REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	C.T.A. EB No. 703 (C.T.A. CASE NO. 7476)
- versus -	Members: ACOSTA, PJ CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
LA SALLIAN EDUCATIONAL INNOVATORS FOUNDATION (DE LA SALLE UNIVERSITY – COLLEGE OF ST. BENILDE), INC., Respondent.	Promulgated: APR 19 2012

x- -x

DECISION

Fabon-Victorino, J.:

On December 23, 2010, petitioner Commissioner of Internal Revenue filed the Instant Petition for Review assailing the adverse Decision dated July 16, 2010, as well as the Resolution dated November 18, 2010, denying her Motion for Reconsideration, both rendered by the Special First Division of the Court.

This appeal stemmed from the Petition for Review filed by respondent with the Court in Division, praying for the cancellation of Assessment Notice 33-FY-05-31-02 dated June 17, 2005, issued against respondent for deficiency income tax and value added tax (VAT) in the amount of P125,191,750.24.

The following facts, as found by the Court in Division, insofar as pertinent to the present action, are undisputed, viz:

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), empowered to decide, cancel, and abate tax liabilities pursuant to Section 204(B) of the National Internal Revenue Code (NIRC), as amended.

Respondent, on the other hand, is a non-stock, non-profit domestic corporation, with office at The College of St. Benilde, 2544 Taft Avenue, Malate, Manila. Respondent La Sallian Educational Innovators Foundation and the College of St. Benilde are one and the same entity, and are registered as such.

On June 07, 2005, petitioner, through Regional Director Alfredo V. Misajon of the BIR Revenue Region No. 08, Manila, issued a Pre-Assessment Notice for respondent's deficiency income tax and value-added tax for fiscal year ending May 31, 2002. Ten days thereafter or on June 17, 2005, petitioner, again through RD Misajon, issued Assessment Notice No. 33-FY 05-31-02 for the same period, with demand letter against respondent for deficiency income tax in the amount of P122,414,521.70, computed as follows:

Gross Income Per Return on Educational		P 618,449,079.00
Less: Expenses Per Return on Educational		459,848,867.00
Net Income Per Return		P 158,600,212.00
Add: Adjustments Per Investigation		
Interest Expense – Disallowed (Sec. 34[B] NIRC)	P 21,827,506.66	
Provision For Retirement – Not Deductible (Sec. 34 NIRC)	27,059,454.34	
Provision For Doubtful Accounts – Not Deductible (Sec. 34 NIRC)	4,252,393.73	
Not Subjected to Withholding Tax – Sec. 34 NIRC		
Rental	123,147.00	
Income Not Subjected to Income Tax – Depository Accounts (Sec. 32 NIRC)	575,702,650.00	
Unlocated/Unsupported Invoices & Vouchers (Sec. 34 NIRC)	2,150,270.66	631,170,895.82
Adjusted Taxable Income		P 789,771,107.82
Tax due		P 78,977,110.78
Less: Tax due per return		-
Deficiency Income Tax (subject to increments)		P 78,977,110.78
Add: 25% surcharge (Sec. 248)		
20% interest from __ to 06-20-05 (Sec. 249)		43,437,410.92
Compromise Penalty (Sec. 254)		
TOTAL AMOUNT DUE & COLLECTIBLE		P 122,414,521.70

Petitioner likewise issued on even date, Assessment Notice No. 33-FY 05-31-02 for fiscal year ending May 31, 2002, with demand letter for respondent's deficiency VAT in the amount of P2,752,228.54, computed as follows:

Taxable income Subject to VAT			
ICC Revenue		P 24,830,069.00	
Auxiliary Service Income		637,280.35	
Concessionaire		606,726.00	
Mimeo/Xerox		425,489.60	
Bookstore-School Supplies		559,140.96	
Parking Fund		2,729,330.75	
Boarding House		2,513,338.02	
Locker Rental		309,172.00	32,610,546.68
VAT Output Tax Due - Sec. 106/ 08 NIRC			P 3,261,054.67
Less: Creditable Input Tax			
Carried Over from Previous Quarter		P 770,351.28	
Current Input Tax		943,242.91	
Total		P 1,713,594.19	
Less:			
Excess/To be Applied to Succeeding Year - Sec. 110 NIRC	P 121,991.53		
Unsupported - Sec. 110 NIRC	393,240.74		
Pro-rated between Hotel & School - Sec. 110, NIRC	309,956.13	825,188.40	888,405.79
VAT Due			P 2,372,648.88
Less: Payment			652,506.04
Deficiency VAT			P 1,720,142.84
Add:			
25% surcharge (Sec. 248)			
20% interest from ___ to 06-20-05 (Sec. 249)			1,032,085.70
Compromise Penalty (Sec. 254)			
TOTAL AMOUNT DUE & COLLECTIBLE			P 2,752,228.54

A separate Demand Letter for compromise penalty in deficiency VAT in the amount of P25,000.00 was issued as well on same date.

On July 20, 2005, respondent protested the assessments through a Request for Reconsideration. On September 19, 2005, respondent submitted additional documents in support of its protest.

On April 21, 2006, respondent executed an Agreement Form with petitioner to settle its deficiency VAT liability for fiscal year ending May 31, 2002 in the amount of P601,487.70 which was paid through UCPB Check No. 45154 on May 9, 2006, at the Land Bank of the Philippines, Port Area Branch.

Complaining inaction of petitioner's on the protest, respondent filed a Petition for Review before the Court in Division on April 26, 2006.

In her Answer filed on June 15, 2006, petitioner interposed the following special and affirmative defenses:

> "7. As per (respondent's) allegation the subject income and VAT assessments were received on June 21, 2005. As per verification with the Post Office of Manila, it was revealed however that said income and VAT assessments were received by the (respondent) on June 20, 2005. Hence, reckoning from the actual date of receipt of said assessments, the thirty (30) day period to protest prescribed on July 19, 2005. Thus, the (respondent's) filing of administrative protest on July 20, 2005 was already late because the said income and VAT assessments have become final, demandable and executory;
>
> 8. Even assuming in arguendo that the (respondent's) protest was timely filed on July 20, 2005, still, the Court of

Tax Appeals cannot take cognizance of this subject case due to (respondent's) failure to comply with the sixty (60) day period prescribed by the Tax Code within which to submit the documents to support its protest. (Petitioner) strongly maintains that the Honorable Court of Tax Appeals will continually support the interest of the government under the Lifeblood Theory doctrine enshrined by the Supreme Court in several cases particularly where prescription clearly sets in due to (respondent's) own negligence;

9. Section 228 of the 1997 Tax Code clearly provides that, FIRST: the assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as maybe prescribed by implementing rules and regulations; SECOND, that within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted, otherwise, the assessment shall become final; and, THIRD, that in case the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable;

10. As per BIR records, (respondent) filed its protest on July 20, 2005, hence, the last day of the sixty (60) day period within which to submit supporting documents was on September 18, 2005, otherwise, the subject income and VAT assessments have become final (paragraph 4 of Section 228 of the 1997 Tax Code). (Respondent) only submitted its supporting documents after the lapsed (sic) of the sixty (60) day period, which was on September 19, 2005 (paragraph 6 of the Petition for Review);

11. Therefore, the Court of Tax Appeals cannot take cognizance of the subject case. The law is very clear regarding the sixty (60) day period prescribed by law for the submission of (respondent's) documents to support its protest. Hence, (respondent) must follow the sixty (60) day period, otherwise, its right to assail said income and VAT assessments likewise prescribed. The sixty (60) day period is non-extendible;

12. More importantly, (respondent) has violated the rules on pleadings that the filing of petition and the payment of docket fee and other legal fees must be done within the

thirty (30) day reglementary period to appeal. Undoubtedly, the (respondent's) filing of the instant Petition for Review on April 17, 2006 deadline through registered mail without the payment of required docket fee and other legal fees of the CTA is a clear violation of the thirty (30) day period to appeal prescribed under the last paragraph of Section 228 of the 1997 Tax Code, hereby quoted as follows:

> *'If the protest is denied in whole or in part,* **or is not acted upon within one hundred eighty (180) days from submission of documents,** *the taxpayer adversely affected by the decision or* ***inaction*** *may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the decision xxx xxx xxx; otherwise the decision shall become* final, *executory and demandable.'* (Emphasis supplied)

13. In order for the Court to act on matters brought before it, it must acquire jurisdiction over the case. The thirty (30) day period prescribed by Section 11 of Republic Act 1125, as amended by Section 9 of Republic Act 9282, within which the taxpayer adversely affected by a decision of the Commissioner of Internal Revenue should file his appeal with the Tax Court is a jurisdictional requirement, and the failure of a taxpayer to lodge his appeal within the prescribed period bars his appeal and render the questioned decision final and executory (*Surigao Electric Co. vs. Court of Tax Appeals/ 57 SCRA 523).* Section 9 of Republic Act 9282 is hereby quoted as follows:

> **'Section 9.** Section 11 of the same Act is hereby amended to read as follows:
>
> **Section 11.** Who May Appeal; Mode of Appeal; Effect of Appeal. – any party adversely affected by a decision, ruling or **inaction** of the Commissioner of Internal Revenue xxx xxx xxx may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law xxx xxx xxx.' (Emphasis supplied)

14. As per records, the (respondent) filed the instant Petition for Review on April 17, 2006 - the last day of the thirty-day period to appeal, but the (respondent) paid the docket and other legal fees with an aggregate amount of P861,178.34 only on April 26, 2006 or nine days after the lapsed (sic) of the thirty (30) day period to appeal, hence, the Court of Tax Appeals has no jurisdiction to entertain it, much less consider the right of the Government to collect the

tax from the taxpayer *(Alfonso vs. Spouses* Andres *G.R. No. 139611, October 4, 2002; Pedrosa vs. Spouses Hill 327 Phil 153, June 14, 1996).* Clearly, existing jurisprudence dictates that the subject petition filed by the (respondent) should be dismissed outright for lack of jurisdiction of the CTA due to aforesaid jurisdictional defects;

15. Courts are bound to take notice of the limits of their authority and they may, by their own motion, even (sic) the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying the pleadings, dismissing the action or otherwise noticing the defect, at any stage of the proceedings *(Ace* Publication *Inc. vs. Commissioner of Customs and Collector of Customs, 11 SCRA 147);*

16. Payment of docket fee and other legal fees within the prescribed period is both mandatory *(Manalili vs. De Leon, 370 SCRA* 625, *November* 27, *2001; Buenaflor vs. Court of* Appeals, *346 SCRA 563, November 29, 2000; Alfonso vs. Spouses Andres, supra)* and jurisdictional *(Siy Chin, et. al. vs. Court of Appeals, supra; Ayala Land, Inc. vs. Spouses Carpio, supra).* Failure to do so is a ground for dismissal of an appeal. The bare invocation of the 'interest of substantial justice' is not a magic wand that will automatically compel the Court to suspend procedural rules *(Lazaro vs. Court of Appeals, GR No. 137761, April 6, 2000);*

17. The Supreme Court ruled that payment of docket fees is not a mere technicality of law or procedure, but an essential requirement for the perfection of an appeal *(Siy Chin et. al. vs. Court of Appeals, 345 SCRA* 673, *November* 23, *2000; Ayala Land, Inc. vs. Spouses Carpio, 345 SCRA 579, November 22, 2000; Alfonso vs. Spouses Andres, supra)* without such payment, the appellate court like CTA does not acquire jurisdiction over the subject matter of the action. As laid down in Barangay 24 of Legaspi City vs. Imperial, 338 SCRA 694, August 24, 2000, the Supreme Court said:

> 'The right to appeal is not a natural right or part of due process. It is purely statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. Well-rooted is the principle that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory,

> and deprives the appellate court of jurisdiction to alter final judgment much less entertain appeal.'

18. The payment of docket fee and other legal fees is not a trivial matter. These fees are necessary to defray court expenses in the handling of cases *(Emnace vs. Court of Appeals, 370 SCRA 431, November 23, 2001).* The law mandates the payment of docket fee and other legal fees within the prescribed period. Otherwise, the jurisdiction of the proper court to handle a case is adversely affected *(Sun Insurance Office, Ltd. vs. Asuncion, 170 SCRA 224, 285, February 13, 1989; Pedroza vs. Spouses Hill supra);*

19. It is very clear that despite solvency of the (respondent), it failed to pay the required docket and other legal fees within the period to appeal. Undoubtedly, (respondent) slept on its right and so, as a consequence, its right to appeal was adversely affected. Therefore, all issues raised in its Petition for Review has become moot and academic because the CTA no longer has jurisdiction to take cognizance of the case. At this point, it is worth emphasizing the role lawyers play in the dispensation of justice. Thus, in Bayas vs. Sandiganbayan, GR No/s. 143689-91, November 12, 2002, the Supreme Court held:

> 'Lawyers are not merely representatives of the parties but, first and foremost, officers of the Court. As such, one of their duties - assisting in the speedy and efficient administration of justice – is more significant than that of [the cause of] their client, rightly or wrongly x x x. We stress that candor in dealings is the very essence of membership in the legal profession. Lawyers are obliged to observe rules of procedure in good faith, not to misuse them to defeat the ends of justice.'

20. Nonetheless, even assuming in arguendo that the Court of Tax Appeals has jurisdiction over the case, the (petitioner) maintains that the subject income and VAT assessments are valid and correct and the (respondent) has the burden of proof to impugn their validity *(Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil 647).* Thus, similarly held, tax assessments by revenue examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise *(Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc.,* 145 *SCRA 671);* and assessments duly made by a BIR examiner and approved by her superior officers will not be disturbed *(Gutierrez vs. Villegas, 8 SCRA 547);*

21. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right *(Tan Guan vs. Court of Tax Appeals, et. al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil 967 [1960]);*

22. Taxes are the lifeblood of the nation, the Court has always applied the doctrine of strict interpretation in construing tax exemptions *(Commissioner of Internal Revenue vs. Court of Appeals, 271 SCRA* 605, *613, April* 18, *1997).* Thus, a reading of last paragraph of Section 30 of the 1997 Tax Code ineludibly shows the exception to the exemption of non-stock non-profit corporations from payment of income tax. In the said provision, it clearly states that income from any property of exempt organizations, as well as that arising from any activity it conducts for profit is taxable. The phrase 'any of their activities conducted for profit' does not qualify the word 'properties'. This makes income from the property of the organization taxable, regardless of how that income tax is used - whether for profit or for lofty non-profit purposes *(Commissioner of Internal Revenue vs. Court of Appeals et. al., GR No. 124043, October 14, 1998);*

23. Thus, applying the aforestated Supreme Court jurisprudence, (respondent's) income on its properties (real and personal) such as income on ICC hotel, dormitory, parking lot, lockers, photocopy machines, and bookstores are therefore subject to income tax;

24. Cafeterias or canteens inside the (respondent's) school premises are operated and owned by concessionaire; thus, the rental income earned by (respondent) from concessionaire shall be subject to income tax (Department Order No. 137-87);

25. The substantiation requirements rule being adopted by the BIR examiners as a basis for disallowing certain deductible expense is valid and proper. (Petitioner) applauds the (respondent) for conceding that retirement and doubtful accounts of P27,059,454.34 and P4,252,393.73, respectively, should be disallowed. (Petitioner) strongly maintains that those expenses that were disallowed by the BIR examiner shall be added to the (respondent's) taxable income, resulting to its deficiency income tax of P122,414,521.70, inclusive of increments;

26. A non-stock non-profit private educational corporation organized and operated for educational purposes is subject to the 10% special rate of income tax provided for under the Tax Code on its income from sources other than from tuition, matriculation, laboratory, library, athletic, graduation fees of similar nature essential to or necessarily connected with the educational purposes of an institution of learning *(Jesus Sacred Heart College vs. Commissioner of Internal Revenue, 95 Phil 16);*

27. A private educational institution which deviates from its purely educational purposes and activities shall be treated like any private domestic corporation engaged in business for profit with respect to income derived therefrom. The protective mantle of income tax benefit or exemption cannot be extended to a private educational institution which chooses to descend from its high pedestal of tax preference or immunity to the level of an ordinary private corporation engaged in profitable undertaking or business *(Xavier School, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 1682, October 8, 1969; p. 79; Jose Aranas, Updated National Internal Revenue Code, 1988 edition);*

28. In the case at bar, (respondent) was subjected to 10% income tax as a taxable educational institution. The said income tax deficiency assessment was duly accompanied with factual findings of the BIR examiner. Thus, said income tax assessment is presumed valid, correct, and made in good faith (Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil 647). Unfortunately, the said income tax assessment has now become final, demandable and executory due to the aforestated jurisdictional defects. Hence, said income tax assessment has now become delinquent and has become incontestable with the Courts *(Sections 205 and 228 of the 1997 Tax Code; Sections 7 and 11 of RA No. 1125; Republic vs. Lim Tian Teng & Co., 165 SCRA 584; Republic vs. Ledesma, 19 SCRA 455; Republic vs. Magalona, Jr., et. Al., 109 Phil 723);*

29. The VAT issue in this case has become moot and academic due to the (respondent's) adherence to the BIR's VAT findings on its request for reinvestigation. (Respondent) paid the amount of P601,487.70 on March 9, 2006 in full settlement of its VAT liability;

30. The prescription issue being raised by (respondent) on VAT is now inconsequential. The (respondent's) payment of recomputed VAT assessment of P601,487.70 on March 9, 2006 before the Landbank

> estopped the former from claiming later for refund. The doctrine of estoppel applies in this case. More importantly, payment under protest is not allowed under the Tax Code;
>
> 31. Even assuming that (respondent's) VAT payment does not preclude prescription issue, the (respondent's) application of the three-year period is misplaced because the applicable provision is Section 222 of the 1997 Tax Code considering that there was falsity in the declaration of (respondent's) quarterly gross receipts, thus Section 222 of the 1997 Tax Code applies, thus:
>
>> 'Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. - (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud assessment shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.'** (Emphasis supplied)
>
> 32. The (respondent) has clearly admitted its auxiliary service income of P637,280.35 (paragraph 60 of the petitioner's Petition for Review) is subject to VAT. This amount was not included in the (respondent's) gross receipt subject to VAT, therefore, there was clear falsity in the (respondent's) VAT returns. Thus, (petitioner's) issuance of (respondent's) deficiency VAT assessment on June 17, 2005 is well within the ten (10) year period to assess prescribed under Section 222 of the 1997 Tax Code."

On June 30, 2006, respondent filed a Reply. As agreed upon, the parties filed a Joint Stipulation of Facts and Issues filed on November 27, 2006.

After the parties rested and filed their respective memoranda, the case was deemed submitted for Decision on July 22, 2009.

On July 16, 2010, the Court in Division promulgated the assailed Decision, the dispositive portion of which reads as follows:

> "WHEREFORE, the *Petition for Review* is hereby GRANTED. The Assessment Notice No. 33-FY 05-31-02 for fiscal year ending May 31, 2002, with demand letter, against (respondent) for deficiency income tax in the amount of ONE HUNDRED TWENTY-TWO MILLION FOUR HUNDRED FOURTEEN THOUSAND FIVE HUNDRED TWENTY-ONE PESOS & 70/100 (P122,414,521.70) is hereby CANCELLED.
>
> SO ORDERED."

On August 6, 2010, petitioner filed a Motion for Reconsideration which was denied for lack merit in the Resolution promulgated on November 18, 2010.

Hence, this Petition for Review filed on December 23, 2010 before the Court *En Banc,* assigning the following errors allegedly committed by the Court in Division, to wit:

I. THE FIRST DIVISION OF THE COURT OF TAX APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT DENIED THE PETITIONER'S MOTION TO DISMISS AND DECLARED THAT RESPONDENT HAS TIMELY SUBMITTED ITS ACCOUNTING DOCUMENTS TO PETITIONER WITHIN THE SIXTY (60)-DAY PRESCRIBED PERIOD UNDER SECTION 228 OF THE 1997 TAX CODE DESPITE THE FACT THAT IT WAS SUBMITTED ON THE SIXTY-FIRST (61ST) DAY FROM THE FILING OF PROTEST;

II. THE FIRST DIVISION OF THE COURT OF TAX APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT DENIED THE PETITIONER'S MOTION TO DISMISS AND RELAXED THE PROCEDURES ON DOCKET FEE AND OTHER LEGAL FEES DESPITE RESPONDENT'S MISINTERPRETATION OF SECTION 3 RULE 13 OF THE 1997 RULES OF CIVIL PROCEDURE;

III. THE SPECIAL FIRST DIVISION OF THE COURT OF TAX APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT CANCELLED THE DEFICIENCY INCOME TAX ASSESSMENT OF P122,414,521.70 ISSUED BY THE PETITIONER AGAINST RESPONDENT COVERING FISCAL YEAR ENDING MAY 31, 2002.

Petitioner claims that the 60-day period for the submission of the supporting documents prescribed in Section 228 of the NIRC, as amended, is mandatory and non-extendible. Non-compliance with the requirement will render the questioned assessment final and demandable. In the instant case, respondent filed its protest against the subject assessments on July 20, 2005, but submitted its supporting documents only on September 19, 2005, or a day beyond the allowable 60-day period for submission of supporting documents allowing the assessments to attain finality. Having become final, the said assessments could no longer be subject of appeal before the Court in Division.

According to petitioner, the fact that the 60th day fell on September 18, 2005, or on a Sunday is of consequence since Section 228 is clear and does not state that if the last day of the 60-day period fell on a Sunday or any holiday, the same is automatically extended to the next working day. Thus, the 60-day period should be deemed as mandatory and strictly construed against respondent. For this reason Section 1, Rule 22 of the Rules of Court, which states that if the last day of a period for doing an act falls on a Saturday or Sunday, the time shall not run until the next working day, is inapplicable.

Moreover, respondent failed to pay the required docket fees within the reglementary period for appeal rendering the assailed assessment not only final and executory but beyond appeal as well. Respondent filed the Petition for Review with the

Court in Division through registered mail on April 17, 2006, the last day for filing the appeal. However, the docket fees were paid only on April 26, 2006 when the Petition was actually received by the Court. The late payment of docket fees warrants a denial of the petition. Therefore, the Court in Division erred when it gave the Petition due course notwithstanding respondent's late payment of the required docket fees.

Anchored on the same ground, the Court in Division should have granted its Motion to Dismiss especially considering that respondent has not shown any persuasive and justifiable reason for the relaxation of the rule on payment of docket fees. The denial of her motion to dismiss placed premium on respondent's erroneous interpretation of Section 3, Rule 13 that "the date of mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court." Petitioner points out that the payment of docket fee and other legal fees within the thirty (30)-day reglementary period to appeal to this Court is mandatory as well as jurisdictional. Thus, the late payment of the required docket fees deprived the Court in Division of the authority to entertain the Petition for Review deemed filed out of time. The issue being jurisdictional, Section 2, Rule 1 of the Revised Rules of the Court of Tax Appeals on liberal construction is inapplicable.

Even assuming that the Court in Division had jurisdiction over the Petition, it still erred when it cancelled the assailed deficiency assessment which enjoyed the presumption of correctness. Moreover, unlike respondent, which failed to discharge the burden, petitioner was able to establish the factual and legal bases of the deficiency income tax assessment she issued against respondent through the testimony of Revenue Officer Rebecca Pandapatan. With the favorable presumption and absence of proof of its invalidity, the deficiency assessment should have been sustained by the Court in Division.

While petitioner admits that respondent is a charitable educational institution, thus tax exempt, she insists that this status had been impliedly revoked when respondent's profit-earning activities far exceeded its charitable activities as shown in its financial statements for fiscal year ended May 31, 2002 justifying the cancellation of its tax exempt status and subsequent issuance of the subject assessment for deficiency income tax for the fiscal year 2002. Its financial aid for charitable educational purposes amounted only to P78,919,876.00, while its income from profit gaining activities amounted to P775,336,452.00. Further, its cash receipts for the school year 2002 amounted to approximately P1.222 Billion while only 6% of this cash receipts or P78,919,876.00 or 9% of the revolving fund of P775,336,452.00 went to charitable activities.

Respondent, on the other hand, denies late submission of protest supporting documents on September 19, 2005. Under Section 228 of the NIRC, it had 60 days from the day it filed its protest on July 20, 2005 or until September 18, 2005 to submit all supporting documents. As admitted by petitioner, the 60th day fell on a Sunday. Pursuant to Section 1, Rule 22 of the Rules of Court, time did not run until the next working day. Hence, the documents supporting its protest were seasonably submitted on September 19, 2005.

This position is as well in accord with Section 28 of the Executive Order No. 292, otherwise known as the Administrative Code of 1987 which provides that "Where the day, or the last day, for doing any act required or permitted by law falls on a regular holiday or special day, the act may be done on the next succeeding business day." Under the Revised Administrative

Code, Saturdays and Sundays are considered as holidays. Hence, respondent's filing of supporting documents on the next working day is deemed compliance with the 60-day period prescribed in Section 228 of the NIRC.

Respondent also disputes petitioner's contention that it was not able to pay the required docket fees within the period for appeal rendering the assailed assessment final and executory and consequently depriving the Court in Division of the authority to entertain the Petition for Review. Section 3, Rule 13 of the Rules of Court provides that the date of mailing of the Petition, as shown by the registry receipt, is deemed the date of payment of the required docket and other legal fees. Since the Petition was timely filed through registered mail on April 17, 2006, it follows that the docket fees were as well timely paid. There being substantial compliance, no further justification was necessary to justify the relaxation of the Rules on payment of docket fees.

On the alleged presumption of regularity in the issuance of the assailed assessment, respondent counters that mere presumption of regularity in the performance of official duty is not sufficient to sustain the assessment. It is imperative that the assessment must have factual and legal bases. The presumption of correctness of the assessment cannot be based on another presumption.

As regards sufficiency of evidence to prove the lack of income tax liability, respondent points out that the voluminous exhibits it presented speak for themselves. Moreover, the entries in its financial statements reflecting gained profits did not adversely affect its tax exempt status. Allegedly, the Supreme Court has ruled that the making of profit does not destroy the tax exemption of a charitable, benevolent or educational institution. Respondent points out that its operation is not for profit but in pursuit of its primary purpose - to establish a school that will offer elementary, secondary, collegiate and post graduate courses of study, as well as technical, vocational and special courses.

Besides, Section 4, Article XIV of the 1987 Constitution provides that "All revenues and assets of a non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes shall be exempt for taxes and duties." Thus, to be tax exempt, the educational institution falls under the classification non-stock, non-profit educational institution;

and the income seeks to be exempted from taxation is used actually, directly, and exclusively for educational purposes. Significantly, the parties already stipulated that the first requirement had been met. On the second, the Court in Division held that respondent operates not for profit but for educational purposes.

Further, as held by the Court in Division, petitioner has no cause of action against respondent for the assailed assessment was void as it failed to state the law and the facts upon which it was based.

Finally, the instant Petition has not been perfected since it is pro-forma as the arguments raised therein are but a rehash of petitioner's Motion to Dismiss and Motion for Reconsideration, both of which had been denied by the Court in Division, for lack of merit. Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals provides that no petition for review assailing a resolution or decision of a Division of the Court may be entertained unless preceded by a motion for reconsideration or new trial, as the case may be, with the Division. Given that no Motion for Reconsideration was deemed perfected before the Court in Division for being pro-forma, the condition precedent has not been complied with, justifying denial of the instant Petition before the Court *En Banc.*

On April 20, 2011, instant Petition for Review was deemed submitted for decision.

Under the established circumstances, it is imperative to first rule on the jurisdiction and the timeliness of the filing of the appeal before the Court in Division as it will determine the validity of the whole process.

There is no dispute that respondent filed its administrative protest against the subject assessment on July 20, 2005. Pursuant to Section 228 of the NIRC, as amended, respondent had 60 days from the filing of its protest, or until September 18, 2005 to submit all relevant supporting documents, otherwise the assessment shall become final and executory. Likewise undisputed is the fact that the 60th day fell on a Sunday. On top of this, the parties stipulated that respondent submitted documents in support of its protest on September 19, 2005.[1] Clearly, respondent was able to file the documents supporting its

---

[1] Joint Stipulation of Facts and Issues dated November 24, 2006, Division docket page 247.

protest against the impugned assessment within the mandated 60-day period on September 19, 2005.

Relevantly, Section 1, Rule 22 of the Rules of Court, provides, thus:

> "Sec. 1. *How to compute time.* In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or even from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day."

In one case, the Supreme Court ruled that where the last day of the period for doing an act as provided by law falls on a Saturday, a Sunday or a legal holiday in the place where the court sits, the time should not run until the next working day.[2] Contrary to petitioner's claim, Section 1, Rule 22 does not apply to the filing of pleadings in Court alone. It equally applies to all legal acts as provided by law including but not limited to the filing of supporting documents with an administrative body like

[2] Alarilla, Sr. vs. Ocampo, G.R. No. 144697, December 10, 2003.

petitioner's agency. In other words, respondent timely filed its supporting documents preventing the subject assessment from becoming final and executory.

Anent, the alleged late payment of docket fees, which necessarily relates to the timeliness of the filing of the Petition for Review before the Court in Division, Section 228 of the NIRC, as amended, is instructive, thus:

> "SEC. 228. **Protesting of Assessment.** –
>
> x x x x x x x x x
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

w/

Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals as well provides, thus:

> "SEC. 3. *Who may appeal; period to file petition. –*
>
> (a) **A party adversely affected by** a decision, ruling or **the inaction of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the court by petition for review filed within thirty days** after receipt of a copy of such decision or ruling, **or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments**. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes." (emphasis ours)

In accord with the foregoing provisions, the Court *En Banc* has consistently ruled the 30-day period within which to file an appeal is jurisdictional and failure to comply therewith bars the appeal and deprives the Court of jurisdiction to entertain and determine the correctness of the assailed assessments, orders or decision of petitioner. Such period is not merely directory but mandatory and it is beyond the power of the Court to extend the same.[3]

It was established that respondent received the subject disputed assessment for deficiency income tax on June 21, 2005, to which it filed a protest on July 20, 2005, or within the 30-day period for filing a protest pursuant to Section 228. It seasonably submitted its supporting documents on September 19, 2005 or the next working day after the prescribed 60th day. From September 18, 2005, petitioner had 180 days or until March 17, 2006 to act on the protest, pursuant to Section 228 of the NIRC, as amended. Note that there was a stipulation that petitioner failed to act on the protest within the 180-day period.[4] Hence, respondent had thirty (30) days or until April 16, 2006, within which to file an appeal to the Court in Division as provided under Section 228 of the same Code. However, the last day for filing the Petition again fell on a Sunday. To beat the deadline, respondent filed its Petition for Review through registered mail on April 17, 2006, or the next working day, following the computation of time in Section 1, Rule 22 of the Rules of Court.

---

[3] RCBC vs. CIR, G.R. No. 168498, April 24, 2007.
[4] Joint Stipulation of Facts and Issues dated November 24, 2006, Division docket page 247.

Incidentally, the record reveals some disturbing flaws in relation to the filing of the Petition for Review before the Court in Division.

First, only in respondent's Reply dated June 30, 2006[5] does it appear that the Petition for Review was filed through registered mail.

Secondly, no Affidavit of Service was attached to the Petition as required under Section 13, Rule 13 of the Rules of Court. It was attached to the June 30, 2006 Reply to petitioner's Answer dated June 14, 2006[6] where the latter moved to dismiss the Petition on jurisdictional grounds.

Third, the Petition filed with the Court in Division did not contain proof that petitioner was furnished with a copy of the said Petition, pursuant to Section 1[7] and 3,[8] Rule 42 of the Rules

---

[5] Division docket, page 93.
[6] Division docket, page 80.
[7] Section 1. How appeal taken; time for filing. – A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. x x x
[8] Section 3. Effect of failure to comply with requirements. – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

of Court, as amended, in relation to Section 4(a),[9] Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

Fourth, the Registry Receipt as proof of mailing of the Petition filed before the Court in Division was attached to the Reply dated June 30, 2006. Worse, the Registry Receipt was an illegible photocopy indicating only the date of mailing as April 17 without year. Likewise respondent failed to submit a certification from the post office to clarify if such Registry Receipt indeed pertains to this case.

Worth to note as well is the fact that not once in any of its pleadings did respondent categorically state the manner and time of its payment of docket fees in relation to its filing of the Petition for Review before the Court in Division. In all its pleadings, respondent consistently invokes Section 3, Rule 13 of the Rules of Court. It claims that the date of mailing is deemed the date of payment of docket fees. Since the Petition was filed on time, it is deemed to have paid the docket fees on time.

[9] Sec. 4. *Where to appeal; mode of appeal.* – (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments x x x shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. x x

The Petition for Review before the Court in Division only indicates the date when the said pleading was received *sans* the date of posting. The Court's Computation Sheet is likewise silent on the date docket fees were paid. The date of filing is indicated April 17, 2006 which is actually the date of posting of the Petition as admitted by respondent in its Reply dated June 30, 2006.

Only in the Resolution of October 10, 2006 resolving petitioner's Motion to Dismiss dated July 7, 2006 that the date of payment of docket fees was made clear. The pertinent portion of the Resolution reads as follows:

> "x x The case at bar is parallel to the above quoted *Cu-Unjieng case*. Petitioner's (herein respondent) delayed payment of docket fees did not in any way unduly prejudice respondent (herein petitioner). **It paid the docket fees (9) days after it filed its petition by registered mail on April 17, 2006**. x x "[10] (emphasis ours)

It has been held that without any evidence to prove otherwise, the Court presumes that the docket fee was paid on the date the receipt for the same was issued.[11] Since Official

[10] Resolution dated October 10, 2006, Division docket page 242.
[11] Pyro Copper Mining Corporation vs. Mines Adjudication Board-Department of Environment and Natural Resources, G.R. No. 179674, July 28, 2009.

Receipts Nos. 4046567, 2904601A, 29041111A, 2900844A, and UPLC0434554 evidencing payment of docket fees were all issued on April 26, 2006, then such date is deemed the date of payment of said fees.

It is now plain that respondent paid the docket fees only on April 26, 2006 or on the same day the Court received the Petition for Review filed by respondent through registered mail. In other words, respondent filed its Petition for Review on April 17, 2006 without the required payment of docket fees. While respondent may be deemed to have seasonably filed its Petition for Review, still it failed to perfect its appeal for failure to pay at the same time the corresponding docket and other lawful fees as required in Section 1, Rule 42 of the 1997 Rules of Civil Procedure, under which the instant case was instituted, pursuant to Section 4, Rule 8, in relation to Section 1, Rule 7 of the Revised Rules of the Court of Tax Appeals, which reads as follows:

> "Sec. 1. *How appeal taken; time for filing.* – A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction **may file a verified petition for review** with the Court of Appeals, **paying at the same time to the clerk of said court the corresponding docket and other lawful fees**, depositing the amount of P500.00 for

W

> costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen days." (emphasis ours)

Basic is the rule that appellate court docket and other lawful fees must be paid within the period for taking an appeal,[12] and that where the filing of the initiatory pleading is not accompanied by payment of the docket fees, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.[13] Note that respondent filed its Petition for Review before the Court in Division on April 17, 2006, the next working day after the last day for filing its initiatory pleading. But for unknown reason, it stood still and waited until the pleading reached the Court on April 26, 2006, before it paid the required docket and other legal fees. Let it be stressed that the last day of the 30-

[12] Ilusorio vs. Ilusorio-Yap, G.R. No. 171656, March 17, 2009.
[13] Mercado vs. Court of Appeals, G.R. No. 150241, November 04, 2004.

day reglementary period for filing an appeal with the Court in Division was on April 16, 2006. Thus, when the respondent filed its Petition on April 17, 2006, the period to appeal had already lapsed. The filing of the Petition on April 17, 2006 or the next working day was allowed only in view of Section 1, Rule 22 of the Rules of Court. Despite the foregoing circumstances, the respondent paid the docket fees only on April 26, 2006 or ten (10) days after the lapse of the period to appeal.

The payment of docket fees within the prescribed period is mandatory for the perfection of the appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.[14]

The filing of the appeal and the payment of the required docket and other lawful fees on time are twin requirements and must concur for the Court to acquire competence to rule on the case. The payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. This is so because a court acquires jurisdiction over the subject matter of the action

---

[14] Tan vs. Link, G.R. No. 172849, December 10, 2008.

only upon the payment of the correct amount of docket fees regardless of the actual date of filing of the case in court.[15]

Time and again, the Final Arbiter has ruled that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional.[16] Otherwise, the appellate court will not be able to act on the subject matter of the action, and the decision or final order sought to be appealed from will become final and executory.

The similar ruling is expressed in the case of *La Salette College v. Victor C. Pilotin,*[17] where the Supreme Court explains that payment of docket fees is not a trivial matter. These fees are necessary to defray court expenses in the handling of cases. For this reason, and to secure a just and speedy disposition of every action and proceeding, the Rule of Civil Procedure mandates the payment of docket fees and other lawful fees within the prescribed period. Otherwise, the jurisdiction of the proper court to handle a case is adversely affected.[18]

---

[15] Villena vs. Rupisan, G.R. NO. 167620, April 03, 2007.
[16] Sehwani, Incorporated vs. In-N-Out Burger, Inc., G.R. No. 171053, October 15, 2007.
[17] G.R. No. 149227, December 11, 2003.
[18] Sun Insurance Office, Ltd. (SIOL) v. Asuncion, 170 SCRA 274.

While it is true that respondent subsequent to the filing of its Petition for Review before the Court in Division paid the required docket and other lawful fees, it did not cure the defect as the payment was effected beyond the reglementary period for perfecting an appeal.

The right to appeal a decision, or in this case the inaction, of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.[19] The requirement of the law under Section 1, Rule 42 is clear. Further, the payment of appellate docket fees is not a mere technicality of law or procedure but an essential requirement for the perfection of an appeal, and since it is jurisdictional, it is an issue that may be raised even for the first time on appeal.

Admittedly, there are exceptions to the general rule on the timely payment of appellate docket fees. Yet a common thread

[19] RCBC vs. CIR, G.R. NO. 168498, June 16, 2006.

in all of said cases is an exceptionally meritorious reason why the appellate docket fees in the cases were not timely paid.[20]

Reliance on jurisprudence that the application of the technical rules of procedure would be relaxed if the same was subsequently complied with is not justified. The liberal application of rules of procedure for perfecting appeals is still the exception, and not the rule; and it is only allowed in exceptional circumstances to better serve the interest of justice.[21]

Respondent cannot likewise find solace in Section 2, Rule 1 of the 2005 Revised Rules of the Court of Tax Appeals which provides that the Rules of procedure shall be liberally construed before the Court. Respondent failed to recall that provisions with respect to the rules on the manner and periods for perfecting appeals are strictly applied and are only relaxed in very exceptional circumstances on equitable considerations.[22] Procedural rules do not exist for the convenience of the litigants; the rules were established primarily to provide order to and enhance the efficiency of our judicial system. While procedural rules are liberally construed, the provisions on reglementary

---

[20] Tan vs. Link, G.R. No. 172849, December 10, 2008.
[21] Ruiz vs. Delos Santos, G.R. No. 166386, January 27, 2009.
[22] Go vs. Sunbanun, G.R. No. 168240, February 09, 2011.

periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business.[23]

The limitation on the period of appeal is not without reason. They must be strictly followed as they are considered indispensable to forestall or avoid unreasonable delays in the administration of justice, to ensure an orderly discharge of judicial business, and to put an end to controversies. Though as a general rule, rules of procedures are liberally construed, the provisions with respect to the rules on the manner and periods for perfecting appeals are strictly applied and are only relaxed in very exceptional circumstances on equitable considerations, which are sadly not present in the instant case.[24]

Significantly, respondent was unable to justify its delay in the payment of docket fees to the satisfaction of the Court. In fact, respondent even boldly maintains that it does not need to put forward any meritorious or justifiable reason since it insists that it paid the docket fees on time.

---

[23] Saint Louis University, Inc. vs. Evangeline C. Cobarrubias, G.R. No. 187104, August 03, 2010.
[24] Heirs of Gaudiano vs. Benemerito, G.R. NO. 174247, February 21, 2007.

The Supreme Court held that where the party litigant has failed to advance a reasonable or meritorious explanation for its failure to pay the docket fees in full upon the filing of the petition for review, such is a fatal omission on its part, to wit:

> "Viewed in this light, procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights; like all rules, they are required to be followed. However, there are recognized exceptions to their strict observance, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without the appellant's fault; (10) peculiar, legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge, guided by all the attendant circumstances. **Thus, there should be an effort, on the part of the party invoking liberality, to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.**
>
> **In Cobarrubias' case, no such explanation has been advanced. Other**

> **than insisting that the ends of justice and fair play are better served if the case is decided on its merits, Cobarrubias offered no excuse for her failure to pay the docket fees in full when she filed her petition for review. To us, Cobarrubias' omission is fatal to her cause**."[25] (emphasis ours)

Worse, instead of admitting its inadvertence and its belated payment of the required docket fees and praying for the liberality of the Court, respondent even tried to create confusion to conceal the exact date of its payment of docket fees. This should not be countenanced and should not merit any liberality and relaxation of the Rules of procedure.

In a case, the Supreme Court even went so far as to ignore the meritorious defense of a party-litigant when such litigant made attempts to mislead or confuse the facts. The pertinent portion thereof reads as follows:

> "Neither can we countenance the counsel's attempts to mislead the courts and claim "substantial compliance" by declaring that the "fees were paid through postal money orders sent directly to the Court of Appeals two (2) days later." Such use of vagaries only breeds suspicion that counsel knew of his unjustifiable error.
>
> x x x

---

[25] Saint Louis University, Inc. vs. Evangeline C. Cobarrubias, G.R. No. 187104, August 03, 2010.

> Thus, while regretful that the petitioners may have had meritorious defenses against the trial court's 17 December 1998 Order, we must likewise weigh such defenses against the need to halt an abuse of the flexibility of procedural rules.
>
> x x x
>
> It has long been recognized that strict compliance with the Rules of Court is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business. For the Court to allow the reopening or remand of the case after such a display of indifference to the requirements of the Rules of Court would put a strain on the orderly administration of justice. As we have said in one case:
>
> > It is necessary to impress upon litigants and their lawyers the necessity of strict compliance with the periods for performing certain acts incident to the appeal and the transgressions thereof, as a rule, would not be tolerated; otherwise, those periods could be evaded by subterfuges and manufactured excuses and would ultimately become inutile."[26]

Also Section 3, Rule 42 of the Revised Rules of Court provides that non-payment of docket and other lawful fees required under the Rules is sufficient ground for dismissal of the petition for review, thus:

> SEC. 3. Effect of failure to comply with requirements. – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which

[26] Saint Louis University vs. Cordero, G.R. No. 144118, July 21, 2004.

> should accompany the petition shall be sufficient ground for the dismissal thereof."

In fine, for failure to pay the corresponding docket fees on time, respondent also failed to perfect its appeal, divesting the Court in Division of jurisdiction or authority to take cognizance of the Petition for Review filed before it. As provided in Section 228 of the NIRC, as amended, for failure to perfect an appeal on time, the assailed assessment has become final and demandable. That being the case, the impugned assessment is now beyond the province of the Court. Consequently, respondent is precluded from disputing the correctness of the assessment.[27]

On this matter, the ruling of the Supreme Court in the case of Commissioner of Internal Revenue vs. Hon. Raul M. Gonzalez,[28] is most appropriate:

> "We have held that a taxpayer's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess. Indeed, any objection against the

---

[27] RCBC vs. CIR, G.R. No. 168498, June 16, 2006
[28] G.R. No. 177279, October 13, 2010

> assessment should have been pursued following the avenue paved in Section 229 (now Section 228) of the NIRC on protests on assessments of internal revenue taxes."

For failure to conform to the rules regarding appeal will render the judgment final and executory and beyond the power of the Court's review. Jurisprudence has it that when a decision, such as the assailed assessment becomes final and executory, it becomes valid and binding upon the parties and their successors in interest. Such decision or order can no longer be disturbed or reopened no matter how erroneous it may have been.[29]

In view of the finality of the said assessment, the Decision of the Court in Division becomes a decision rendered without jurisdiction which is not a decision in contemplation of law and can never become executory.[30] Any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court.[31] In *Tambunting, Jr. v. Sumabat,* the Final Arbiter declared that a void judgment is in legal effect no judgment, by which no rights are divested, from which no rights can be obtained, which neither binds nor bonds

[29] Talento vs. Excalada, Jr., G.R. No. 180884, June 27, 2008.
[30] Heirs of Honrales v. Honrales, G.R. No. 192651, August 25, 2010.
[31] Bungcayao, Sr. v. Fort Ilocandia Property Holdings, G.R. No. 170483, April 19, 2010.

anyone, and under which all acts performed and all claims flowing therefrom are void.[32]

WHEREFORE, the Petition for Review dated December 21, 2010, filed by the Commissioner of Internal Revenue, is hereby **GRANTED**. The Decision dated July 16, 2010 and the Resolution dated November 18, 2010 are **REVERSED and SET ASIDE**. Consequently, the Petition for Review dated April 17, 2006 filed before the Court in Division is **DISMISSED**, on jurisdictional grounds.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

(On Wellness Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

---

[32] Tanenglian v. Silvestre, et al., G.R. No. 173415, March 28, 2008.

(On Wellness Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Wellness Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.

ERNESTO D. ACOSTA
Presiding Justice