REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LEAH EMPESANDO, *ET AL.*, Petitioners,	**CTA EB NO. 1995 (CTA CASE NO. 9093)**
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1996 (CTA CASE NO. 9093)**
	PRESENT:
-versus-	Del Rosario, *P.J.,* Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, *and* Modesto-San Pedro, *JJ.*
LEAH EMPESANDO, *ET AL.*, Respondents.	**Promulgated:** JUN 1 6 2021 3:30 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

This resolves the Motions for Reconsideration filed by the Commissioner of Internal Revenue (CIR) on September 15, 2020[1] and by the

[1] *Rollo*, pp. 199-211.

taxpayers on October 5, 2020,[2] without the respective Comments from the parties despite notice.[3]

On the one hand, the CIR seeks to reverse the Court's Decision affirming the court *a quo*'s September 17, 2018 Decision and December 14, 2018 Resolution, by stating that:

1. Under Sections 22(E) and 23 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, resident citizens are taxable on all income derived from sources within and without the Philippines;[4]

2. Taxation of income in the Philippines is based on citizenship, residency and the source principle;[5]

3. There was a Reservation on the ADB Charter covering the taxation of salaries and emoluments paid by the bank to its employees who are Philippine nationals;[6] and,

4. Revenue Memorandum Circular No. 31-2013 is only a clarification of existing policies enacted in the tax code.[7]

On the other hand, the taxpayers hold the opposing view and state that:

1. Under the ADB Charter, non-taxation of the salaries and emoluments paid by the bank to its employee is the general rule. Thus, as an exception to the general rule of the treaty provision, taxability should be strictly construed;[8]

2. As practiced by the member nations of the ADB, an implementing or enabling law subsequent to the ratification of the ADB Charter is necessary to tax the salaries of their nationals;[9] and,

3. The tax code is *not* the enabling legislation that exempts the taxpayers/employees of ADB from the general rule of non-taxability.[10]

Both motions are denied.

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[2] *Rollo*, pp. 213-224.
[3] Records Verification Notices dated January 19, 2021 and February 22, 2021.
[4] *Rollo*, pp. 201-202.
[5] *Rollo*, p. 202.
[6] *Rollo*, pp. 203-207.
[7] *Rollo*, pp. 207-208.
[8] *Rollo*, pp. 215-218.
[9] *Rollo*, pp. 219-222.
[10] *Rollo*, pp. 222-223.

The issues raised by the parties are but a mere rehash of the grounds already evaluated and passed upon by the Court in the assailed Decision, which held that:

1. A review of the relevant treaty and legislative provisions will demonstrate that Congress clearly intended to tax the salaries and emoluments received by Filipinos from ADB;

2. RMC 31-2013 merely *reiterates* the general principles laid down in Section 23(A) and merely *implements* Sections 24(A)(1)(a), 31 and 32, all of which have been in effect since January 1, 1998;

   The preface of RMC 31-2013 in Section 1 states these objectives when it cites Sections 23 and 24 of the 1997 NIRC, as amended, as the foundation and states that the guidelines were intended to address the "confusion on the correct tax treatment of the compensation income earned by Philippine nationals xxx employed by foreign governments/embassies/diplomatic missions and international organizations xxx,";

3. The failure, in the past, by the CIR to take a categorical position on the taxation of Filipino ADB employees does not operate to *estop* the government from correcting the same. In fact, prolonged practice of non-collection of certain taxes, if proven to be erroneous, does not ripen into validity as the Supreme Court *En Banc* held in the consolidated cases of *La Suerte Cigar and Cigarette Factory v. Court of Appeals et al*;[11] and,

4. In a claim for tax refund, an "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[12] In the case at bench, the payment and collection of taxes is neither erroneous nor illegal. Since the income of the ADB employees was subject to tax based on the 1997 NIRC provisions, the collection of the same was, therefore, grounded on statutory authority.

Based on the foregoing, the Court finds no cogent reason to reverse its assailed Decision.

[11] G.R. No. 125346, November 11, 2014.
[12] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

WHEREFORE, in view of the foregoing, the Motions for Reconsideration filed by the CIR and by the taxpayers are **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(*See Concurring Opinion*)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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LEAH EMPESANDO, ET AL., Petitioners,

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- versus -

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,

CTA EB NO. 1996
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- versus -

LEAH EMPESANDO, ET AL., Respondents.

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUN 16 2021 3:30pm

x - x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the parties' Motions for Reconsideration for lack of merit.

With respect to the Commissioner of Internal Revenue's (CIR) Motion for Reconsideration, I submit that the assailed Decision dated July 30, 2020 has already attained finality in view of the belated filing of his Motion for Reconsideration on September 15, 2020.

Under Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals, 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 (15) days from receipt of notice of the decision, resolution or order of the Court in question.

Under Section 13, Rule 13 of the Rules of Court, as amended, judgments, final orders, or resolutions shall be served either personally or by registered mail. Personal service may be done by personal delivery of a copy to the party or to the party's counsel, or to their authorized representative named in the appropriate pleading or motion, or **by leaving it in his or her office with his or her clerk, or with a person having charge thereof**.[1]

In the case at bar, the assailed Decision was personally served upon the CIR's counsel at the Legal Division of the Bureau of Internal Revenue Region No. 7B East NCR, on August 18, 2020.[2] The CIR's counsel claims, however, that he received the assailed Decision on August 31, 2020 due to the fact that the Legal Division of Revenue Region No. 7B East NCR adapted an alternative work arrangement.[3]

Personal service is complete upon actual delivery.[4] As such, the fifteen (15) – day period to file a motion for reconsideration should be reckoned from the date of the actual delivery of the assailed Decision on August 18, 2020 and not from the date of receipt of the CIR's counsel on August 31, 2020 as alleged in the Motion for Reconsideration. Consequently, the CIR's Motion for Reconsideration filed only on September 15, 2020 was thirteen (13) days late and, therefore, did not stall the finality of the assailed Decision in so far as the CIR is concerned.

Finally, the adoption of an alternative work arrangement in the office of the CIR's counsel, which resulted to the delay of his counsel's receipt of the assailed Decision, is not sufficient to justify respondent's failure to file his comment on time.

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[1] Section 6, Rule 13 of the Rules of Court, as amended.
[2] CTA EB No. 1995 Docket, p. 167.
[3] Paragraph 1, Motion for Reconsideration, CTA EB No. 1995 Docket, p. 199.
[4] Section 15, Rule 13 of the Rules of Court, as amended.

The pronouncement in *Ligaya Mendoza, et al. vs. The Honorable Court of Appeals (Eight Division), et al.*[5], citing *Balgami vs. Court of Appeals*,[6] anent the need to devise a system to ensure that official communications from the courts are timely and promptly received is enlightening, *viz.*:

> "Xxx. In *Balgami v. Court of Appeals*, the Court instructed the counsels to devi[s]e a system to ensure that official communications would be promptly received by them, lest, they will be chargeable with negligence, thus:
>
>> x x x. **The law office is mandated to adopt and arrange matters in order to ensure that official or judicial communications sent by mail would reach the lawyer assigned to the case.** The court has time and again emphasized that the negligence of the clerks, which adversely affect the cases handled by lawyers, is binding upon the latter. The doctrinal rule is that negligence of the counsel binds the client because, otherwise, there would never be an end to a suit so long as new counsel could be employed who could allege and [prove] that prior counsel had not been sufficiently diligent, or experienced, or learned.
>
> Evidently, petitioners' counsel was wanting on this respect. **Not only did petitioners' counsel fail to devi[s]e a system for the prompt and efficient receipt of mails intended for her, she also failed to ensure that she could be notified of the decision as soon as possible.** As a practicing lawyer, **petitioners' counsel should have been more circumspect in monitoring official communications intended for her** so as to avoid situations like this, where a mail matter was inexplicably lost after delivery thereby running the risk of losing a client's case on technicality." (Boldfacing supplied)

As a litigant, it is respondent's responsibility to monitor the status of his case and to ensure his timely receipt of resolutions, orders, notices and decision of the Court. He cannot use as an excuse the inefficiency of the system which his very own office has formulated.

It is well-settled that decisions become final and executory by operation of law and not by judicial declaration. The finality of a decision becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The Court need not even pronounce the finality of the decision as the same becomes final by operation of law.[7] A decision that has acquired finality becomes immutable and unalterable, and

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[5] G.R. No. 182814, July 15, 2015.
[6] 487 Phil. 102, 113 (2004).
[7] *Philippine Savings Bank vs. Josephine L. Papa*, G.R. No. 200469, January 15, 2018.

may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land.[8]

In fine, I VOTE to DENY the Motions Reconsideration for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[8] *Id.*