REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1681 (CTA Case No. 8938)**
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
FILMINERA RESOURCES CORPORATION, Respondent.	Promulgated: JAN 28 2019 2:43 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court seeking the reversal of the following:

1. January 31, 2017 Decision[1] of the CTA Third Division[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Filminera Resources Corporation in the reduced amount of **SIXTY SEVEN MILLION SEVEN HUNDRED NINETY SEVEN THOUSAND NINE HUNDRED TWENTY-TWO AND 51/100 PESOS (PHP67,797,922.51).**

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[1] Annex A, Petition for Review, Rollo, pp. 19-38.
[2] Penned by J. Lovell R. Bautista with the concurrence of J. Esperanza R. Fabon-Victorino and J. Ma. Belen M. Ringpis-Liban.

SO ORDERED."

2. June 20, 2017 Resolution[3] denying the CIR's Omnibus Motion (1. To Admit; 2. For Partial Reconsideration) for lack of merit.

THE FACTS

The facts, condensed from the appealed decision and the records, are as follows:

The Parties

Petitioner CIR is empowered to perform the duties of his office, including among others, the duty to act on and to approve claims for refund or issuance of certificate of tax credit as provided by the National Internal Revenue Code of 1997 (1997 NIRC), as amended, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

Respondent Filminera Resources Corporation (FRC), formerly "Base Metals Mineral Resources Corporation", is a domestic corporation duly organized in accordance with Philippine laws, which is primarily engaged in mining business. Its primary purpose under its Articles of Incorporation is as follows:

> "To carry on the business of operating coal mines; and of prospecting, exploration and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all other kinds of ores, metals, and minerals, hydrocarbons, acids and chemicals, and in the products and by-products of every kind and description and by whatsoever process, the same can be or may hereafter be produced; to purchase, lease, option, locate, or otherwise acquire, own, exchange, sell, or otherwise dispose of, pledge, mortgage, deed in trust, hypothecate, and deal in mines, mining claims, mineral lands, coal lands, timber lands, water and water rights, and other property, both real and personal."[5]

Relevant Facts

FRC is registered with the Bureau of Internal Revenue (BIR) Large Taxpayers Excise Audit Division 1 as a VAT-registered entity with Taxpayer's Identification No. (TIN) 000-153-880-000 and OCN 8RC0000036160 since January 1, 1997. It was also issued an Authority to

[3] Annex B, Petition for Review, Rollo, pp. 39-47.
[4] Decision, Rollo, p. 20.
[5] *Id.* at pp. 20-21. *See also* Certificate of Filing of Amended Articles of Incorporation, Exhibit P-2, *Id.* at p. 2099.

Print (ATP) VAT Official Receipts with Serial Nos. 0001 to 1000, with OCN 9AU0000290062 and Serial Nos. 0001 to 2500, with OCN 8AU0000118161.[6]

Philippine Gold Processing and Refining Corp. (PGPRC), formerly registered as LFT Processing Corporation, is a domestic corporation duly organized in accordance with Philippine laws, with the primary purpose of engaging in the "business of processing, milling, crushing, refining, smelting, concentrating, amalgamating and beneficiating mineral resources, and the products or by-products thereof, of every kind and description and by whatsoever process, method, or mode in which such activities can be carried out; and in conjunction with the foregoing[,] to build, construct, operate, purchase, lease or otherwise acquire such processing, milling, refining, and beneficiating plants, machinery, tools and other equipment [*sic*] whatsoever, which are necessary and incidental in carrying out the foregoing purpose, and to carry on the business of preparing for market, buying, selling, at wholesale, and exchanging mineral resources and the products or by-products thereof[.]"[7]

PGPRC is likewise registered as a New Producer of Gold and Silver Doré on a non-pioneer status with the Board of Investments (BOI) which issued Registration No. 2008-042 on February 7, 2008 pursuant to Board Resolution No. 36-25 Series 2007.[8]

On July 5, 2007, FRC and PGPRC entered into an Ore Sales and Purchase Agreement whereby the former will exclusively sell to PGPRC pre-production ore and ROM ores mined from the former's facilities.[9]

On April 1, 2009, FRC started commercial mining operations in its mining claims.[10]

On August 3, 2009, in a ruling numbered DA (VAT-073) 435-2009 which was addressed to Sycip Gorres Velayo & Co., Assistant Commissioner - Legal Service James H. Roldan confirmed that the input VAT on PGPRC's purchases of goods and services, including input VAT on importation of capital equipment, attributable to zero-rated sales are available as tax credit or refund pursuant to Section 112 of the 1997 NIRC.[11]

For the period beginning April until June 2012 (4th Quarter of 2012), petitioner issued VAT Zero-Rated Official Receipts (OR) to PGPRC for the "settlement of ore sales" as follows:[12]

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[6] *Id.* at p. 21.
[7] *Id.*
[8] BOI Certificate of Registration No. 2008-042 dated February 7, 2008, Exhibit P-7, Division Docket, Vol. 3, pp. 1693-1701.
[9] Decision, Rollo, p. 22.
[10] Note 1, Notes to Financial Statements, Audited Financial Statements, Exhibit P-33, Division Docket, Vol. 3, p. 1776.
[11] Decision, Rollo, p. 22.
[12] *Id.*

Exhibit	Official Receipt No.	Date	Amount in USD	Period
P-14	149	May 18, 2012	6,276,104.31	April 2012
P-16	151	June 15, 2012	5,574,040.11	May 2012
P-18	153	July 16, 2012	5,977,729.06	June 2012

On July 25, 2012, FRC filed its Amended Quarterly VAT Return or BIR Form No. 2550-Q for the 4th Quarter of FY ended June 30, 2012.[13]

On June 30, 2014, FRC then filed its Application for Tax Credits/Refunds (BIR Form No. 1914) for the period April 1, 2012 to June 30, 2012 (4th Quarter of 2012), claiming a TCC in the amount of Seventy-Six Million Three Hundred Thirty-Three Thousand One Hundred Seven and 78/100 Pesos (₱76,333,107.78), representing unutilized or unapplied creditable input VAT.[14]

CTA Third Division Proceedings

On November 27, 2014, alleging that there was no action from the CIR on its administrative claim, FRC filed a petition with the Court *a quo*.[15]

On December 17, 2014, the Court issued Summons to then respondent CIR, with an order to file an Answer to the Petition for Review within fifteen (15) days from receipt thereof. On January 14, 2015, the CIR filed a Motion for Extension of Time to File Answer praying for an extension of thirty (30) days or until February 19, 2015, within which to file an Answer, which was granted by the Court in its Order dated January 20, 2015.[16] Then on February 18, 2015, the CIR filed again an Urgent Motion for Additional Time to File Answer praying for an additional period of ten (10) days, or until March 1, 2015 within which to file an Answer. This was granted by the Court in a February 25, 2015 Resolution.[17]

Finally, on March 2, 2015, the CIR filed an Answer, alleging that:

- The taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with provisions of law;

- FRC's claim for refund is subject to administrative routinary investigation or examination;

- It is incumbent upon FRC to prove that it is entitled to the refund; ge

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[13] *Id.*
[14] *Id.* at pp. 22-23.
[15] *Id.* at p. 23
[16] *Id.*
[17] *Id.*

- Bare allegations unsubstantiated by evidence is not equivalent to proof; and,

- FRC failed to discharge the burden of proving that its sales are VAT zero-rated contemplated in Section 112(A) of the 1997 NIRC, as amended.[18]

On April 29, 2015, the CIR filed his Respondent's Pre-Trial Brief while FRC filed its Pre-Trial Brief on April 30, 2015. During the May 5, 2015 hearing, the Court gave the parties ten (10) days to submit their Joint Stipulation of Facts and Issues (JSFI).[19] On May 13, 2015, the parties filed their JSFI. Thereafter, the Court issued a Pre-trial Order (PTO) on June 15, 2015.[20]

During the June 26, 2015 hearing, FRC presented and qualified Atty. Clifford E. Chua (Atty. Chua) as an Independent Certified Public Accountant (ICPA), who was ordered by the Court to submit his ICPA report within a period of thirty (30) days from said hearing, or until July 26, 2015. Consequently, on July 20, 2015, Atty. Chua submitted his ICPA Report.

During trial, FRC presented the following witnesses:

- Ms. Joy P. Dompor (Ms. Dompor), FRC's treasurer, who testified that FRC's transactions are subject to VAT at zero percent (0%) rate because it exclusively supplies and/or sells its preproduction ore and ROM ore to PGPRC, a BOI-registered producer of gold and silver ore, hence, the transactions are considered export sales; and,

- Atty. Chua, the court-commissioned ICPA, who testified that he conducted an examination of the documents supporting petitioner's claim and, thereafter, prepared and then filed in court his findings in an ICPA Report.[21]

During the November 23, 2015 hearing, counsel for FRC was granted twenty (20) days to file a Formal Offer of Evidence (FOE). On December 9, 2015, FRC filed a Motion for Additional Time [To File Formal Offer of Evidence], praying for additional period of twenty (20) days within which to file its FOE. This motion was granted by the Court in a Resolution dated December 18, 2015.[22]

On December 20, 2015, FRC filed its FOE for the following: Exhibits P-1 to P-8, P-8-A, P-8-A-1 to P-8-A-39, P-8-B, P-9 to P35, P-36 to P-431, P-

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[18] *Id.*
[19] *Id.* at p. 24.
[20] *Id.*
[21] *Id.*
[22] *Id.* at p. 25.

432 to P-488, P-489, P-490 to P-553, P-554 to P-1205, P-1206 to P-1252, P-1253 to P-1253-A, P1254 to P-1254-A, and P-1255 to P-1255-A. On January 27, 2016, the Court resolved to admit *all* of these exhibits.[23]

During the February 16, 2016 hearing, counsels for the CIR manifested that they have no witnesses to present since there was no report of investigation that was submitted by the BIR examiners. Accordingly, both parties were granted thirty (30) days, or until March 17, 2016, to file their respective memoranda.[24]

On March 14, 2016, FRC filed its Memorandum (For the Petitioner). On the other hand, the CIR filed a Manifestation on March 17, 2016, adopting the arguments raised in the Answer filed on February 27, 2015 as part of his memorandum for the case.[25]

On March 29, 2016, the Court submitted the case for decision.[26]

On January 31, 2017, the CTA Third Division promulgated a decision partially granting the refund claim.[27]

On March 29, 2017, the CIR filed an Omnibus Motion (1. To Admit; 2. For Partial Reconsideration) which was denied by the Court *a quo* for lack of merit.[28]

CTA En Banc Proceedings

On July 28, 2017, after an extension of fifteen (15) days,[29] the CIR filed his Petition for Review and appealed to the CTA *En Banc*.[30]

In an August 17, 2017 Resolution, FRC was ordered to file its Comment within ten (10) days from notice.[31] On October 11, 2017, after two (2) extensions,[32] FRC filed a Motion to Admit Attached Comment (Re: Petition for Review dated July 27, 2017).[33]

In an October 25, 2017 Resolution, the Court *En Banc* resolved to give due course to the petition and ordered the parties to file their memoranda

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[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] Annex A, Petition for Review, Rollo, pp. 19-38.
[28] June 20, 2017 Resolution, Annex B, Petition for Review, *Id.* at p. 39.
[29] Minutes of CTA En Banc Resolution dated July 17, 2017, *Id.* at p. 6.
[30] *Id.* at pp. 7-16.
[31] *Id.* at pp. 52-53.
[32] Minutes of CTA En Banc Resolution dated September 20, 2017, *Id.* at p. 60; October 10, 2017 Resolution, *Id.* at pp. 67-68.
[33] *Id.* at pp. 69-96.

within thirty (30) days from notice.[34] On December 11, 2017, respondent FRC filed its memorandum[35] while petitioner CIR failed to file any.[36]

Accordingly, in a January 29, 2018 Resolution, the Court *En Banc* noted without action respondent FRC's Motion to Admit Attached Comment (Re: Petition for Review dated July 27, 2017) and submitted the case for decision.[37]

THE ISSUE

The CIR petitions the Court *En Banc* to reverse and set aside the January 31, 2017 Decision of the CTA Third Division and raises a single assignment of error for resolution:

> "Whether the Third Division of the CTA erred in partially granting respondent's Petition for Review and ordering petitioner to issue a tax credit certificate in favor of respondent in the reduced amount of Sixty-Seven Million Seven Hundred Ninety-Seven Thousand Nine Hundred Twenty-Two and 51/100 Pesos (Php 67,797,922.51)."[38]

THIS COURT'S RULING

We deny the CIR's petition for lack of merit.

The CIR prays for the reversal of the decision grounded on the position that FRC's BOI Certification is insufficient to prove that there was actual shipment of FRC's goods from the Philippines to a foreign country. In support of this view, the CIR cites the cases of *Carmen Copper Corporation v. Commissioner of Internal Revenue*[39] and *Philippine Gold Processing and Refining Corporation v. Commissioner of Internal Revenue.*[40]

The holdings in* Carmen Copper Corporation *and in* Philippine Gold Processing and Refining Corporation *cited by CIR are inapplicable to this case. yr

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[34] *Id.* at pp. 101-102.
[35] *Id.* at pp. 103-129.
[36] Records Verification dated January 5, 2018, *Id.* at p. 131.
[37] *Id.* at pp. 133-134.
[38] Petition for Review, *Id.* at p. 10.
[39] CTA Case No. 8418, June 30, 2015.
[40] CTA EB No. 1082 (CTA Case No. 8270), November 26, 2014.

First, the case of *Carmen Copper Corporation v. Commissioner of Internal Revenue*[41] concerns the refund of input VAT from importation of capital goods attributable to the taxpayer's zero-rated *direct* export sales under Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended. This case, however, does *not* involve *direct* export sales by the taxpayer claimant but instead involves the supply of goods to a BOI-registered exporter under Section 106(A)(2)(a)(5) of the 1997 NIRC, as amended.

A careful reading of Section 106(A)(2)(a)(5) will show that the provision, which is the basis of this claim, does not require that there be an "*actual shipment of goods from the Philippines*." Section 106(A)(2)(a)(5) of the 1997 NIRC, as amended, provides in pertinent part:

> "**Sec. 106. Value-Added Tax on Sale of Goods or Properties.** —
>
> (A) Rate and Base of Tax
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export Sales. — The term '**export sales**' means
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;
>
> (4) Sale of gold to the Bangko Sentral ng Pilipinas (BSP); and
>
> (5) <u>Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws</u>." (*underscoring supplied*)

[41] CTA Case No. 8418, June 30, 2015.

Implementing the above provision is Section 4.106-5 (a) (5) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, wherein the sales of goods, properties or services made by VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported (such as PGPRC) are considered export sales subject to VAT at zero percent (0%) rate, thus:

> "**SEC. 4.106-5. Zero-Rated Sales of Goods or Properties.** — A zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.
>
> The following sales by VAT-registered persons shall be subject to zero-percent (0%) rate:
>
> **(a) Export Sales.** — 'Export Sales' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) The sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods, paid for in acceptable foreign currency, and accounted for in accordance with the rules and regulations of the BSP;
>
> (3) The sale of raw materials or packaging materials to an export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;
>
> Any enterprise whose export sales exceed 70% of the total annual production of the preceding taxable year shall be considered an export-oriented enterprise.
>
> (4) Sale of gold to the BSP; and
>
> (5) <u>Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws</u>.
>
> **'Considered export sales under Executive Order No. 226'** shall mean the Philippine F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export product sold by a registered

> export producer to an export producer or to an export trader that subsequently exports the same. *Provided*, that sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; xxx.
>
> For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and *Provided*, finally, that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI." (*underscoring supplied*)

The texts of *both* the law and the implementing regulations clearly do not provide for this requirement contrary to the argument of the CIR.

Second, the case of *Philippine Gold Processing and Refining Corporation v. Commissioner of Internal Revenue.*[42] is, likewise, not applicable to this claim because that holding dealt with a refund of input VAT generated from both importation and local purchases of a BOI-registered exporter under Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended. As discussed above, the instant refund case was decided based on Section 106(A)(2)(a)(5). This specific provision does *not* state that there must be an "*actual shipment of goods from the Philippines*."

In the case at bench, the CIR would have the Court *En Banc* reverse a decision of the Third Division by grafting into the plain words of the law a phrase or condition not otherwise stated therein. *Maledicta expositio quo corrupti textum.* It is a dangerous construction which is against the text of the statute. For this Court to determine otherwise, contrary to the provision of law, will amount to inappropriate judicial interpretation.

What petitioner CIR failed to dispute is that FRC has, in fact, offered in evidence a BOI Certification[43] in full compliance with Section 4.106-5 (a) (5) of RR 16-2005 quoted above. The BOI Certification stated that PGPRC exported 100% of its total sales for the period covering July 1, 2011 to June 30, 2012, which period coincides with the period of FRC's claim.

The January 31, 2017 Decision has already become final and executory because of the CIR's failure to file a Motion for Reconsideration on time.

[42] CTA EB No. 1082 (CTA Case No. 8270), November 26, 2014.
[43] Exhibit P-8-a, Division Docket, Vol. 4, p. 2157.

Petitioner CIR admits that it received the Decision of the Court *a quo* on February 3, 2017. Accordingly, under Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), the CIR only had fifteen (15) days or until February 18, 2017 to file his Motion for Reconsideration, thus:

> **"RULE 15**
> **MOTION FOR RECONSIDERATION OR NEW TRIAL**
>
> SECTION 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 by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question. *(a)*"

Unfortunately, the CIR filed his Omnibus Motion (1. To Admit; 2. For Partial Reconsideration) only on March 29, 2017, more than a month later, through inadvertence.[44]

Under Sections 6 and 7 of Rule 14 of the RRCTA, the petitioner's opportunity to appeal has already lapsed insofar as the assailed decision had become final and executory:

> **"RULE 14**
> **JUDGMENT, ITS ENTRY AND EXECUTION**
>
> SECTION 6. *Entry of Judgment and Final Resolution.* — If no appeal or motion for reconsideration or new trial is filed within the time provided in these Rules, the Clerk of Court shall forthwith enter the judgment or final resolution in the book of judgment. The date when the judgment or final resolution becomes executory shall be deemed the date of its entry. The entry shall contain the dispositive part of the judgment or final resolution and shall be signed by the Clerk of Court, with a certification that such judgment or resolution has become final and executory. (*Rules of Court, Rule 51, sec. 10a*)
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> SECTION 7. *Execution of Judgment.* — Upon the expiration of the period to appeal from a judgment or order that disposes of the action or proceeding and no appeal has been duly perfected, execution shall issue as a matter of right, on motion.
>
> If an appeal has been duly perfected and finally resolved, execution may be forthwith applied for in the court of origin, on motion of the judgment obligee, submitting therewith a certified true copy of the judgment or final order sought to be enforced and of its entry, with notice to the adverse party. (*Rules of Court, Rule 39, sec. 1a*)"

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[44] *Id.* at p. 2238 and 2302.

Accordingly, by the time the instant petition was filed, the Court *a quo* had already lost its jurisdiction over the case.

It bears stressing that an appeal is a statutory privilege and must be exercised in the manner provided by law. Therefore, perfection of an appeal in the manner and within the period prescribed by law is not only mandatory, but jurisdictional, and non-compliance is fatal having the effect of rendering the judgment final and executory. The Supreme Court reiterated this doctrine in *Philippine National Bank v. Commissioner of Internal Revenue*,[45] thus:

> "This Court agrees with the CTA *En Banc* that PNB has not demonstrated any cogent reason for this Court to take an exception and excuse PNB's blatant disregard of the basic procedural rules in a petition for review. Furthermore, the timely perfection of an appeal is a mandatory requirement. One cannot escape the rigid observance of this rule by claiming oversight, or in this case, lack of foresight. Neither can it be trifled with as a mere technicality to suit the interest of a party. Verily, the periods for filing petitions for review and for *certiorari* are to be observed religiously. Just as [the] losing party has the privilege to file an appeal within the prescribed period, so does the winner have the xxx right to enjoy the finality of the decision.
>
> In *Air France Philippines v. Leachon*, we held:
>
>> Procedural rules setting the period for perfecting an appeal or filing an appellate petition are generally inviolable. <u>It is doctrinally entrenched that appeal is not a constitutional right but a mere statutory privilege. Hence, parties who seek to avail of the privilege must comply with the statutes or rules allowing it. The requirements for perfecting an appeal within the reglementary period specified in the law must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays, and are necessary for the orderly discharge of the judicial business. For sure, the perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well. Failure to perfect an appeal renders the judgment appealed from final and executory</u>." (*underscoring supplied and citations omitted*)

While it is true that the Court may deviate from the foregoing rule, this is true only if the appeal is meritorious on its face. The Court has not hesitated to relax the procedural rules in order to serve and achieve substantial justice.

In *Martin Peoso and Elizabeth Peoso v. Macrosman Dona*[46] the Supreme Court relaxed the application of technical rules of procedure to serve the ends of justice and explained in this wise:

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[45] G.R. No. 172458, December 14, 2011.
[46] G.R. No. 154018, April 3, 2007.

"Considering the *prima facie* merit of the pleading involving the issues whether the petitioners house is a public nuisance; whether the subject house is constructed on an abandoned road; and whether the alleged nuisance is specially injurious to respondent; and, considering further the fact that the MTC and the RTC decisions are conflicting, the CA had valid grounds to refrain from dismissing the appeal solely on technical grounds.

As the Court has expounded in *Aguam vs. Court of Appeals*:

> The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The 'discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.' Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. 'A litigation is not a game of technicalities.' 'Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts.' Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice. (Emphasis supplied)

In *Ginete v. Court of Appeals*, the Court further held:

> Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, as we are now constrained to do in the instant case.

xxxx

> The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice. (Emphasis supplied)
>
> Rules of procedure being designed to facilitate the attainment of justice, their rigid application resulting in technicalities that tend to delay or frustrate rather than promote substantial justice, must always be avoided." (*underscoring supplied and citations omitted*)

In the circumstances obtaining in this case, however, the occasion does *not* warrant the relaxation prayed for by petitioner CIR. Furthermore, the arguments raised in the petition, which reiterate those previously set forth and which the Court *a quo* had already considered, weighed, and resolved before it rendered its decision, are *without* merit.

The CIR is correct in pointing out that the tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the taxpayer.[47] Nonetheless, this case has undergone the scrutiny of the Court below without the CIR raising any new issue substantial enough to defeat the entitlement of the taxpayer. Thus, it bears stressing that when the taxpayer has already proven its entitlement to the claim as determined by the Court *a quo*, substantial justice also dictates that the government should not keep the money that does not belong to it at the expense of its citizens.[48]

Considering the foregoing discussion, petitioner CIR has failed to validly argue against the holding of the Court *a quo* decreeing the partial grant of the claim in favor of FRC.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The January 31, 2017 Decision and the June 20, 2017 Resolution are hereby **AFFIRMED**.

SO ORDERED.

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

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[47] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

[48] *Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice