REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

P3OPLE4U INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9923

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:
MAY 03 2019 8:52am

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RESOLUTION

On January 3, 2019, the Court received respondent's Motion to Dismiss,[1] posted on December 17, 2018. Despite notice,[2] petitioner failed to file its comment to respondent's motion.[3]

In his motion, respondent Commissioner of Internal Revenue (CIR) states that the Court has no jurisdiction to take cognizance of the case. The CIR states that petitioner received the Final Decision on Disputed Assessment (FDDA) on December 9, 2016. Thus, petitioner only had until January 8, 2017, within which to file its petition for review before the Court of Tax Appeals (CTA). When the subject Petition for Review was filed on September 5, 2018, it was clearly filed beyond the period allowed by law.

Respondent CIR also states that he received an Entry of Judgment on August 16, 2018, with respect to CTA Case No. 9527, involving the same parties and subject matter, which states as follows:

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[1] Docket, pp. 124-127.
[2] Docket, p. 131.
[3] Per Records Verification dated March 6, 2019.

> This is to certify that on February 13, 2018 an Order rendered in the above-entitled case was filed in this Office, the dispositive part of which reads as follows:
>
> > "IN VIEW HEREOF, this case is **DISMISSED** without prejudice.
> >
> > SO ORDERED."
>
> and that the same has, on May 18, 2018, become final and executory, petitioner's Motion for Reconsideration thereof having been denied in a Resolution promulgated on April 25, 2018, without any appeal being taken thereon, and is hereby recorded in the Book of Entries of Judgments.

A review of the material dates in the subject Petition for Review reveals the following:

> On December 9, 2016, Petitioner received a copy of the Final Decision dated 7 December 2016.
>
> ....Since the Final Decision was received by the Petitioner on 9 December 2016, it had 30 days from that date or until 9 January 2017 (8 January 2017 was a Sunday) within which to file the petition.
>
> The Petition for Review was timely filed on 9 January 2017. Respondent filed its Answer thereto on 21 April 2017. The case was then set for Pre-Trial Conference on 18 July 2017.
>
> In light of Petitioner's need for more time to diligently prepare its case, the Honorable Court reset the pre-trial conference to 10 October 2017 and later rescheduled the same to 13 February 2018.
>
> On 13 February 2018, counsel for the Petitioner omitted to submit its Pre-Trial Brief. Hence, the Court of Tax Appeals (Third Division) issued an Order, the dispositive portion of which states:
>
> > "IN VIEW HEREOF, this case is **DISMISSED** without prejudice.
> >
> > **SO ORDERED.**"
>
> On 23 February 2018, Petitioner filed a Motion for Reconsideration with Motion to Admit Attached Pre-Trial

> Brief. However, the same was denied by this Honorable Court in a Resolution dated 25 April 2018.
>
> xxx xxx xxx
>
> Since the Order of this Honorable Court dated 13 February 2013 explicitly states that the instant case was dismissed "without prejudice", it does not preclude the refiling of the same action. Hence, petitioner re-files its Petition for Review.[4]

Rule 18, Section 5 of the Rules of Court provides for the effect of the plaintiff's failure to appear at pre-trial, as follows:

> SEC. 5. *Effect of failure to appear.* – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. <u>The dismissal shall be with prejudice, unless otherwise ordered by the court</u>. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof. (*Underscoring supplied*)

In the instant case, the Court of Tax Appeals (CTA) – Third Division specifically declared that the dismissal of CTA Case No. 9527 was without prejudice.[5] Thus, it is necessary to determine the consequences of a dismissal without prejudice.

A dismissal with prejudice disallows and bars the refiling of the complaint; whereas, the same cannot be said of a dismissal without prejudice.[6] The Supreme Court further explained:

> As earlier underscored, the dismissal was one without prejudice. Verily, it was not a judgment on the merits. It bears reiterating that a judgment on the merits is one rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point. <u>The dismissal of the case without prejudice indicates that absence of a decision on the merits and leaves the parties free to litigate the matter in a subsequent action **as**</u>

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[4] Docket, pp. 14-15.
[5] Docket, CTA Case No. 9527, Order dated February 13, 2018, p. 159.
[6] *Strongworld Construction Corporation, et al. v. Hon. N.C. Perello, in her capacity as Presiding Judge of Branch 276 of the Regional Trial Court of Muntinlupa City, et al.*, G.R. No. 148026, July 27, 2006.

> **though the dismissed action has not been commenced.**[7] (*Underscoring and emphasis supplied*)

Thus, petitioner is correct that a dismissal without prejudice does not bar the re-filing of the case. However, the Court agrees with respondent that the instant case was filed beyond the 30-day period within which to appeal to the Court of Tax Appeals.

Under Rule 8, Section 3 of the Revised Rules of the Court of Tax Appeals (RRCTA), the period for filing of an appeal is stated as follows:

> Rule 8 Procedure in Civil Cases
>
> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments ...... may appeal to the Court by petitioner for review filed within thirty days after receipt of a copy of such decision or ruling.... (*Underscoring supplied*)

The Petition for Review in the dismissed CTA Case No. 9527 was timely filed, through registered mail, on January 9, 2017 (January 8, 2017 was a Sunday), or within 30-days from petitioner's receipt of the Final Decision on December 9, 2016. However, said CTA Case No. 9527 is deemed as "not commenced" after its dismissal without prejudice on February 13, 2018, pursuant to the abovequoted Supreme Court ruling.

The Court must reconcile the prescriptive period to file an appeal before the CTA with the instant situation involving the filing of a new case after the original case was dismissed without prejudice.

Considering that cases before the CTA have to be filed within a certain period in order for the CTA to acquire jurisdiction, the Court cannot agree with petitioner's argument that a dismissal without prejudice allows the subsequent filing of a new case *without any limitation as to the period of refiling.*

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[7] *Sps. Isidro "Abel" Cruz and Lea Cruz v. Sps. Florencio and Amparo Caraos, et al.*, G.R. No. 138208, April 23, 2007.

To consent to petitioner's position would be to allow a circumvention of the limits set forth for the timely filing of appeals before the CTA.

Thus, it is necessary to determine the period of limitation for the re-filing of a case that was dismissed without prejudice. Since the RRCTA does not provide instances which interrupt or suspend the prescriptive period to file the appeal before the CTA, nor the applicable period for re-filing of a case previously dismissed without prejudice, reference may be made to the Civil Code of the Philippines which provides:

> Art. 1155. <u>The prescription of actions is interrupted when they are filed before the court</u>, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor. (*Underscoring supplied*)

It is clear from Art. 1155 of the Civil Code that the prescription of actions is interrupted when the action is filed in court. The effect of the filing of an action on the remaining prescriptive period was discussed in *Ledesma v. Court of Appeals*,[8] as follows:

> On August 21, 1980, private respondent Rizal Commercial Banking Corporation filed Civil Case no. 38287 in the then Court of First Instance against petitioner to enforce the terms of Trust Receipt Agreement No. 7389 executed by them on April 1, 1974 but which petitioner had failed to comply with. As summons could not be served on the latter, <u>said case was dismissed without prejudice on March 3, 1981</u>. <u>On December 2, 1988, private respondent bank instituted Civil Case No. 88-2572 in the Regional Trial Court of Makati, Metro Manila, Branch 133, against petitioner on the same cause of action and subject matter</u>.
>
> xxx xxx xxx
>
> Article 1155 of the Civil Code provides that the prescription of an action, ..., is interrupted by (a) the filing of an action, (b) a written extrajudicial demand by the creditor, and (c) a written acknowledgment of the debt by the debtor. <u>The effects of the last two instances have</u>

[8] G.R. No. 106646, Resolution dated June 30, 1993 (224 SCRA 175).

already been decided by this Court, the rationale wherein should necessarily apply to the first.

The matter of interruption of the prescriptive period by reason of a written extrajudicial demand by the creditor was decided in *Overseas Bank of Manila vs. Geraldez, et al.* in this wise:

> "x x x. The interruption of the prescriptive period by written extrajudicial demand means that the said period would commence anew from the receipt of the demand. That is the correct meaning of interruption as distinguished from mere suspension or tolling of the prescriptive period.
>
> x x x
>
> A written extrajudicial demand wipes out the period that has already elapsed and starts anew the prescriptive period. x x x
>
> x x x
>
> That same view as to the meaning of interruption was adopted in Florendo vs. Organo, 90 Phil. 483, 488, where it was ruled that the interruption of the ten-year prescriptive period through a judicial demand means that 'the full period of prescription commenced to run anew upon the cessation of the suspension.' When prescription is interrupted by a judicial demand, the full time for the prescription must be reckoned from the cessation of the interruption. x x x."

The interruption of the prescriptive period by reason of a written acknowledgment of the debt by the debtor was dealt with in *Philippine National Railways vs. National Labor Relations Commission, et al.*, thus:

> 'Article 1155 of the Civil Code provides that the 'prescription of actions is interrupted' *inter alia*, 'when there is any written acknowledgment of the debt by the debtor.' This simply means that the period of prescription, when interrupted by such a written acknowledgment, begins to run anew;

> and whatever time of limitation might have already elapsed from the accrual of the cause of action is thereby negated and rendered inefficacious. x x x
>
> x x x
>
> x x x. The effect of the interruption spoken of in Article 1155 is to renew the obligation, to make prescription run again from the date of the interruption."

> Based on the aforecited cases, Article 1155 has twice been interpreted to mean that <u>upon the cessation of the suspension of the prescriptive period, the full period of prescription commences to run anew</u>. Petitioner, on the other hand, insists that in case of the filing of an action, the prescriptive period is merely tolled and continues to run again, with only the balance of the remaining period available for the filing of another action. This postulation of petitioner, if we are to adopt it, would result in an absurdity wherein Article 1155 would be interpreted in two different ways, i.e., the prescriptive period is interrupted in case of an extrajudicial demand and a written acknowledgment of a debt, but it is merely tolled where an action is filed in court.
>
> x x x
>
> On the foregoing considerations, we are convinced and so hold that the correct interpretations of Article 1155 of the Civil Code are reflected in and furnished by the doctrinal pronouncements in *Overseas Bank of Manila* and *Philippine National Railways Company*, not only because they are later in point of time but because the issue is squarely resolved in a decisive and logical manner therein. Petitioner's submission would result in a bifurcated interpretation of Article 1155, aside from the irrational conclusion that a judicial action itself cannot produce the same result on the prescriptive period as a mere extrajudicial demand or an acknowledgment of the debt. (*Underscoring supplied*)

Applying the foregoing pronouncements, the filing of the first action, CTA Case No. 9527, interrupted the 30-day period within which to file the appeal with the CTA. However, it is unclear at which date should the new prescriptive period be counted, when the reason for interruption is the filing of an action.

The Court finds that the 30-day period should be reckoned from the finality of the Resolution dated April 25, 2018 in CTA Case No. 9527, which denied petitioner's Motion for Reconsideration of the Order[9] dated February 13, 2018.

To be sure, judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment 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 judgments or orders as the same become final by operation of law.[10]

Records show that the Petition for Review in CTA Case No. 9572 was dismissed without prejudice on February 13, 2018. Petitioner's Motion for Reconsideration thereof was denied in the Resolution dated April 25, 2018, a copy of which was received by petitioner on May 2, 2018. No appeal having been taken therefrom, the Resolution became final and executory on May 18, 2018. Counting thirty (30) days from May 18, 2018, petitioner had until June 17, 2018 within which to re-file the Petition for Review.

Considering that the present Petition for Review was filed only on September 5, 2018, the same was belatedly filed and must perforce be dismissed.

WHEREFORE, based on the foregoing considerations, respondent's Motion to Dismiss is **GRANTED**. Accordingly, the Petition for Review docketed as CTA Case No. 9923 is **DISMISSED** for having been filed out of time.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[9] Dismissing CTA Case No. 9527 without prejudice.
[10] *Barrio Fiesta Restaurant v. Helen C. Beronia*, G.R. No. 206690, July 11, 2016.