REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

BASES CONVERSION AND DEVELOPMENT AUTHORITY, Petitioner,	**CTA Case No. 8176**
	Members:
- versus -	**ACOSTA,** *Chairperson* **UY,** *and* **FABON-VICTORINO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 28 2011, 10:48 am

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RESOLUTION

UY, J.:

Before the Court is a Petition for Review filed on October 8, 2010 by the Bases Conversion and Development Authority (BCDA) against the Commissioner of Internal Revenue (CIR), praying for a tax refund in the amount of **ONE HUNDRED TWENTY TWO MILLION SEVENTY NINE THOUSAND FOUR HUNDRED FORTY TWO PESOS AND SIXTY THREE CENTAVOS (₱ 122,079,442.63)**, which was allegedly paid starting March 19, 2008 up to October 8, 2008, supposedly representing Creditable Withholding Tax (CWT) erroneously withheld in relation to the sale/disposition of BCDA units in Serendra Project.

The said Petition for Review was filed with a Request for Exemption from Payment of Filing Fees.

In its Resolution dated October 20, 2010, this Court denied said Request for lack of merit, and ruled that BCDA, as a government owned and controlled corporation is not exempt from payment of legal fees as provided in Section 22, Rule 141 of the Rules of Court, as amended. BCDA was then ordered to pay the corresponding legal fees within five (5) days from receipt of said Resolution in the amount of ₱ 1,209,457.90.

On November 10, 2010, BCDA filed a Motion for Reconsideration of this Court's Resolution dated October 20, 2010.

At the hearing held on November 11, 2010, the CIR was granted a period of ten (10) days within which to file a Comment on the said Motion. The CIR, however, failed to file the same.

In the meantime, Atty. Theresa G. Cinco-Bactat, Executive Clerk of Court III, of this Court, sent a letter dated January 17, 2011 to the Supreme Court, requesting for a certification on whether BCDA is required to pay the legal fees for any and all cases it has filed before the said Court.

On her response letter dated January 20, 2011, Atty. Ma. Lourdes C. Perfecto, Deputy Clerk of Court and Chief Judicial Records Office of the Supreme Court, stated that the BCDA is not exempt from paying the prescribed legal fees for petitions it has filed before the said Court. In the same letter, Atty. Perfecto even furnished this Court with a list of cases where the BCDA filed petitions under Rules 45 and 65 before the High Court and paid the corresponding docket and other legal fees prescribed by the Rules.

In the Resolution dated February 8, 2011, this Court denied BCDA's Motion for Reconsideration, and ordered again the payment of legal fees in the amount of ₱ 1,209,457.90, within five (5) days from receipt of said Resolution. Otherwise, the

Petition for Review shall be dismissed, pursuant to Section 5, Rule 141 of the Rules of Court, as amended.

On March 9, 2011, the Records Division of this Court informed Atty. Margarette Y. Guzman, Executive Clerk of Court III of this Division, that as of such date, BCDA failed to pay the prescribed amount of legal fees.

On March 14, 2011, the Cash Division of this Court issued a certification that per their records, BCDA did not pay any legal fees from October 8, 2010 up to March 14, 2011.

Section 5, Rule 141 of the Rules of Court, as amended, which applies suppletorily to this Court,[1] provides:

> "SEC. 5. *Fees to be paid by the advancing party.*—The fees of the clerk of the Court of Appeals or of the Supreme Court shall be paid by him at the time of the entry of the action or proceeding in the court by the party who enters the same by appeal, or otherwise, and the clerk shall in all cases give a receipt for the same and shall enter the amount received upon his book, specifying the date when received, person from whom received, name of action in which received, and amount received. **If the fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the appeal or the action or proceeding.**" *(Emphasis supplied)*

Furthermore, Section 3, Rule 42 of the same Rules, states:

> "SEC. 3. *Effect of failure to comply with requirements.*—The failure of the petitioner to comply with any of the foregoing requirements **regarding the payment of the docket and other lawful fees**, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition **shall be sufficient ground for the dismissal thereof**." *(Emphasis supplied)*

In *Gegare vs. Court of Appeals, et al.*[2], the Supreme Court ruled that:

> "The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal (Dorego *v.* Perez, 22 SCRA 8 [1968]; Bello *v.* Fernandez, 4 SCRA 135 [1962]). **In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees** as held in *Acda v. Minister of Labor*, 119 SCRA 306

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[1] Section 3, Rule 1 of the Revised Rules of the Court of Tax Appeals.

[2] G.R. No. 132264, October 8, 1998, citing *Rodillas vs. Commission on Elections*, 245 SCRA 702, 705-706 (1995).

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(1982). **The requirement of an appeal fee is by no means a mere technicality of law or procedure. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal was filed at all. The right to appeal is merely a statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provision of the law.**" *(Emphasis supplied)*

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DISMISSED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice