REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PFIZER, INC.,
Respondent.

CTA EB No. 961
(CTA Case No. 8237)

Present:

Del Rosario, *PJ,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

SEP 16 2013 [signature] 9:00 a.m.

x- x

DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a *Petition for Review* filed by petitioner, Commissioner of Internal Revenue (CIR), assailing the *Decision*[1] dated October 3, 2012, and the *Resolution*[2] dated November 13, 2012, of the former Third Division of the Court granting respondent's Petition for Revival of Judgment involving the decision rendered in CTA Case No. 6135 entitled "Pfizer, Inc. vs. Commissioner of Internal Revenue."

The Facts

The facts, as culled from the records[3], are as follows:

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[1] *Rollo*, pp. 21-27.
[2] *Rollo*, pp. 28-29.
[3] *Rollo*, pp. 21-24, *citations omitted.*

Petitioner Commissioner of Internal Revenue (CIR) is the official of the Republic of the Philippines authorized, among others, to issue and cancel assessments pursuant to Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended, with office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

Respondent, on the other hand, is a corporation duly organized and existing under Philippines Laws, engaged, among others, in the business of manufacturing and distributing chemical, pharmaceutical, medicinal, and biological products, with office address at 23rd Floor, Ayala Life-FGU Center, 6811 Ayala Avenue, Makati City.

On July 10, 2000, respondent filed a "Petition for Review" with the Court docketed as CTA Case No. 6135 assailing the assessment for alleged deficiency income tax and value-added tax in the total amount of P52,895,130.82 for the fiscal year ended November 30, 1995 issued by the BIR.

On April 21, 2003, the Court rendered its Decision granting the petition, and ordering the cancellation and withdrawal of the deficiency tax assessments, the dispositive portion of which reads as follows:

> "**WHEREFORE,** in the light of the foregoing, the instant petition for review is **GRANTED**. Accordingly, the deficiency assessments issued by respondent against petitioner for income tax and value-added tax in the amounts of P18,217,037.82 and P34,678,093.00, respectively, are hereby **CANCELLED** and **WITHDRAWN,** due to prescription."

Petitioner filed a "Petition for Review" docketed as CA-G.R. SP No. 78458, appealing the April 21, 2003 Decision of this Court before the Court of Appeals (CA). The same was subsequently denied via Resolutions dated October 7, 2003, December 9, 2003 and January 23, 2004.

Petitioner then filed a "Petition for Review on Certiorari," docketed as G.R. No. 162444, appealing the aforementioned Resolutions of the CA before the Supreme Court. The Supreme Court denied petitioner's petition in a Resolution dated May 17, 2004. The Supreme Court Resolution attained finality on June 28, 2004 and was entered into the Book of Entries of Judgments.

On March 2, 2011, respondent filed its Petition for Revival of Judgement[4].

On June 17, 2011, petitioner filed her Answer[5] and alleged by way of special and affirmative defenses that it is essential that respondent submit documents it has alleged in support of its claim to prove that it has substantially complied with Section 6 of Rule 39 of the Revised Rules of Civil Procedure and that respondent must prove that its action to revive judgment was filed within the period prescribed therein.

Recently, upon its application for tax clearance from the BIR, respondent was informed that the deficiency assessment issued by petitioner for income tax and value added tax for the fiscal year ended November 30, 1995 was not cancelled and withdrawn as reflected in the BIR's data base of taxpayers.[6]

The former Third Division, in its *Decision*[7] dated October 3, 2012, granted respondent's Petition for Revival of Judgment.

The Motion for Reconsideration[8] filed by petitioner was denied for lack of merit in the Resolution[9] dated November 13, 2012.

Aggrieved, petitioner filed the instant *Petition for Review*[10].

Respondent was ordered to file its comment within ten (10) days from receipt of the Resolution[11] dated January 14, 2013. Respondent filed its Comment (Re: Petitioner's Petition for Review)[12] on February 4, 2013.

Considering the issues raised by both parties, this Court resolved to give due course to the petition and ordered the parties to submit their respective memoranda[13].

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[4] *Division Docket*, pp. 1-5.
[5] *Division Docket*, pp. 87-94.
[6] *Division Docket*, pp. 3-4 and 114.
[7] *Supra*, Note 1.
[8] *Division Docket*, pp. 136-145.
[9] *Supra*, Note 2.
[10] *Rollo*, pp 7-20.
[11] *Rollo*, pp. 34-35.
[12] *Rollo*, pp. 36-42.
[13] *Rollo*, pp. 44-45, Resolution dated February 19, 2013.

Petitioner filed a Manifestation[14] on April 1, 2013 stating that she is adopting the arguments raised in her Petition for Review as her Memorandum. Respondent likewise filed a Manifestation[15] on April 10, 2013 stating that it is adopting all the arguments in its earlier Comment (Re: Petitioner's Petition for Review) as its Memorandum. Thus, the above-captioned case was submitted for decision on May 27, 2013.

The Issue

The sole issue presented by petitioner is whether or not the revival of judgment in *"Pfizer, Inc. versus Commissioner of Internal Revenue"* CTA Case No. 6135 is proper. [16]

The Ruling of the Court

The Petition for Review has no merit.

A careful perusal of the arguments raised by petitioner in the instant petition shows that they were the very same flawed arguments which had been thoroughly discussed and passed upon by the Court in the assailed Decision. Be that as it may, this Court will again address the arguments of petitioner to reinforce its ruling.

Section 6, Rule 39 of the Revised Rules of Court provides:

> "Sec. 6. *Execution by motion or by independent action.* — **A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action**. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations." *(Emphasis Supplied)*

In relation thereto, Article 1144 of the Civil Code of the Philippines provides:

> "Article 1144. The following actions must be brought within **ten years** from the time the right of action accrues:

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[14] *Rollo*, pp. 46-47.
[15] *Rollo*, pp. 49-50.
[16] *Rollo*, p. 11.

(1) Upon a written contract;
(2) Upon an obligation created by law;
(3) **Upon a judgment**." *(Emphasis Supplied)*

From the foregoing, once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from the date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five years, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint within ten years from the time the judgment becomes final.[17]

In the case of *Enriquez vs. Court of Appeals*[18], the Supreme Court explained the nature of an action to revive judgment, *to wit*:

> "Sec. 6, Rule 39 of the Rules of Court states that an action to revive judgment only requires proof of a final judgment which has not prescribed and has remained unexecuted after the lapse of five (5) years but no more than ten (10) years from its finality. xxx. An action to revive judgment is not meant to retry the case all over again. Its cause of action is the judgment itself and not the merits of the original action."

In compliance with the order[19] of the Court in Division, respondent submitted certified true copies of the following documents in support of its petition:

1. Decision dated April 21, 2003 issued by the Court of Tax Appeals[20];
2. Resolution dated October 7, 2003, issued by the Fifteenth Division of the Court of Appeals[21];
3. Resolution dated December 9, 2003 issued by the Fifteenth Division of the Court of Appeals[22];
4. Resolution dated January 23, 2004, issued by the Fifteenth Division of the Court of Appeals[23];
5. Resolution dated May 17, 2004, issued by the First Division of the Supreme Court[24]; and
6. Entry of Judgment issued by the Deputy Clerk of Court and Chief Judicial Records Officer, Teresita G. Dimaisip[25].

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[17] *Villeza vs. German Management and Services, Inc, et. al.* (G.R. No. 182937, August 8, 2010).
[18] G.R. No. 137391, December 14, 2001
[19] *Division docket*, pp. 38-39, Resolution dated April 1, 2011.
[20] *Division docket*, pp. 42-62.
[21] *Division docket*, pp. 63-65.
[22] *Division docket*, pp. 66-69.
[23] *Division docket*, pp. 70-71.
[24] *Division docket*, p. 72.

The CTA judgment sought to be revived became final and executory on June 28, 2004[26] and was accordingly entered into the Book of Entries of Judgments of the Supreme Court on the same date. On the other hand, the petition for revival of judgment was filed on March 2, 2011. Clearly, the filing of the petition was well within the reglementary period provided by law.

From the foregoing, this Court finds that respondent has complied with the requirements set forth under the law for the revival of judgment.

Petitioner argues that laches have set in since respondent failed to assert its right to the judgment/decision for an unwarranted period of time.

However, contrary to petitioner's argument, laches never set in because respondent filed its petition for revival of judgment within the period set by the rules and law.

Petitioner insists that Section 6, Rule 39 of the Revised Rules of Civil Procedure, in relation to Article 1144 of the Civil Code is not applicable in the present case. Section 7 of the Revised Rules of the Court of Tax Appeals (RRCTA) does not provide for an independent action in case of neglect or failure to file a motion after issuance of judgment. The suppletory application of the Rules of Court should have no standing in the instant case given the peculiar nature of tax cases and the clear directive of Section 7 of RRCTA. The peculiarity stems from the very fact that taxes are essential to the government's very existence.

This Court cannot comprehend petitioner's argument that the Rules of Court cannot be applied suppletorily when Section 3, Rule 1 of the RRCTA clearly provides that "[T]he Rules of Court in the Philippines shall apply suppletorily to these Rules." Suppletory is defined as "supplying deficiencies." It means that the provisions in the Rules of Court will be made to apply only where there is an insufficiency in the applicable rule.[27]

Section 7 of Rule 14 of the RRCTA provides that:

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[25] *Division docket*, p. 73.
[26] *Division docket*, p. 73.
[27] *Government Service Insurance System, et. al. vs. Villaviza, et. al.* (G.R. No. 180291, July 27, 2010).

> "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.
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> **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**." *(Emphasis supplied)*

From a reading of the above provision, it is silent as to when the motion for the execution of the judgment should be filed. Hence, *We* find that Section 6, Rule 39 of the Rules of Civil Procedure applies suppletorily.

Moreover, in *Manila Electric Company vs. CIR* [28], this Court has previously granted a petition for revival of judgment.

Finding no reversible error, *We* affirm the assailed *Decision* dated October 3, 2012 and *Resolution* dated November 13, 2012 of the former Third Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[28] CTA Case No. 7348, November 7, 2007, decision affirmed in CTA EB Case No. 363, September 5, 2008.

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice