REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MANILA ELECTRIC COMPANY (MERALCO),
Respondent.

C.T.A. E.B. NO. 363
(C.T.A. CASE NO. 7348)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

SEP 05 2008 GRApolinario
1:45 p.m.

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on March 3, 2008 under Republic Act No. 9282 and Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking a review of the Decision and Resolution by the First Division of this Court (Court in Division) which granted the Petition for Revival of Judgment filed in CTA Case No.

7348, entitled "Manila Electric Company, petitioner, vs. Commissioner of Internal Revenue, respondent,"[1], to wit:

1) Decision promulgated on November 7, 2007[2] granting the revival of the Decision rendered in CTA Case No. 4833 and accordingly ordering petitioner to refund in favor of respondent the amount of TWELVE MILLION SEVEN HUNDRED FORTY THREE THOUSAND THREE HUNDRED NINETY SEVEN AND 47/100 PESOS (P12,743,397.47) representing final withholding tax on interest income from its money market placements pursuant to Section 56(b), now Section 54(b) of the National Internal Revenue Code (NIRC) of 1997; and

2) Resolution promulgated on January 29, 2008[3] denying herein petitioner's Motion for Reconsideration of the aforesaid Decision for lack of merit.

THE FACTS

The factual antecedents of the case, as found by the Court in Division, are as follows.

Petitioner is the officer duly authorized by law to assess and collect all national internal revenue taxes, fees, and charges, including the power to decide refunds of internal revenue taxes, fees or other charges, with office address at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City. Respondent, on the other hand, is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, engaged in the business of distributing and supplying of electric power within its franchise area, with its principal office address is at Lopez Building, Ortigas Avenue, Pasig City. It is also a

[1] Ponencia of Associate Justice Lovell R. Bautista, First Division, concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.
[2] Docket, pp. 18-23.
[3] Docket, pp. 24-26.

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registered taxpayer with TIN 000-101-528-000 and Certificate of Registration No. OCN8RC0000016119.

On July 24, 1992, herein respondent, Manila Electric Company, filed before this Court, a Petition claiming for tax refund or tax credit of the amount of P12,743,397.45, docketed as CTA Case No. 4833, entitled "Manila Electric Company and Manila Electric Company Pension Fund, represented by its Agent and Assistant Secretary, Lourdes D. Torres vs. The Commissioner of Internal Revenue." In response to the Petition, herein petitioner filed an Answer dated October 9, 1992 on October 13, 1992.

After trial on the merits, the then Court of Tax Appeals, rendered its Decision dated October 2, 1995 on said case, the dispositive portion of which states:

> "**WHEREFORE**, We find and so hold that petitioner (herein respondent) is entitled to a refund of the amount of P12,743,397.45 representing final withholding tax on interest income from its money market placements pursuant to Sec. 56(b), now Sec. 54(b), of the Tax Code.
>
> **SO ORDERED.**"

The Notice of the Decision was received by herein petitioner, through counsel on October 5, 1995; and through the Commissioner's Office and the Litigation Section of the Bureau of Internal Revenue on October 9, 1995. Inasmuch as the said Decision was left unappealed, it became final and executory on October 24, 1995, as evidenced by its Entry of Judgment.

On October 5, 2005, petitioner received respondent's letter dated October 5, 2005, seeking satisfaction of the Court's Decision in CTA Case No. 4833. Petitioner, however, failed to comply with the final judgment and to refund the amount of P12,743,397.45, despite said demand.

Consequently, respondent filed a Petition for Revival of Judgment of the Decision rendered in CTA Case No. 4833 before the Court in Division on October 21, 2005, docketed as CTA Case No. 7348, entitled "Manila Electric Company, petitioner, vs. Commissioner of Internal Revenue, respondent".

On November 7, 2007, the Court in Division rendered its assailed Decision granting the petition and ordering the revival of the Decision rendered in CTA Case No. 4833, and accordingly ordered petitioner to refund in favor of herein respondent (as the petitioner in CTA Case No. 4833), the amount of TWELVE MILLION SEVEN HUNDRED FORTY THREE THOUSAND THREE HUNDRED NINETY SEVEN AND 47/100 PESOS (P12,743,397.47) representing final withholding tax on interest income from its money market placements pursuant to Section 56(b), now Section 54(b) of the National Internal Revenue Code (NIRC) of 1997.

Finding no valid or cogent reason to either alter or modify the assailed Decision, the Court in Division denied herein petitioner's Motion for Reconsideration of the aforesaid Decision in the Resolution dated January 29, 2008.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision dated November 7, 2007 and Resolution dated January 29, 2008 of the Court in Division, be reversed/set aside and respondent's Petition for Revival of Judgment in CTA Case No. 7348 be denied for having been filed outside the prescriptive period.

THE ISSUE

Petitioner raises a sole issue for resolution, to wit:

"WHETHER RESPONDENT'S ACTION PRAYING FOR THE REVIVAL OF JUDGMENT HAS ALREADY PRESCRIBED."[4]

Petitioner's Arguments:

In support of the instant Petition for Review, petitioner submits that the ten-year period for the revival of judgment in this case is to be counted from the time the Decision dated October 2, 1995 in CTA Case No. 4833 became final and executory.

Petitioner points out that it is a factual finding of the court *a quo* that petitioner's counsel received the decision in the case sought to be revived on 5 October 1995 and a copy was furnished the Commissioner's office on 9 October 1995, and that no appeal was ever filed by herein petitioner; that since notice to counsel is deemed notice to client, and there was a failure to file an appeal, the subject decision allegedly became final after fifteen (15) days from receipt of the same or on 20 October 1995 wherein the decision allegedly lapsed into finality.

However, the Court *a quo* allegedly started to count the prescriptive period not on the aforementioned date, but on the date of Entry of Judgment on 24 October 1995, which according to herein petitioner, is erroneous.

Petitioner further argues that, as to date of finality, the Honorable Supreme Court, found that the ten year period is counted either from the date the judgment became final or from the date of its entry.[5] And since the date of finality preceded the entry thereof in this case, petitioner insists that the former is the proper reckoning point to count prescription.

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[4] Petitioner for Review, pp. 3-4; Docket, pp. 9-10.
[5] Citing the case of Marc Donnelly vs. Court of First Instance of Manila, G.R. No. L-31209, April 11, 1972.

Petitioner also adds that as held by the Supreme Court in the case of Juco vs. Heirs of Tomas Siy Chung Fu,[6] after the lapse of the period to appeal, a decision becomes final and executory. The decision sought to be revived was received by petitioner on 5 October 1995, thus, the same became final on 20 October 1995 and ten years therefrom would be 17 October 2005. Therefore, the petition for revival of judgment filed by respondent on 21 October 2005 has clearly prescribed.

Respondent's Counter-arguments:

Respondent filed its "Comment"[7] through registered mail on April 21, 2008 praying for the dismissal of the present petition for lack of merit considering that the Court *a quo* did not allegedly commit any error in its assailed Decision. The rules and the law are allegedly clear that a judgment may be enforced by action within ten (10) years from the date of its entry; that the evidence is undisputed that the Decision promulgated on October 2, 1995, and sought to be enforced through the Petition filed on October 21, 2005 was entered in the book of entries of judgments on October 24, 1995, well within the ten-year prescriptive period.

THE COURT EN BANC'S RULING

We find no merit in the petition.

At the outset, it is worthy to note that petitioner's reliance on the decision of the Supreme Court in the case of Marc Donnelly vs. Court of First

[6] G.R. No. 150233, February 16, 2005.
[7] Docket, pp. 38-41.

Instance of Manila, rendered on April 11, 1972, is a decision that was based on the old rules of civil procedure (specifically, Section 6 of Rule 39 of the New Rules of Court), the applicable rule then. Similarly, under the Revised Rules of Court, the applicable rule at the time the decision sought to be revived in this case was rendered, the exact provision was reproduced therein. Said rule states as follows:

> "SEC. 6. Execution by motion or by independent action.- A judgment may be executed on motion within five (5) years from ***the date of its entry or from the date it becomes final and executory.*** After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action." *(Emphasis Ours)*

On the other hand, the First Division of this Court, in upholding the right of herein respondent to file an action for revival of judgment and finding that the right to file the same has not yet prescribed, applied the presently applicable rule of procedure, the 1997 Revised Rules of Civil Procedure (specifically, Section 6 of Rule 39 thereof). Said section reads:

> "SEC. 6. Execution by motion or by independent action.- A final and executory judgment or order may be executed on motion within five (5) years from ***the date of its entry***. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be ***enforced by action***. The Revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations." *(Emphasis Ours)*

Evidently, the present rule provides that after the lapse of five (5) years ***from entry of judgment*** and before it is barred by the statute of limitations, a final and executory judgment or order may be enforced by action.[8] Furthermore, it was added that the revived judgment may also be enforced by

[8] Adelaida Infante vs. Aran Builders, Inc., G.R. No. 156596, August 24, 2007; Shipside Inc. vs. CA, G.R. No. 143377, February 20, 2001.

motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

A comparison of the old and present rules pertaining to the execution of judgments either by motion or independent action readily shows that the phrase "**or from the date it becomes final and executory**" was deleted from the present rule; thereby removing the alternative circumstances, between the "**finality of the order or judgment**" and "**entry of judgment**", in determining the prescriptive period within which to execute a judgment.

In this connection, Section 2 of Rule 36 of the 1997 Rules of Civil Procedure on "Judgments, Final Orders and Entry Thereof", clarifies that the date of finality of the judgment or order shall be deemed to be the date of its entry. Said Section reads:

> "SEC. 2. Entry of Judgments and final orders. - If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment of final order shall forthwith be entered by the clerk in the book of entries of judgments. **The date of finality of the judgment or final order shall be deemed to be the date of its entry.** The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory." (*Emphasis Ours)*

In light of the foregoing legal provisions and antecedent facts of this case, this Court now proceeds to resolve whether herein respondent's action for revival of judgment had already prescribed.

We rule in the negative and correspondingly affirm the assailed decision in this case.

It is well-settled that rules of procedure can be given retroactive effect. The amendment of the old rule being procedural in character, no vested rights could attach.[9] Procedural laws are adjective laws which prescribe rules and forms of procedure of enforcing rights or obtaining redress for their invasion; they refer to rules of procedure by which courts applying laws of all kinds can properly administer justice. Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes. A new statute which deals with procedure only is presumptively applicable to all actions – those which have accrued or are pending. The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected.[10]

Nor is the retroactive application of procedural statutes constitutionally objectionable. The reason is that as a general rule no vested right may attach to, nor arise from, procedural laws.[11] It has been held that "a person has no vested right in any particular remedy, and a litigant cannot insist on the application to the trial of his case, whether civil or criminal, of any other than the existing rules of procedure".[12]

[9] Billones v. Court of Industrial Relations, 14 SCRA 674 (1965).
[10] Gregorio vs. Court of Appeals, 26 SCRA 229; Tinio *vs*. Mina, 26 SCRA 512.
[11] Billones vs. Court of Industrial Relations, supra.
[12] Agpalo, Statutory Construction, 1986 ed., pp. 269-272.

Significantly, an action for revival of judgment is no more than a procedural means of securing the execution of a previous judgment which has become dormant after the passage of five years without it being executed upon motion of the prevailing party. It is not intended to re-open any issue affecting the merits of the judgment debtor's case nor the propriety or correctness of the first judgment. It is a new and independent action wherein the cause of action is the judgment itself and not the merits of the action upon which the judgment sought to be enforced is rendered. Its purpose is not to re-examine and re-try the issues already decided but only to revive the judgment.[13]

Needless to stress, the application of the present rules of procedure in the present action for revival of judgment will not greatly prejudice the rights of herein petitioner. The judgment sought to be revived was already rendered favorably to respondent based on the merits and had already determined its right for refund in the amount of P12,743,397.45. Thus, with the application of the 1997 Revised Rules of Civil Procedure to this instant case, it is clear that the reckoning date in counting the prescriptive period is from the date of entry of judgment.

Indubitably, the date of entry of judgment sought to be revived is October 24, 1995 and the Petition for Revival of Judgment was filed on October 21, 2005 before the Court in Division. Applying the present rules of procedure and settled jurisprudence, We adhere to the findings of the Court in Division that the action for revival of judgment has not yet prescribed.

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[13] Azotes vs. Blanco, 85 Phil. 90.

In the light of the foregoing discussions, the Court *En Banc* finds no reversible error committed by the Court in Division that would merit a reversal of its assailed Decision and Resolution dated November 7, 2007 and January 29, 2008, respectively.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice