Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

METRO ALLIANCE HOLDINGS AND EQUITIES CORPORATION (formerly known as MARSMAN & COMPANY INC.,)
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

CTA EB CASE NO. 177
(CTA Case No. 5940)

Members:
ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

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DECISION

CASANOVA, J.:

This is a Petition for Review of the Resolution of the Second Division of this Court granting respondent's "Motion for Issuance of Writ of Execution in C.T.A. Case No. 5940 entitled "Metro Alliance Holdings and Equities Corporation vs. Commissioner of Internal Revenue" promulgated on January 2, 2006 and the Resolution dated March 28, 2006 denying petitioner's "Motion for Reconsideration".

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

> "5. On 05 July 2002, the Second Division of this Honorable Court rendered a Decision in the above-entitled case (CTA Case No. 5940), the dispositive portion of which reads:
>
> > "WHEREFORE, in view of all foregoing, the instant Petition for Review is hereby DENIED, for lack of merit. Accordingly, petitioner is ORDERED to PAY the respondent

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> the amount of P83,753,387.00(sic) inclusive of 25% surcharge and 20% deficiency interest as deficiency withholding taxes for the year 1989, 1990, 1991. In addition, petitioner is also ORDERED TO PAY 20% delinquency interest computed from September 17, 1999, which is the fifteenth day from the time petitioner received respondent's final decision on the protest, until the full payment thereof pursuant to Section 249 (a)(c)(3) of the Tax Code."

6. Petitioner filed a Motion for Reconsideration of the subject Decision and the same was denied by the Court of Tax Appeals in a Resolution dated 23 October 2002.

7. Petitioner filed an appeal of the questioned decision before the Court of Appeals and the latter affirmed the decision of the Court of Tax Appeals in a decision promulgated on 01 December 2003. Petitioner subsequently filed a Motion for Reconsideration of the decision of the Court of Appeals, which motion was denied by the latter court in its Resolution dated 30 June 2004.

8. On 20 September 2004, the Supreme Court denied Petitioner's appeal. The Motion for Reconsideration of the decision of the Supreme Court was denied with finality by the Supreme Court on 22 November 2004.

9. Respondent filed their "Motion for Execution" with the Court of Tax Appeals on 09 September 2005. Said motion was opposed by the Petitioner in their "Motion to Admit Opposition (to Respondent's Motion for Issuance of Writ of Execution)" and "Opposition (to Respondent's Motion for Issuance of Writ of Execution)," which were both filed on 20 October 2005. Finding merit on Petitioner's motion, the Second Division of this Honorable Court admitted the Opposition filed by the Petitioner in a Resolution promulgated 28 October 2005. However, the Second Division of this Honorable Court granted Respondent's "Motion for Execution" in a Resolution rendered on 02 January 2006.

10. Petitioner filed a Motion for Reconsideration of the Resolution of the Second Division of this Honorable Court granting Respondent's Motion for Execution, arguing that the resolution rendered by said Court on 02 January 2006 failed to resolve the issues raised in the Opposition filed by the Petitioner.

11. On 28 March 2006, the Second Division of this Honorable Court rendered a Resolution on the Petitioner's Motion for Reconsideration, holding that the Court can no longer act upon the Petitioner's "Opposition", which prays for the postponement of the Respondent's "Motion for Issuance of a Writ of Execution". The Second Division of the Court of Tax Appeals held that:

> "Considering that the Resolution dated September 20, 2004 of the Supreme Court had become final and executory as per Entry of Judgment issued by the Supreme Court on January 19, 2005, it becomes the ministerial duty of the Court to issue the corresponding Writ of Execution. This Court, therefore, has no more authority to alter or amend its decision in the above-captioned case."

(*Pages 2-4, Petition for Review, En Banc*)

Hence, this appeal by way of a Petition for Review filed with the Court *En Banc*, raising the following issues:

I. The Court of Tax Appeals erred in declaring in its resolution that it has no more authority to alter or amend its decision in CTA Case No. 5940.

II. The Court of Tax Appeals erred in granting the Respondent's Motion for Issuance of Writ of Execution without resolving or clarifying the issues raised in the Opposition filed by the Petitioner.

III. The Motion for Issuance of Writ of Execution should not have been granted for failure to comply with the requirements for the issuance of the writ as provided for in Rule 39, Section 8 of the rules of Court.

On June 13, 2006, respondent filed a Comment on the instant Petition for Review, in compliance with the Court *En Banc* Resolution dated May 24, 2006. Petitioner filed a "Motion to Admit Attached Memorandum (to Petitioner's Petition for Review) on July 20, 2006 which was subsequently granted by the CTA *En Banc* in its Resolution dated July 28, 2006. Accordingly, the attached Memorandum of the petitioner was admitted as part of the records of this case. The case was deemed submitted for decision sans the Memorandum of the respondent.

At the outset, the present Petition for Review filed by the petitioner with the Court *En Banc* should be dismissed outright for lack of jurisdiction.

In filing the instant Petition for Review, petitioner is invoking the appellate jurisdiction of the Court *En Banc* pursuant to Rule 4, Section 2 of the Revised Rules of Court of the Court of Tax Appeals, which reads, in part, as follows:

> "Sec. 2. Cases within the jurisdiction of the Court en banc.- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
> (a) xxx
> (b) xxx
> (c) xxx;
> (d) Decisions, resolutions or orders on motions for reconsiderations or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over tax collection cases;
> xxx xxx xxx"

It should be noted that the "motion for reconsideration" referred to in the afore-quoted provision pertains only to a motion for reconsideration of a Decision or Resolution of the Court in Division that constitute a final disposition of the case. In other words, Rule 4, Section 2 (d) of the Revised Rules of the Court of Tax Appeals provides for an appeal from the Resolution of the Court in Division that affirms, modifies or reverses its previous Decision on the merits of the case or its previous Resolution containing a final disposition of a case. A Resolution granting a "Motion for the Issuance of a Writ of Execution" and a Resolution

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denying a "Motion for Reconsideration" assailing the said Resolution are not within the ambit of Rule 4, Section 2(d) of the Revised Rules of the Court of Tax Appeals.

Furthermore, after a careful and thorough perusal, evaluation and study of the instant Petition for Review, the Court *En Banc* finds no cogent reason to disturb the Resolutions of the Second Division promulgated on January 2, 2006 and March 28, 2006. Assuming *arguendo* that the Court *En Banc* has jurisdiction over the instant Petition for Review, the Court would like to reiterate the principle that *"once a decision has become final and executory, no further amendment or correction can be made by the court, except to order its execution and to correct clerical errors and mistakes" (Seven Brothers Shipping Corporation vs. Oriental Assurance Corporation, 391 SCRA 67)*. It is the ministerial and mandatory duty of the trial court to enforce its own judgment. In a long line of cases, the Highest Tribunal held that:

> *"Litigation must at some times be terminated, for public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party shall not be deprived of the fruits of victory by some subterfuge devised by the losing party." (Equatorial Realty Development, Inc. vs. Mayfair Theater, Inc., 359 SCRA 491)*

In the case at bar, considering that the Highest Tribunal had already certified that the September 20, 2004 Resolution of the Supreme Court, which denied the Petition for Review on Certiorari filed by herein petitioner for failure of the petitioner to show that a reversible error had been committed by the appellate Court, has become final and executory on January 19, 2005 and is recorded in the Book of Entries of Judgments, the Court has no more authority to alter or amend its decision in the above-mentioned case. The issues raised by the petitioner in its Opposition (To respondent's Motion for Issuance of Writ of Execution) have already been exhaustively discussed by the Court in CTA Case No. 5940 previously entitled "*MARSMAN AND COMPANY INC. vs.*

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COMMISSIONER OF INTERNAL REVENUE" promulgated on July 5, 2002 and its Resolution dated October 23, 2002.

Considering that this Court has no more authority to alter or amend its decision once it becomes final and executory and that the issues raised by the petitioner in its Opposition have been discussed by the Court, the resolution of the third argument raised in the instant Petition for Review is deemed unnecessary.

In sum, what the instant petition asks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had been resolved and extensively discussed in the assailed Resolutions.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit. The Resolutions of the Second Division, dated January 2, 2006 and March 28, 2006, are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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CERTIFICATION

Pursuant to Sec 13, Art. VIII of the 1987 Constitution, it is hereby certified that the conclusions in the above decision was reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice