

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

CTA EB No. 635
(CTA Case No. 7503)

Present:

-versus-

Acosta, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

**GOLDEN HARVEST GLOBAL
CORPORATION,**

Respondent.

Promulgated:

JUL 26 2010 
3:20 pm

X- - - - - X

R E S O L U T I O N

In the Decision dated September 18, 2009, the Court in Division granted respondent's Petition for Review and declared the Warrant of Dstraint and/or Levy



dated June 14, 2006 issued by the Petitioner as unenforceable. It also ordered petitioner's duly authorized representatives enjoined from enforcing the same. The Court in Division reasoned that there must be an assessment notice to the taxpayer duly informing it of the factual and legal bases of its internal revenue liabilities. If there is no valid notice sent, the assessment is void. The receipt of the assessment notice is necessary for the taxpayer to file its protest. This is in due observance of the tenets of due process. A Final Notice Before Seizure cannot be equated to an assessment notice.¹

Dissatisfied, on October 9, 2009, petitioner moved for the reconsideration of the Decision dated September 18, 2009 and alleged that the Petition for Review should have been denied considering the finality of the assessments long before the issuance of the Warrant of Distrainment and/or Levy.² However, in the Order dated October 14, 2009, the Court in Division treated the Motion for Reconsideration as a mere scrap of paper for failure of the counsel to specify the time and date of hearing in violation of Section 5, Rule 15 of the Rules of Court.³

On October 20, 2009, petitioner amended his Motion for Reconsideration and explained that respondent was not denied due process when it slept on its right by merely questioning receipt of the notice, instead of contesting the validity and

¹ Rollo, pp. 16-29. Penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Lovell R. Bautista and Caesar A. Casanova.

² Docket, CTA Case No. 7503, pp. 361-363.

³ Rollo, p. 31 and Docket, CTA Case No. 7503, p. 364.

correctness of the assessment. The Court in Division again denied this Motion in the Order dated October 22, 2009.⁴

On November 20, 2009, Executive Clerk of Court III, Atty. Margarete Y. Guzman attested that the Decision dated September 18, 2009 became final and executory and was subsequently recorded in the Book of Entries of Judgment.⁵

Unfazed, petitioner filed a Motion for Reconsideration dated April 20, 2010 praying among others for the setting aside of the Entry of Judgement dated November 20, 2009.⁶ The Court in Division issued a Resolution dated May 13, 2010 denying petitioner's Motion for Reconsideration with finality.⁷

On June 17, 2010, petitioner appealed by way of a Petition for Review with the Court *en banc* seeking to reverse the Decision dated September 18, 2009 and to lift the Entry of Judgment.

The Court *en banc* rules that the Petition for Review is dismissible for being filed out of time. Thus, this Court is devoid of jurisdiction to resolve the same.

The failure to perfect an appeal in the manner and within the period fixed by law renders the decision final and executory⁸, in this case the assailed Decision dated September 18, 2009, and hence, such ruling is unappealable.

⁴ Docket, CTA Case No. 7503, p. 365-366 & 368.

⁵ Rollo, p. 32

⁶ Docket, CTA Case No. 7503, pp. 372-374.

⁷ Rollo, pp. 33-34.

⁸ *Tomas T. Teodoro v. Court of Appeals*, G.R. No. 140799, September 10, 2002, 388 SCRA 527.

Records disclose that petitioner failed to file a timely appeal with the Court *en banc* from receipt of the Order dated October 14, 2009 denying his Motion for Reconsideration of the Decision dated September 18, 2009. In the Motion for Reconsideration dated April 20, 2010, petitioner admitted that on October 19, 2009, he received the Order dated October 14, 2009.⁹ Despite service of the Order dated October 14, 2009, petitioner erroneously moved to modify his reconsideration of the Decision dated September 18, 2009 with the Court in Division. Petitioner should have elevated the case on appeal with the Court *en banc* within fifteen (15) days from receipt of the Order dated October 14, 2009 pursuant to Section 11 of Republic Act ("R.A.") No. 9282, Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals¹⁰ and Section 4, Rule 43 of the 1997 Rules of Civil Procedure which read as follows:

XXXX

Sec. 11. Section 18 of the same Act is hereby amended as follows:

XXXX

"A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*," xxxx

XXXX

⁹ Docket, CTA Case No.7503, pp. 364 & 372.

¹⁰ 2009 Edition.

RULE 8
PROCEDURE IN CIVIL CASES

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

(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.**

XXXX

Rule 43

SEC. 4. Period of Appeal. – The appeal shall be taken within fifteen (15) days from notice of the award, judgment, **final order** or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo. Only one (1) motion for reconsideration shall be allowed. xxxx (Emphasis Supplied.)

The Court in Division's pronouncement that the Motion for Reconsideration dated October 9, 2009 is a mere scrap of paper due to the absence of the date and time of hearing, in effect did not toll the period of appeal with the Court *en banc*.¹¹ Evidently, the Decision dated September 18, 2009 became final and executory when petitioner failed to seasonably file an appeal with this Court.

¹¹ See *Republic of the Philippines, et al. v. Marilyn A. Peralta, et al.*, G.R No. 150327, 404 SCRA 360, June 18, 2003.

Under the principle of immutability of final judgement, a final and executory decision, even if erroneous, can no longer be modified.¹² However, in the case of *TEMIC Semiconductors, Inc. Employees Union (TSIEU)-FFW, et al. v. Federation of Free Workers (FFW), et al.*¹³, the Supreme Court enumerated the circumstances when a final and executory judgement may be set aside as follows:

xxxx "a decision that has acquired finality becomes immutable and unalterable. A final judgment may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law; and whether it be made by the court that rendered it or by the highest court in the land." Any act which violates such principle must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but it extends to all bodies upon which judicial powers had been conferred.

The only exceptions to the rule on the immutability of a final judgment are: (1) the correction of clerical errors; (2) the so-called nunc pro tunc entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.¹⁴

Considering that the cited circumstances as exceptions to the rule on immutability of a final judgment are not present in the case at bar, the assailed Decision should be upheld. Consequently, since the assailed Decision has become final and executory, this case cannot be elevated on appeal with the Court *en banc*. Courts are duty-bound to put an end to controversies. Any

¹² *Philippine Rabbit Bus Lines, Inc. v. Heirs of Eduardo Mangawang*, G.R. No. 160355, May 16, 2005, 458 SCRA 684. See *Session Delights Ice Cream and Fast Foods v. The Hon. Court of Appeals, et al.*, G.R. No. 172149, February 8, 2010.

¹³ G.R. No. 160993, May 20, 2008, 554 SCRA 122.

¹⁴ *Ibid.*

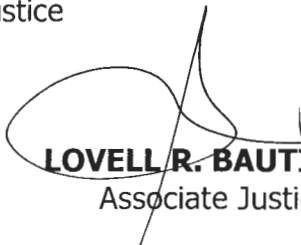
attempt to prolong, resurrect or juggle them should be firmly struck down. The system of judicial review should not be misused and abused to evade the operation of final and executory judgments.¹⁵

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice

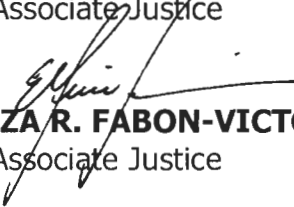

JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice

(On leave)
ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

(On leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

¹⁵ *Paquito Buaya v. Stronghold Insurance Company, Inc.*, G.R. No. 139020, October 11, 2000, 342 SCRA 576.