REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2783** (CTA Case No. 10618)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES, *JJ.***
PHILIPPINE HYDRO (PH), INC., Respondent.	Promulgated: DEC 04 2023 2:29 p.m.

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RESOLUTION

On July 21, 2023, petitioner Commissioner of Internal Revenue (CIR) filed his Motion for Extension of Time to File Petition for Review, which was granted by the Court in a Minute Resolution dated July 28, 2023, subject to the condition that the motion was filed on time. Respondent Philippine Hydro (PH), Inc. filed its Comment/Opposition (to the Motion for Extension of Time to File Petition for Review) on August 1, 2023. Petitioner filed its Petition for Review on August 4, 2023.

Records show that petitioner received the Resolution dated June 29, 2023, denying his Motion for Reconsideration (Re: Decision Promulgated on 06 March 2023) on July 6, 2023; whereas, the Office of the Solicitor General (OSG) received the said Resolution on July 5, 2023.

In his Motion for Extension of Time to File Petition for Review, petitioner manifests that he received the Resolution dated June 29, 2023 on

July 6, 2023; therefore, he has until July 21, 2023 within which to file a Petition for Review before the Court of Tax Appeals (CTA) *En Banc*. In view of petitioner's counsel's heavy workload, he anticipates that he may not be able to file a Petition for Review on July 21, 2023 and requests for another fifteen (15) days from July 21, 2023, or until August 5, 2023, within which to file his Petition for Review.

Respondent Philippine Hydro (PH), Inc., on the other hand, filed a Comment/Opposition (to the Motion for Extension of Time to File Petition for Review dated July 21, 2023), asserting that the motion for extension was belatedly filed by petitioner considering that the OSG received the Resolution, dated June 29, 2023, on July 5, 2023. Therefore, the motion for extension should have been filed on July 20, 2023, fifteen (15) days from the receipt by petitioner's counsel of the said Resolution.

On August 4, 2023, petitioner filed his Petition for Review.

The motion was filed out of time.

It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended.[1] The court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court powerless to entertain or grant it.[2]

Here, the OSG received the Resolution dated June 29, 2023 on July 5, 2023; whereas, the Litigation Division of the Bureau of Internal Revenue (BIR) received it the following day, i.e. July 6, 2023.

Respondent argues in its comment that, in case of several counsels on record, notice to any of the party's counsel starts the time running for appeal. Thus, the receipt on July 5, 2023 by the OSG of the Resolution is sufficient and starts the period of petitioner's appeal, thereby rendering the motion for extension as filed out of time.

It is doctrinally entrenched that the right to appeal is a statutory right and the one who seeks to avail of that right must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well. The failure to perfect the appeal within the time

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[1] *Vda. de Victoria v. Court of Appeals*, G.R. No. 147550, January 26, 2005.
[2] *Philippine Long Distance Telephone Co., Inc. v. Court of Appeals*, G.R. No. 57079, September 29, 1989.

prescribed by the Rules of Court unavoidably renders the judgment final as to preclude the appellate court from acquiring the jurisdiction to review the judgment.[3]

In view of the foregoing, the instant Motion for Extension of Time to File Petition for Review did not comply with the condition set forth in the Minute Resolution dated July 28, 2023 and is considered filed out of time. Accordingly, it does not extend the period within which to file the Petition for Review. The Petition for Review filed by the CIR on July 21, 2023 is, thus, filed out of time.

WHEREFORE, the instant **Petition for Review** is **DISMISSED** for being filed out of time.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[3] *Albor v. Court of Appeals*, G.R. No. 196598, January 17, 2018.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice