REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ABS-CBN BAYAN FOUNDATION, INC., Petitioner,	CTA CASE NO. 9614
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE BUREAU OF INTERNAL REVENUE LARGE TAXPAYERS SERVICE, Respondents.	Promulgated: JUL 06 2017 11:34 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

On May 26, 2017, petitioner ABS-CBN Bayan Foundation, Inc. filed through registered mail a Petition for Review which the Court received on June 7, 2017.

The Petition disputes the assessment for deficiency Value-added Tax (VAT), Compensation Withholding Tax (CWT), Expanded Withholding Tax (EWT), and Documentary Stamp Tax (DST) as contained in the Final Decision on Disputed Assessment (FDDA) received by petitioner on April 26, 2017.

Relevantly, Section 228 of the National Internal Revenue Code (NIRC) of 1997 provides, thus:

> SEC. 228. *Protesting of Assessment*. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> x x x x x x x x x

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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. *(Emphasis supplied)*

The thirty (30)-day prescriptive period to appeal is reiterated in Section 11[1] of Republic Act (RA) No. 1125, as amended, and Section 3, Rule 8[2] of the Revised Rules of the Court of Tax Appeals (RRCTA).

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[1] SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: *Provided, however,* That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.

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[2] SEC. 3. *Who may appeal; period to file petition.* -

(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the

Under the provisions cited, the aggrieved taxpayer has 30 days to appeal respondent's denial of its protest to the Court of Tax Appeals (CTA).[3]

As alleged, petitioner received the FDDA denying its protest on April 26, 2017 giving it 30 days or until May 26, 2017 to appeal the same to the Court.

The record shows that petitioner mailed its Petition for Review on the last day of the 30-day period or on May 26, 2017, hence, the appeal was timely filed. This is in accord with Section 3, Rule 13 of the Rules of Court which provides that if a pleading is filed by registered mail, then the date of mailing shall be considered as the date of filing. The date of actual receipt of the mailed pleading by the Court is of no moment.[4]

However, the record is also clear that when the Petition for Review was received by the Court on June 6, 2017, only a personal check in the amount of P5,000.00 was issued by petitioner as payment for the docket/filing fees.

Under Rule 141 of the Rules of Court, the basis for the docket/filing fees shall be the amount of disputed tax which in the present case amounts to P49,268,210.01. Based on this amount, the docket/filing fees which must be paid upon the filing of the Petition should be P474,066.80. In other words, the docket/filing fees have not been paid in full in violation of the rules.

It must be noted that the right to appeal is purely a statutory right. Not being a natural right or a part of due process, the right to appeal may be exercised only in the manner and in accordance with the rules provided therefor. For this reason, payment of the full amount of the appellate court docket and other lawful fees within the reglementary period is mandatory and jurisdictional.[5]

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exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. x x x
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[3] Fishwealth Canning Corporation vs. Commissioner of Internal Revenue, G.R. No. 179343, January 21, 2010
[4] Russel vs. Ebasan, G.R. No. 184542, April 23, 2010
[5] Tan vs. Link, G.R. No. 172849, December 10, 2008

In this case, while the Petition for Review was seasonably filed through registered mail on May 26, 2017, the docket/filing fees have not been paid in full within the 30-day reglementary period to appeal.

Evidently, the personal check in the amount of P5,000.00 is critically insufficient to cover the required docket/filing fees. Some 12 days from receipt of the Petition for Review, or on June 7, 2017, the Clerk of Court required petitioner in writing to pay the full amount of the docket/filling fees. However, it was only on June 13, 2017 or 18 days after the 30-day period to appeal expired that petitioner paid in full the docket/filing fees amounting to P474,066.80.

The Supreme Court has consistently upheld the dismissal of an appeal or notice of appeal for failure to pay the full docket fees within the period for taking the appeal. This Court is as well consistent in ruling that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.[6]

Admittedly, exceptions to the general rule on the timely payment of appellate docket fees are also embodied in jurisprudence. Yet a common thread in all of said cases is an exceptionally meritorious reason why the appellate docket fees in the cases were not timely paid.[7]

In the present case, petitioner failed to put forward any meritorious reason to merit an exception to the general rule.

There is nothing in the record that even suggests that petitioner inquired about the correct amount of docket/filing fees for its case. Obviously, the personal check in the amount of P5,000.00 mailed with the Petition for Review is grossly insufficient to cover such fees.

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[6] Fil Estate Properties vs. Valencia, G.R. No. 173942, October 15, 2007
[7] Tan vs. Link, G.R. No. 172849, December 10, 2008

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Worse, petitioner exerted no effort to coordinate with the Court or take any action to ensure that its appeal was timely and properly instituted especially considering that it filed its Petition for Review on the last day of the 30-day period to appeal. Petitioner acted only after receipt of the written advice from the Clerk of Court pertaining to the insufficiency of the amount it indicated in the personal check it issued for the payment of the required docket/filing fees.

In the absence of an exceptionally meritorious reason for the late payment of the appellate docket/filing fees in the instant case, there is no basis for the Court to accord petitioner liberality on the matter, as explained by no less than the Supreme Court in the following fashion:

> Suffice it to say that "[c]oncomitant to the liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules." Those who seek exemption from the application of the rule have the burden of proving the existence of exceptionally meritorious reason warranting such departure. Petitioners' failure to advance any explanation as to why they failed to pay the correct docket fees or to complete payment of the same within the period allowed by the CA is thus fatal to their cause. Hence, a departure from the rule on the payment of the appeal fee is unwarranted.[8]

The requirement of paying the full amount of the appellate docket fees within the prescribed period is not a mere technicality of law or procedure. This Court has consistently held that the "payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appeal is not perfected. The appellate court does not acquire jurisdiction over the subject matter of the action and the Decision sought to be appealed from becomes final and executory.[9]

In view of the non-payment of the full amount of docket/filing fees within the reglementary period, the appeal was not perfected, and the Court was deprived of jurisdiction

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[8] Alonzo Gipa, Imelda Marollano, Juanito Ludovice, Virgilio Gojit, Demar Bitangcor, Felipe Montalban and Daisy M. Placer vs. Southern Luzon Institute as represented by its Vice-President for Operations and Corporate Secretary, Ruben G. Asuncion, G.R. No. 177425, June 18, 2014

[9] Far Corporation vs. Magdaluyo, G.R. No. 148739. November 19, 2004

to review the subject assessment, which is now deemed final and executory.

WHEREFORE, the Petition for Review posted on May 26, 2017 by petitioner ABS-CBN Bayan Foundation, Inc., is hereby **DISMISSED**, for lack of jurisdiction.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice