Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

LUZON HYDRO CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB Case No. 722
(CTA Case No. 7810)

Members:
ACOSTA, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JAN 06 2012 1:35 p.m.

X- X

DECISION

Casanova, J.:

This is an appeal to the Court of Tax Appeals (CTA) *En Banc* by way of a verified Petition for Review[1], seeking the reversal of the Decision[2] ("Assailed Decision") dated November 24, 2010 and the Resolution[3] ("Assailed Resolution") dated January 10, 2011, denying petitioner- Luzon Hydro Corporation's Motion for Reconsideration[4] filed on December 22, 2010.

The facts of the case, as found by the CTA Third Division, are as follows:

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[1] Petition for Review, CTA En Banc Rollo, pp. 5-34.
[2] Petition for Review, Annex "A", Ibid, pp. 35-64.
[3] Petition for Review, Annex "B", Ibid, pp. 70-79.
[4] Division Docket (Vol. I), pp. 711-716.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Poblacion Alilem, Ilocos Sur.[5]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), who is charged with the authority to perform the duties of his office, including inter alia, the power to decide and grant refunds or tax credit of erroneously or illegally collected internal revenue taxes, as provided by law, with office address at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[6]

Petitioner is registered with the BIR as a VAT taxpayer under taxpayer identification number (TIN) 004-266-526 and is duly registered with the Securities and Exchange Commission.[7]

On November 24, 1996, a Power Purchase Agreement (PPA) with the National Power Corporation (NPC) was entered into by The Consortium of Northern Mini Hydro Corporation; Ever Electrical Manufacturing, Inc.; Aboitiz Equity Ventures, Incorporated; Pacific Hydro Limited. The PPA was executed for the development of the Bakun AB and C small hydroelectric facilities located at the Bakun River in Benguet and Ilocos Sur provinces on a build-operate-transfer (BOT) basis. This consortium has caused the formation of the petitioner, for the purpose of performing the undertakings in respect of

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[5] Decision, par. 1, CTA En Banc Rollo, p. 36.
[6] Decision, par. 2, Ibid, p. 36.
[7] Decision, par. 4, Ibid, p. 36.

the Project pursuant to and under the terms and conditions of the Accession Undertaking.[8]

Petitioner was issued Certificate of Accreditation No. 97-03-31 by the Department of Energy, as a hydroelectric powerhouse. It is also registered with the Board of Investments as an operator of Power Generating Plants with Certificate of Registration No. 96-262.[9]

Records show that petitioner filed the following VAT returns, stamp received by the BIR[10]:

Month	Original VAT Return (Date filed)	Amended VAT Return (Date filed)	Amount
June	July 21, 2006	April 19, 2007	1,252,183.09
July	September 1, 2006	April 19, 2007	1,051,474.12
August	September 15, 2006	April 19, 2007	765,937.45
September	October 2006	April 19, 2007	1,082,257.73
TOTAL			**4,151,852.39**

On April 30, 2007, petitioner filed an administrative claim with the BIR RDO No. 2 of Vigan, Ilocos Sur for refund of its unutilized input VAT for the period covering June to September 2006 in the amount of P4,151,852.39.[11]

Due to respondent's failure to act on petitioner's request for refund, petitioner elevated its claim to the CTA by filing a Petition for Review[12] on July 18, 2008.

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[8] Decision, pars. 1 and 2, Ibid , p. 37.
[9] Decision, par. 3, Ibid, p. 37.
[10] Decision, par. 4, Ibid, pp. 37-38.
[11] Decision, par. 1, Ibid, p. 40.
[12] Division Docket (Vol. I), pp. 1-12.

The parties, in their Joint Stipulation of Facts and Issues[13] filed on October 30, 2008, submitted the following issues for this Court's resolution, to wit:

1. Whether or not petitioner's sale of electricity through renewable sources of energy such as hydropower is zero-rated.

2. Whether or not the input value added tax being claimed by petitioner is supported by sufficient documentary evidence.

3. Whether or not petitioner complied with the invoicing and accounting requirement to establish zero-rated sale of electricity.

4. Whether or not petitioner has excess and unutilized input VAT from its purchases of domestic goods and services in the amount of four million one hundred fifty one thousand eight hundred fifty two pesos and thirty nine centavos (Php 4,151,852.39) representing alleged unutilized input VAT incurred for the months of June to September 2006.

5. Whether or not the input VAT being claimed by petitioner is attributable to its alleged zero-rated sale of electricity.

6. Whether or not the administrative and judicial claim were filed within the reglementary period allowed by law.

On April 1, 2009, petitioner filed its Formal Offer of Evidence which was admitted[14] by the Court on June 4, 2009. On the other hand, respondent manifested in the hearing[15] held on September 1, 2009 that she is waiving her right to present evidence in view of the non-submission of audit report by the Revenue Officer who conducted the investigation.

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[14] Ibid, pp. 602-603.
[15] Ibid, p. 615.

Thereafter, the case was submitted for Decision on December 14, 2009[16] after taking into consideration petitioner's Memorandum[17] filed on September 24, 2009 and respondent's Memorandum[18] filed on December 1, 2009.

On November 24, 2010, the CTA Third Division promulgated the Assailed Decision, the dispositive portion of which is as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DISMISSED** for having been filed beyond the 30-day period provided under Section 112(C) of the NIRC of 1997, *as amended by RA 9337."*

Not satisfied with the said Decision, petitioner filed its Motion for Reconsideration[19] on December 22, 2010. However, the said Motion was dismissed in the Assailed Resolution dated January 10, 2011, for having been filed beyond the reglementary period.

Despite the denial of petitioner's Motion for Reconsideration due to late filing, petitioner still filed its Petition for Review[20] with the CTA *En Banc* on February 14, 2011. Respondent, on the other hand, filed her Comment (Petition for Review *En Banc* dated February 7, 2011)[21] on March 28, 2011.

In a Resolution[22] dated April 12, 2011, the Court *En Banc* ordered both parties to submit their respective memorandum, after which, the petition shall be submitted

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[16] Ibid, p. 672.
[17] Ibid, pp. 618-637.
[18] Ibid, pp. 651-670.
[19] Ibid, pp. 711-716.
[20] Petition for Review, CTA En Banc Rollo, pp. 5-34.
[21] Ibid, pp. 391-420.
[22] Ibid, pp. 422-423.

for decision. Petitioner and respondent filed their Memoranda on May 16, 2011[23] and May 26, 2011[24], respectively and on June 15, 2011, the case was submitted for decision.

Notwithstanding the fact that the case was already submitted for decision, petitioner still moved[25] to suspend the proceedings in this case for at least 60-days from September 26, 2011, the date it filed its motion, on the ground that petitioner allegedly received an information from the Revenue Region No. 1 Office of the BIR that its administrative claim has a good chance of approval. Consequently, the Court *En Banc* issued a Resolution[26] on October 5, 2011, ordering respondent to file her Comment on the said motion. But per records verification[27], respondent failed to file the same.

In this Petition for Review, petitioner justifies the late filing of its Motion for Reconsideration in this wise:

> " 50. Because of the transcendental importance and the novel issue of the instant case and its impact on the consuming public and because of the circumstances of this case which differs from Aichi Forging Company of Asia, Inc. (Aichi case), this case must be decided on the merit by brushing aside technicalities of procedure."

Petitioner further argues that the retroactive application of Aichi case will defeat the public policy laid down in Republic Act No. 9136.

The petition must fail.

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[23] Ibid, pp. 424-450.
[24] Ibid, pp. 451-477.
[25] Petitioner's Motion to Suspend Proceedings, Ibid, pp. 481-485.
[26] Ibid, pp. 487-488.
[27] Ibid, p. 489.

Well settled is the rule that when a judgment becomes final and executory, it thereby becomes immutable and unalterable and any amendment or alteration, which substantially affects a final and executory judgment, is null and void for lack of jurisdiction, including the entire proceedings held for that purpose.[28]

In the case at bar, records show that the Assailed Decision dated November 24, 2010 was received by petitioner on November 26, 2010. Petitioner had fifteen (15) days or until December 11, 2010, a Saturday, to file its Motion for Reconsideration. Under the Rules[29], should the last day of the period to file a pleading fall on a Saturday, a Sunday or a legal holiday, a litigant is allowed to file his or her pleading on the next working day.[30] Applying Section 1 of Rule 22 of the 1997 Rules of Court, petitioner had until the next working day, which is Monday, December 13, 2010 to file the said motion. However, petitioner allowed the 15-day reglementary period to lapse without filing the same. Petitioner filed its Motion only on December 22, 2010— nine (9) days after the lapse of the prescribed period.

In view of the foregoing, the CTA *En Banc* affirms the ruling in the Assailed Resolution issued by the CTA Third Division dated January 10, 2011, that, in view of the late filing of petitioner's Motion for Reconsideration, the Assailed Decision dated

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[28] Equatorial Realty Development vs. Mayfair Theater, Inc., GR No. 136221, May 12, 2000, citing the case of Arcenas vs. CA, 299 SCRA 733 (1988); Salva vs. CA, 304 SCRA 632 (1999).
[29] Rules of Court, Rule 22, Section 1. How to Compute time- In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.
[30] Nilo Padre vs. Fructosa Badillo, Fedila Badillo, Presentacion Caballes, Edwina Vicario (d) represented by Mary Joy Vicario-Orbeta and Nelson Badillo, G.R. No. 165423, January 19, 2011.

November 24, 2010 became final and executory, thereby depriving this Court of jurisdiction from taking cognizance of the said Motion or from disturbing a final and executory decision. This is in accord with the the doctrine laid down in the case of *International Exchange Bank vs. CIR*[31], where the Court *En Banc* held that the 15-day reglementary period for the filing of a Motion for Reconsideration is mandatory and jurisdictional, thus:

> " xxx xxx xxx
>
> Petitioner contends that the Court in Division deprived it of due process when it strictly adhered to technical rules and brushed aside petitioner's 'Motion for Leave to Admit the Motion for Reconsideration dated 08 November 2007'.
>
> xxx xxx xxx
>
> Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals states that:
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> 'SEC. 1. Who may and when to file motion. — Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question.' (Emphasis supplied)
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> In this case, petitioner received a copy of the Decision dated October 18, 2007 on October 26, 2007. Accordingly, petitioner had fifteen (15) days from receipt of the said Decision or until November 10, 2007 within which to file a Motion for Reconsideration. However, it was only on November 23, 2007 that petitioner filed its 'Motion for Leave of Court to Admit the Motion for Reconsideration dated 08 November 2007'.

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[31] CTA EB Case No. 370, September 9, 2008.

This procedural lapse of petitioner did not toll the running of the reglementary period. Consequently, the assailed Decision has become final and executory due to petitioner's own failure to seasonably file a Motion for Reconsideration.

Basic is the rule that the 15-day reglementary period for the filing of a motion for reconsideration is mandatory and jurisdictional. Thus, We find no error on the part of the Court in Division in denying the Motion filed by petitioner."

Corollary thereto, in the case of *Penta Technological Products, Inc., vs. CIR,*[32] the Court emphasized the need and importance of strictly complying with the rules of procedure, to wit:

"The Supreme Court on several occasions held that 'rules of procedure, especially those prescribing the time within which certain acts must be done, have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions. Thus, . . . failure to perfect an appeal within the prescribed reglementary period is not a mere technicality, but jurisdictional.' [33]

It is also beyond all telling that the right to appeal is not part of due process but a mere statutory privilege that has to be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail of the same must comply with the requirements of the rules. [34] Failing to do so, the right to appeal is lost.

There being no jurisdiction, the Court will not belabor or even attempt to discuss the lone issue raised by the parties in their Joint Stipulation of Facts and Issues. All actions or proceedings are rendered

[32] CTA Case No. 7723, January 21, 2011.
[33] Producers Bank of the Philippines vs. Honorable Court of Appeals, et al., G.R. No. 126620, April 17, 2002.
[34] Stolt-Nielsen Marine Services, Inc. (now Stolt-Nielsen Transportation Group, Inc.) vs. NLRC, et al., G.R. No. 147623, December 13, 2005.

void sans authority on the part of the Court to hear and determine the case."

Lastly, public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite time fixed by law. This is necessary for the proper, efficient and orderly discharge of judicial functions. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal.[35] While it is true that there are exceptions to this rule, it is evident that petitioner did not present any circumstance that is meritorious enough to justify the relaxation of the said rule.

Since the Court *En Banc* has no jurisdiction over the Petition for Review, the other issues raised by petitioner becomes inconsequential and need not be further resolved by this Court.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

[35] Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation, citing the case of In the matter of the Heirship (Intestate Estates) of the late Hermogenes Rodriguez v. Robles, G.R. No. 182645, December 4, 2009, 607 SCRA 770.

(I maintain my Dissenting Opinions as promulgated by the Third Division of the Court in its Decision dated November 24, 2010 and Resolution dated January 10, 2011)

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice