment notice and demand required under paragraph (b) of this Section, there shall be collected in addition to the interest prescribed herein and in paragraph (d) above and as part of the tax a surcharge of ten per centum of the tax unpaid. (Underscoring supplied)

26. Accordingly, applying the foregoing provisions, the tax liability of Petitioner should be computed as follows -

Deficiency Tax Due	P	4,209,712.00
Add: 20% Interest under Sec. 51 (d), not to exceed 3 years, or 60%		2,525,827.20
	P	6,735,539.20
10% Surcharge on the total unpaid tax under Sec. 51 (e) (3)		420,791.00

20% Additional interest on the basic
Tax and deficiency not to exceed 3
years or 60% under Sec. 51 (e) (2)_____4,041,323.52

P 11,197,833.72

27. Petitioner paid this amount on 30 September 2004 as evidenced by its On Line Payment Inquiry issued by the Landbank of the Philippines."

For his part, respondent Commissioner of Internal Revenue argues that the imposition of 25% surcharge and delinquency interest at 20% per annum until full payment of the deficiency tax is correct. According to the respondent, in the imposition of delinquency interest, the applicable law is that which is in effect at the time of the issuance of the notice of assessment and demand. The notice of assessment and demand was issued on April 15, 1989, indicating the due date of payment as "on or before 30 days from receipt" thereof. At that time, the applicable law on the imposition of delinquency interest was Section 283 of the 1986 Tax Code. Furthermore, respondent argues that "assuming *arguendo* that the imposition of surcharge and interest is erroneous, since the decision has become final and executory, it can no longer be reviewed. Notably, when petitioner appealed the decision to the Court of Appeals, it did not raise as an issue the imposition of the surcharge and interest".

The petition is bereft of merit.

It is well-settled that an order granting the issuance of a writ of execution of a final judgment is not appealable. As early as the case of ***Molina vs. De la Riva***[1] the Supreme Court had already ruled that appeal

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[1] No. 4244, September 20, 1907 (8 Phil. 571)

is not the proper remedy against an order of execution issued pursuant to a final judgment. The Supreme Court ruled:

> "The Code of Civil procedure (sec. 105) allows supplemental pleadings to be filed, but that section does not allow a supplemental answer to be filed and a trial thereon had after the case has passed to final judgment and an order been made for the execution of the sentence. *In such circumstances a defendant must commence an original action asking that the proceedings for the execution of the sentence be enjoined.*" (Italics supplied)

Nevertheless, there are certain exceptions to the general rule that an appeal is not the proper remedy against an order granting execution of a final judgment. Jurisprudence has established that where the order varies the terms of the judgment[2] or where, being vague, the court renders what is believed to be a wrong interpretation of the judgment[3] an appeal could be allowed.

Petitioner's petition for review, however, is not based on either of the afore-mentioned exceptions. In fact, petitioner's appeal seeks to vary a final and executory decision of the then Court of Tax Appeals in C.T.A. Case No. 4803. The real intention of the petitioner in filing the present Petition for Review is for the modification of the interest and surcharge imposed by Court of Tax Appeals in its Decision dated July 1, 1997.

This appeal brings to fore the age old legal principle of *immutability of final and executory judgments*. The Supreme Court explained the rationale behind said principle as follows:

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[2] J.M. Tuazon & Co., Inc. vs. Estabillo, L-20610, Jan. 10, 1975
[3] Castro vs. Surtida, 87 Phil 166

> "xxx xxx xxx. Wisely put, the general rule is that a final judgment of the Supreme Court cannot be altered or modified by the lower court regardless of any occasional injustice. The equity of a particular case must yield to the overmastering need of certainty and unalterability of judicial pronouncements. Any amendment or alteration which substantially affects a final and executory judgment, is null and void for lack of jurisdiction."[4]

In the case before Us, the petitioner essentially prays for the modification of the Decision of the Court of Tax Appeals pertaining to the imposition of interest and surcharge on petitioner's deficiency income tax using the pertinent provisions of the 1986 Tax Code. Petitioner believes that it is the 1985 Tax Code that should have been applied by the Court.

In its Petition for Review with the Court of Appeals, however, petitioner failed to put in issue the alleged incorrectness of the rates of interest and surcharge imposed in the Decision of the Court of Tax Appeals. Even in its Petition for Review in the Supreme Court, although denied for being filed out of time, petitioner did not raise the issue of the impropriety of the rates of interest and surcharge applied by the Court of Tax Appeals. The Court of Tax Appeals' Decision, having been affirmed by the Court of Appeals coupled with the subsequent denial of petitioner's Petition for Review in the Supreme Court with Entry of Judgment dated March 18, 2004, had become final and executory, as such, the principle of immutability of judgments bars any amendment or modification thereof.

In the words of the Supreme Court:

> "[A]ttempts to frustrate or put off enforcement of an executory judgment on the basis of facts or events occurring before the judgment became final cannot meet with success. Facts or events bearing on the substance of the obligation subject of the action should ordinarily be alleged during the issue-formulation stage or otherwise by proper amendment, and proved at the trial; if discovered after the case has

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[4] Flores vs. Court of Appeals, et al., G.R. Nos. 97556 and 101152, July 29, 1996

been submitted but before the decision is rendered, proved after obtaining a reopening of the case; and if discovered after judgment has been rendered but before it becomes final, substantiated at a new trial which the court in its discretion may grant on the ground of newly discovered evidence, pursuant to Rule 37, Rules of Court. Once the judgment becomes executory, the only other remedy left to attempt a material alteration thereof is that provided for in Rule 38 of the Rules of Court (governing petitions for relief from judgments), or an action to set aside the judgment on account of extrinsic, collateral fraud.

There is no other permissible mode of preventing or delaying execution on equitable grounds predicated on facts occurring before finality of judgment."[5]

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

SO ORDERED.

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

We Concur:

(on leave)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(on leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

[5] Baclayon vs. CA, 182 SCRA 762 (1990) cited in Pacific Mills, Inc. et al. vs. Padolina, et al., G.R. No. 141013, November 29, 2000.

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals *En Banc* in accordance with Section 13, Article VIII of the Constitution.

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