REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

J SQUARE C CONSTRUCTION SUPPLY, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA EB NO. 1229
(CTA Case No. 8455)

Present:

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

Promulgated:

NOV 25 2015

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DECISION

COTANGCO-MANALASTAS, *J.*:

On appeal before the Court *En Banc* by way of a *Petition for Review*[1] filed on October 7, 2014, pursuant to Section 18 of Republic Act No. 1125, as amended by Section 11 Republic Act No. 9282 and Republic Act No. 9503[2], are the July 31, 2014 *Decision*[3] and the September 11, 2014 *Resolution*[4] promulgated by the First Division of the Court of Tax Appeals

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[1] *Rollo*, pp. 1-32.
[2] Otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes."
[3] *Rollo*, pp. 34-46.
[4] *Rollo*, pp. 48-50.

(CTA) in CTA Case No. 8455, entitled "*J Square C Construction Supply, Inc. vs. Commissioner of Internal Revenue*".

Quoted below are the relevant portions of the appealed *Decision and Resolution*:

Decision dated July 31, 2014:

> "By operation of law, the final assessment notice received by petitioner on April 15, 2011 became final, executory and demandable as petitioner's protest was filed only on August 24, 2011, way beyond the 30-day reglementary period.
>
> Having ruled that the final assessment notice already became final, executory and demandable, discussion on the other issues presented in this case is moot and academic.
>
> **WHEREFORE,** premises considered, the Petition for Review is **DENIED.**"

Resolution dated September 11, 2014:

> "**WHEREFORE**, premises considered, the "Motion for Reconsideration (for Petitioner J Square C Construction Supply, Inc.)" filed by petitioner on August 22, 2014, through a license [sic] courier, is hereby considered a mere scrap of paper."

FACTS OF THE CASE

The facts, as narrated by the Court in Division, are quoted below:

> "Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 700-A Aurora Boulevard, Valencia, Quezon City. It is registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) taxpayer under tax identification number (TIN) 000-390-620-000 and is duly registered with the Securities and Exchange Commission.
>
> Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), who is charged with the authority to perform the duties of her office, including *inter alia,* the power to interpret tax laws, decide tax cases, and make assessments as provided by law, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City.

On 16 July 2009, a Letter of Authority was issued subjecting petitioner to audit investigation for taxable year 2008. The audit was conducted by Revenue Officer Monica I. Dimaculangan under Group Supervisor Leticia T. Balderama of Revenue District Office No. 40, Revenue Region 7, Cubao, Quezon City.

On March 2, 2010, Revenue District Officer Clavelina S. Nacar of RDO 40, Cubao, Quezon City issued a Post Reporting Notice informing petitioner of the proposed income tax, value-added tax and expanded withholding tax assessments covering taxable year 2008.

Respondent issued a Preliminary Assessment Notice (PAN) dated 10 March 2011, which allegedly was received by petitioner on 18 March 2011, assessing petitioner of deficiency VAT on sale of its real property, the detailed computation of which is shown below:

DEFICIENCY VALUE ADDED TAX		
Taxable sales/receipts per returns		P4,086,311.63
Add: Adjustment per investigation		
Sale of Real Property		9,000,000.00
Taxable sales/receipts per Investigation		P13,086,311.63
Output tax due thereon (12%)		P1,570,357.40
Less: Tax Credits/Payments:		
Payments	P161 ,394.97	
Input tax claimed for the year	346,658.80	
Total	508,053.77	
Less: Disallowed input tax	17,696.40	490,357.37
Deficiency Value Added Tax		1,080,000.03
Add: 20% Interest p.a. (01.27.09 to 03.10.11)		457,446.59
TOTAL AMOUNT DUE		P1,537.446.62

On 8 April 2011, petitioner filed a letter dated 1 April 2011 to the Bureau of Internal Revenue (BIR) Region 7 informing the latter that the issue of subjecting the sale of lot to 12% VAT has been brought up in the examination of its return in 2010, which after thorough verification and submission of required supporting evidence, the concerned examiners and officers classified and affirmed the property as capital asset, subject only to final tax of 6%.

On 8 April 2011, respondent, through Regional Director Nestor S. Valeroso issued a Formal Letter of Demand/Final Assessment Notice to petitioner, which it received on 15 April 2011, finding petitioner liable for deficiency VAT in the total amount P1,573,545.25, inclusive of interest, computed as follows:

DEFICIENCY VALUE ADDED TAX		
Taxable sales/receipts per returns		P4,086,311.63
Add: Adjustment per investigation		
Sale of Real Property		9,000,000.00
Taxable sales/receipts per Investigation		P13,086,311.63
Output tax due thereon (12%)		P1,570,357.40
Less: Tax Credits/Payments:		
Payments	P161 ,394.97	
Input tax claimed for the year	346,658.80	
Total	508,053.77	
Less: Disallowed input tax	17,696.40	490,357.37
Deficiency Value Added Tax		1,080,000.03
Add: 20% Interest p.a. (01.27.09 to 03.10.11)		493,545.22
TOTAL AMOUNT DUE		P1,573,545.25

On August 10, 2011, petitioner received a letter from Regional Director Nestor S. Valeroso dated July 29, 2011, whereby the latter has acknowledged the receipt of petitioner's protest letter (on the PAN) dated April 1, 2011, and gave petitioner fifteen (15) days from August 10, 2011 to file its protest against the Final Assessment Notice/Formal Letter of Demand.

In a letter dated August 17, 2011, which the BIR Region 7 received on August 24, 2011, petitioner protested the Final Assessment Notice/Formal Letter of Demand restating that in its April 1, 2011 letter it gave full explanation and directed the attention of the BIR to the different supporting documents of why it is subject to 6% capital gains tax instead of the 12% VAT.

On 9 December 2011, petitioner received a letter dated 7 December 2011 informing petitioner that pursuant to MOA 040-000890 dated 5 December 2011, Revenue Officer Joseph E. Rodriguez under Group Supervisor Letecia T. Balderama will be continuing the verification/investigation of the 2008 tax liabilities. Respondent informed petitioner of the re-investigation of the case.

On 1 March 2012, Jonas DP. Amora, OIC-Regional Director of Revenue Region 7, Quezon City issued the Final Decision denying petitioner's protest against the Final Assessment Notice/Formal Letter of Demand for failure to submit documents in support thereof.

On April 10, 2012, petitioner assailed the foregoing decision before this Court by filing a Petition for Review.

Respondent, in her Answer filed on June 4, 2012, interposed the following special and affirmative defenses:

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8. Pursuant to the audit investigation conducted by the District Office, a Post Reporting Notice issued by the District Office No. 70-Cubao assessed the Petitioner of deficiency value-added tax in the amount of P1,626,856.00, deficiency income tax in the amount of P5,100.50, deficiency expanded withholding tax in the amount of P7,496.01 and compromise penalty in the amount of P3,000. The same was made known to the Petitioner as it was personally served upon the representative of the Petitioner in the person of Marie Sayno on June 16, 2010 at 11:30 a.m.

9. The District Office held that the real property sold by the Petitioner was subject to VAT due to the fact that the Petitioner reported the said real property in its Financial Statements as Property and Equipment, an account which includes all assets which are used in the course of trade and business of the Petitioner. Hence, the Formal Letter of Demand states that 'Verification disclosed that the sale of your real property amounting to P9,000,000 has not been subjected to VAT, hence, assessed pursuant to Section 106 and 108 of the Tax Code, as amended.'

10. There was indeed an Agreement Form executed by the District Office which was signed by Revenue Officer Monica Dimaculangan, Group Supervisor Leticia Balderama and duly noted by Revenue Disctrict Officer Clavelina Nacar, in favor of J Square C Construction for taxable year 2008. Under said Agreement Form, the Petitioner was allowed to pay the deficiency income tax in the amount of P5,100.25, deficiency value added tax in the amount of P24,410.60, deficiency withholding tax in the amount of P7,496.01 and compromise penalty in the amount of P3,000, all inclusive of penalties and increments. However, the District Office was not satisfied with the justification and documents provided by the Petitioner as to warrant the cancellation of the assessment for value-added tax on the sale of the real property of the Petitioner. Hence, in the Memorandum to the Revenue District Officer, RO Monica Dimaculangan and Group Supervisor Leticia Balderama reported that payments made as per the Agreement Form but stated therein that an assessment on value added tax was determined on the sale of Real Property in the amount of P1,626,856.00 inclusive of increments which is still under protest. Further, it ·was recommended that the case be forwarded to the Assessment Division for appropriate action on the value-added tax liability on the sale of the real property;

10.(sic) The Letter of Authority issued to the Petitioner was made for the audit investigation of the books of accounts and accounting records for taxable year 2008 and not for the sole purpose of determining the taxability of the sale of the real property of the Petitioner. The Agreement Form issued by the District Office, while it may have already included a (sic) findings on the value-added tax, does not yet include the findings of the District Office that the sale of the real property of the Petitioner is subject to value-added tax. This is very clear from the 19 May 2010 Memorandum report of the Revenue Officer to the District Officer, a day after the issuance of the Agreement Form.

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12. Assessment Notice No. 040-B0187-08 was issued to the Petitioner on April 8, 2011 and the same was admitted to have

> been received by the Petitioner on April 15, 2011. Under Section 228 of the National Internal Revenue Code of 1997, the Petitioner has a period of thirty days from receipt thereof within which to file a request for reinvestigation or reconsideration from receipt of the assessment. In the instant case, the Protest on the Final Assessment was filed by the Petitioner only on August 24, 2011, in clear violation of the statutory requirement set forth under Section 228 of the National Internal Revenue Code of 1997. Being a statutory requirement, such rule cannot be changed such that the Protest filed on August 24, 2011 or one hundred thirty-one (131) days after receipt of the Assessment Notice had rendered the same final and demandable.
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> 13. The Assessment Notice issued against the Petitioner has likewise become final and demandable due to the failure of the Petitioner to submit a valid protest which conforms to the form required under existing revenue issuances;
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> xxx xxx xxx

On July 31, 2014, the Court in Division issued the challenged *Decision*[5] denying J Square C Construction's petition for review, holding that the final assessment notice received by petitioner on April 15, 2011 had become final, executory and demandable as petitioner's protest was filed only on August 24, 2011, way beyond the 30-day reglementary period.

On September 11, 2014, the Court in Division resolved that petitioner's Motion for Reconsideration[6] was a mere scrap of paper as it did not contain a notice of hearing, thus, did not toll the running of the period to appeal.

Hence, the filing of the subject *Petition for Review*[7].

The Court *En Banc* ordered the respondent to file her comment within ten (10) days from notice.[8] Record shows that respondent failed to file comment within the prescribed period; thus, considering the issues raised in the subject *Petition for Review*[9], this Court resolved to give due course to the instant

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[5] *Supra*, Note 3.
[6] *Division Docket*, pp. 418-428.
[7] *Supra*, Note 1.
[8] *Rollo*, pp. 300-301.
[9] *Supra*, Note 1.

Petition for Review sans respondent's comment thereto and required the parties to submit their respective memorandum[10].

On October 17, 2014, this Court received a *Manifestation*[11] stating that petitioner filed with the Supreme Court a Petition for Certiorari dated October 3, 2014, assailing the Decision and Resolution dated July 31, 2014 and September 11, 2014, respectively, of the CTA First Division, in CTA Case No. 8455.

Subsequently, on March 9, 2015 the Court received a Notice[12] from the Division Clerk of Court of the Third Division of the Supreme Court. The notice stated that, on January 14, 2015, the Third Division of the Supreme Court resolved to dismiss the petition for certiorari filed by J Square C Construction Supply, Inc., for failure to show any grave abuse of discretion in rendering the challenged *Decision*[13] and *Resolution*[14].

With the filing of petitioner's *Memorandum*[15] on March 26, 2015, and in view of the Records Verification Report[16] of the Judicial Records Division dated April 14, 2015 stating that respondent failed to file her memorandum, the above-captioned case was submitted for decision on May 7, 2015.

ISSUES

Petitioner interposed the following issues:

1. Whether or not a rigid application of the rule will result in manifest failure or miscarriage of justice such that technicalities should be set aside in order to resolve the case on its merits;

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[10] *Rollo*, pp. 304-305.
[11] *Rollo*, pp. 286-297.
[12] *Rollo*, p. 308.
[13] *Supra*, Note 3.
[14] *Supra*, Note 4.
[15] *Rollo*, pp. 310-340.
[16] *Rollo*, p. 341.

2. Whether or not the protest letter filed on 8 April 2011 as protest to the Final Assessment Notice (FAN) was filed within the reglementary period for protesting the FAN;

3. Whether or not the FAN dated 8 April 2011 is void for failure to provide factual bases for the assessment, thus cannot attain finality;

4. Whether or not the sale or transaction by the petitioner of property covered by (TCT No.) PT-67022 is subject to VAT;

5. Whether or not petitioner is liable to deficiency VAT for the sale of real property amounting to twelve percent (12%) of Nine Million Pesos (P9,000,000.00);

6. Whether or not the assessment for deficiency VAT on the disallowed input taxes amounting to Seventeen Thousand Six Hundred Ninety-six Pesos and Forty Centavos (P17,696.40) has already been paid by the petitioner, and the demand for its payment again constitute double assessment and collection.

Arguments of Petitioner

Petitioner anchors it discussion on the following main points: [a] that a rigid application of the rule will result in manifest failure or miscarriage of justice; [b] that petitioner filed a protest to the FAN within the reglementary period; [c] the FAN is void for failure to state factual basis, therefore, cannot attain finality; [d] the sale on the property covered by TCT No. PT-67022 is not subject to VAT; and [e] that the assessment for deficiency VAT on the disallowed input taxes that was already paid constitutes double assessment and collection.

The first point is petitioner's defense for its failure to include a notice of hearing in its Motion for Reconsideration of the challenged *Decision*[17] issued by the Court in Division on July 31, 2014. Petitioner explains that its counsel relied on the premise that this Court is of the same level as the Court of

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[17] *Supra*, Note 3.

Appeals, hence, a notice of hearing on a motion for reconsideration is not required. Citing several jurisprudence, petitioner claims that such honest mistake of its counsel should not prejudice petitioner, who otherwise has a very good cause, to appeal its case and seek redress with this Court, and that a rigid application of the rules will result in a manifest failure or miscarriage of justice because of the following: [1] petitioner was denied due process when it was issued an assessment that did not provide the legal and factual basis for the assessment; [2] the PAN and FAN did not even state why the sale of the property is being subject to VAT; [3] respondent did not consider the supporting documents submitted by the petitioner on April 8, 2010, thus denying petitioner of due process; [4] the assessment of respondent was arbitrary, whimsical, and capricious; and [5] petitioner was subjected to double assessment and collection.

In support of its second point, petitioner denies the finding of the Court in Division that petitioner filed its protest to the FAN only on August 24, 2011. Petitioner claims that it already filed its protest to the FAN as early as April 8, 2011, since petitioner was already notified on April 8, 2011 that the FAN was already issued, petitioner's letter dated April 1, 2011, although initially intended to protest the PAN, was actually submitted in protest of the FAN.

Third, petitioner alleges that the PAN and FAN sent by respondent is void, for the said assessment notices failed to comply with the requirements of the law as it did not provide legal and factual basis for the assessment. Petitioner avers that an ocular inspection of the property assessed for VAT could have been a factual basis in respondent's determination that the property is subject to VAT, but said inspection was not done.

Petitioner insists in its fourth point that: it is engaged in the trading of construction supplies and does not hold any parcel of land, including the property subject of this case, primarily for sale to customers in its ordinary course of business; petitioner was never, primarily engaged in the business of buying, selling and leasing of land or any real property; petitioner has complied and submitted all the supporting documents needed to prove the character of the property and that the transaction should not have been assessed VAT.

Lastly, petitioner points out that it cannot again be required to pay the assessment of deficiency VAT to the disallowed input taxes amounting to P17,696.40 indicated in the PAN and FAN as the said amount was already paid by petitioner as evidenced by the machine validated Development Bank of the Philippines BIR Tax Payment Deposit Slip Official Receipt No. 10-32478.

RULING OF THE COURT *EN BANC*

The Court finds that the subject *Petition for Review*[18] is outrightly dismissible.

Petitioner's Motion for Reconsideration before the CTA First Division was filed beyond the 15-day reglementary period.

In the assailed *Resolution*[19], the CTA First Division resolved that petitioner's Motion for Reconsideration[20] of the *Decision*[21] dated July 31, 2014 is a mere scrap of paper due to petitioner's failure to include a notice of hearing required under Sections 4 and 5 of Rule 15 of the 1997 Rules of Civil Procedure; thus, according to the CTA First Division, petitioner's Motion for Reconsideration did not toll the running of the period to appeal. In view of the said ruling, petitioner submits this first issue in the present *Petition*, urging the Court to apply liberality/relaxation in the interpretation of the rules of procedure.

After scrutiny of the records, the Court *En Banc* would like to underscore the fact that petitioner failed to comply with not just one, but two procedural rules when it filed its Motion for Reconsideration[22] with the CTA First Division. Apart from the aforementioned failure of petitioner to include a notice of hearing, petitioner's Motion for Reconsideration was likewise filed five days too late.

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[18] *Supra*, Note 1.
[19] *Supra*, Note 4.
[20] *Supra*, Note 6.
[21] *Supra*, Note 3.
[22] *Supra*, Note 6.

The 2005 Revised Rules of the Court of Tax Appeals (RRCTA) provides for the remedies that may be availed of by any party aggrieved by any decision, resolution or order of the Court, one of the remedies include the filing of a motion for reconsideration. Section 1, Rule 15 of the 2005 RRCTA answers the question on the period of filing said motion, thus:

> **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.

Petitioner received a copy of the CTA First Division's July 31, 2014 *Decision*[23] on August 6, 2014; thus, petitioner had 15-days or until August 22, 2014 – since August 21, 2014 fell on a special non-working holiday – within which to file a motion for reconsideration, motion for new trial, or an appeal pursuant to the rules.

In this case, petitioner claims that it timely filed its Motion for Reconsideration[24] with the CTA First Division as it mailed the same through a private messengerial/courier service (via LBC) on August 22, 2014. However, this claim of having timely filed the Motion for Reconsideration is belied by the documents on record, rules and jurisprudential precepts.

Under Section 3, Rule 13 of the Rules of Court, pleadings may be filed in court either personally or by registered mail. In the first case, the date of filing is the date of receipt. In the second case, the date of mailing is the date of receipt.[25]

The filing or service by petitioner of the Motion for Reconsideration by private courier service cannot be trivialized. 'Service and filing of pleadings by courier service is a mode not provided in the Rules.'[26]. In varying but consistent language, the Supreme Court has ruled that the "the date of delivery of pleadings to a private letter-forwarding agency is

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[23] *Supra*, Note 3.
[24] *Supra*, Note 6.
[25] *Heirs of Numeriano Miranda, Sr., vs. Pablo R. Miranda*, G.R. No. 179638, July 8, 2013.
[26] *George Pidlip P. Palileo, et al., vs. Planters Development Bank*, G.R. No. 193650, October 8, 2014.

not to be considered as the date of filing thereof in court;" instead, "the date of actual receipt by the court x x x is deemed the date of filing of that pleading."[27]

The pronouncement of the Supreme Court in *Philippine National Bank vs. Commissioner of Internal Revenue*[28] is instructive on the matter:

> 'To recall, PNB filed its petition with the CTA *En Banc* four days beyond the ***extended*** period granted to it to file such petition. PNB argues that it was filed on time since it was mailed on *the last day of the extended period,* which was on December 23, 2005. <u>It has been established that a pleading filed by ordinary mail or by private messengerial service x x x is deemed filed on the day it is actually received by the court, and not on the day it was mailed or delivered to the messengerial service</u>. In *Benguet Electric Cooperative, Inc. v. National Labor Relations Commission,* we said:
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>> The established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading."' (Underscoring supplied)

Applying the foregoing rules and jurisprudential precepts, it is clear that, while petitioner indeed mailed via LBC the Motion for Reconsideration on August 22, 2014, the said Motion is deemed filed on the day of actual receipt by the CTA First Division, *i.e. August 26, 2014*, a date which is already five days beyond the 15-day reglementary period.

Considering that petitioner's Motion for Reconsideration was filed beyond the reglementary period to file motion for reconsideration or new trial provided under Section 1, Rule 15 of the 2005 RRCTA, the said motion is deemed *pro forma,* and thus, did not suspend the running of the period to appeal.

Section 6, Rule 15 of the 2005 RRCTA provides:

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[27] *Supra*, Note 25.
[28] G.R. No. 172458, December 14, 2011.

> SEC. 6. *Contents of motion for reconsideration or new trial and notice.* – The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.
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> xxx xxx xxx
>
> A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed *pro forma*, which shall not toll the reglementary period for appeal.

Failure to file Motion for Reconsideration on time renders the assailed Decision final; thus, may not be disturbed or subjected to appellate review.

Having established that petitioner's Motion for Reconsideration of the July 31, 2014 *Decision*[29] of the CTA First Division in CTA Case No. 8455 was belatedly filed with the said Court in Division, petitioner had also lost its right to appeal the said *Decision* to this Court. 'A motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal.'[30] Also, the belated filing of petitioner's Motion for Reconsideration did not toll the July 31, 2014 *Decision*[31] of the CTA First Division in CTA Case No. 8455 from becoming final and executory. 'As such the Decision is past appellate review and constitutes *res judicata* as to every matter offered and received in the proceedings below as well as to any other matter admissible therein and which might have been offered for that purpose.'[32]

Consequently, this Court is devoid of jurisdiction from taking cognizance of the present *Petition for Review*. 'The unjustified delay in the filing of petitioner's Motion for Reconsideration xxx is not just a procedural lapse, but also a

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[29] *Supra*, Note 3.
[30] *Roberto Y. Ponciano, Jr., vs. Laguna Lake Development Authority and Republic of the Philippines*, G.R. No. 174536, October 29, 2008.
[31] *Supra*, Note 3.
[32] *Supra*, Note 30.

jurisdictional defect which effectively prevents this Court from taking cognizance of the *Petition* at bar.'[33]

This Court found reason in the statements made by the Supreme Court in the case of *Roberto Y. Ponciano, Jr., vs. Laguna Lake Development Authority and Republic of the Philippines*[34]*(Ponciano case),* relative to the effect of filing a belated motion for reconsideration, *viz*:

> "A petition for reconsideration on the ground of excusable negligence is addressed to the sound discretion of the court. This discretion can not be interfered with except in a clear case of abuse. Taking into account all the circumstances of the instant case, **the Court finds no such abuse committed by the Court of Appeals in refusing to admit and act on petitioner's Motion for Reconsideration since the judgment subject of said Motion had already become final upon the lapse of the 15-day reglementary period for the filing of the same. At that point, the appellate court had already lost jurisdiction over the case and the subsequent filing of a motion for reconsideration cannot disturb the finality of the judgment nor restore jurisdiction which had already been lost.**
>
> **That the Motion for Reconsideration was filed only a day late is of no moment.** The Court had previously refused to admit motions for reconsideration which were filed only one or two days late.
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> Without a motion for reconsideration of the 22 February 2006 Decision in CA-G.R. CV No. 80705 having been timely filed with the Court of Appeals, petitioner had also lost his right to appeal the said Decision to this Court. For purposes of determining its timeliness, a motion for reconsideration may properly be treated as an appeal. As a step to allow an inferior court to correct itself before review by a higher court, a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal.

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[33] *Supra.*
[34] G.R. No. 174536, October 29, 2008 citing *Philippine Coconut Authority v. Garrido,* 424 Phil. 904, 909 (2002); *Tan v. Tan,* G.R. No. 133805, 29 June 2004, 433 SCRA 44, 49, citing *Basco v. Court of Appeals,* 383 Phil. 671, 685-686 (2000). *Macabingkil v. People's Homesite and Housing Corp.,* 164 Phil. 328, 340-341 (1976).

Petitioner's Motion for Reconsideration, being filed beyond the reglementary period, did not toll the Decision dated 22 February 2006 of the Court of Appeals in CA-G.R. CV No. 80705 from becoming final and executory. As such the Decision is past appellate review and constitutes *res judicata* as to every matter offered and received in the proceedings below as well as to any other matter admissible therein and which might have been offered for that purpose.

The Court is without jurisdiction to modify, much less, reverse, a final and executory judgment. It has been pronounced by the Court in *Paramount Vinyl Products Corporation v. National Labor Relations Commission* that:

> Well-settled is the rule that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional. **Failure to interpose a timely appeal (or a motion for reconsideration) renders the assailed decision, order or award final and executory that deprives the appellate body of any jurisdiction to alter the final judgment** [*Cruz v. WCC*, G.R. No. L-42739, January 31, 1978, 81 SCRA 445; *Volkshel Labor Union v. NLRC*, G.R. No. L-39686, June 28, 1980, 98 SCRA 314; *Acda v. Minister of Labor*, G.R. No. 51607, December 15, 1982, 119 SCRA 306; *Rizal Empire Insurance Group v. NLRC*, G.R. No. 73140, May 29, 1987, 150 SCRA 565; *MAI Philippines Inc. v. NLRC*, G.R. No. 73662, June 18, 1987, 151 SCRA 196; *Narag v. NLRC*, G.R. No. 69628, October 28, 1987, 155 SCRA 199; *John Clement Consultants, Inc. v. NLRC*, G.R. No. 72096, January 29, 1988, 157 SCRA 635; *Bongay v. Martinez*, G.R. No. 77188, March 14, 1988, 158 SCRA 552; *Manuel L. Quezon University v. Manuel L. Quezon Educational Institution*, G.R. No. 82312, April 19, 1989, 172 SCRA 597]. This rule "is applicable indiscriminately to one and all since **the rule is grounded on fundamental consideration of public policy and sound practice that at the risk of occasional error, the judgment of courts and award of quasi-judicial agencies must become final at some definite date fixed by law**" [*Volkschel Labor Union v. NLRC*, supra, at p. 322]. Although, in a few instances, the Court has disregarded procedural lapses so as to give due course to appeals filed beyond the reglementary period (See*Flexo Manufacturing Corporation v. NLRC*, G.R. No. 55971, February 28, 1985,135 SCRA 145; *Firestone Tire & Rubber Co. v. Lariosa*, G.R. No. 70479, February 27, 1989, 148 SCRA 187; *Chong Guan Trading v.*

> *NLRC*, G.R. No. 81471, April 26, 1989, 172 SCRA 831], the Court did so on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof. (Emphasis ours.)

> **It is clear from the foregoing that the unjustified delay in the filing of petitioner's Motion for Reconsideration in CA-G.R. CV No. 80705 is not just a procedural lapse, but also a jurisdictional defect which effectively prevents this Court from taking cognizance of the Petition at bar.**

> Petitioner cannot claim that he has been deprived of due process. He was able to fully participate in the proceedings before the Court of Appeals in CA-G.R. CV No. 80705. The Court of Appeals actually took into consideration petitioner's evidence when it rendered its Decision dated 22 February 2006; only, it found that said evidence failed to establish specific acts of ownership over the subject property in compliance with the possessory requirements of the law for an imperfect title. Petitioner was not arbitrarily deprived of his right to file a motion for reconsideration of the Decision dated 22 February 2006 of the Court of Appeals; petitioner failed to avail himself of such a remedy within the reglementary period prescribed by law.

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In light of the above disquisitions, the Court finds no need to further discuss the other issues raised by the petitioner. They are rendered irrelevant by the above pronouncements.

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

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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
MA. BELEN RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were 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