

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE,**

Petitioner,

CTA EB No. 2783
(CTA Case No. 10618)

Present:

- versus -

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

**PHILIPPINE HYDRO (PH),
INC.,**

Respondent.

Promulgated:

MAY 30 2024

X-----X

RESOLUTION

For resolution is the **Motion for Reconsideration (Re: Resolution Promulgated on 04 December 2023)**, filed by herein petitioner Commissioner of Internal Revenue (CIR) on December 29, 2023 via registered mail and received by the Court on January 8, 2024, with respondent's **Comment/Opposition (to Petitioner's Motion for Reconsideration dated December 29, 2023)** filed on January 30, 2024.

To recall, the Court in Division issued a Resolution dated June 29, 2023, denying CIR's Motion for Reconsideration (Re: Decision Promulgated on 06 March 2023), which he received on July 6, 2023. On the other hand, the said Resolution was received by the Office of the Solicitor General (OSG) on July 5, 2023.

RESOLUTION

CTA EB No. 2783 (CTA Case No. 10618)

Page 2 of 7

On July 21, 2023, herein petitioner filed a *Motion for Extension to File Petition for Review*. The Court *En Banc*, in the Resolution dated December 4, 2023, dismissed the Petition for Review, for being filed a day late.

In his motion for reconsideration, petitioner prays that the Resolution promulgated on December 4, 2023 be reversed and set aside and that the Court give due course to the Petition for Review filed on August 4, 2023.

According to petitioner, pursuant to the Memorandum of Agreement (MOA) between the OSG and the Bureau of Internal Revenue (BIR), the counsel representing him is the Litigation Division or the Legal Division of the BIR. In the said MOA, the OSG deputed the lawyers from the BIR to handle cases appealed before the Court of Tax Appeals (CTA) *En Banc*. The BIR lawyers are primarily responsible to prepare all the pleadings and other papers/documents before the CTA. It follows that all resolutions and processes of CTA must be served to the BIR lawyers. In other words, since the BIR Litigation Division is the handling lawyer, service should be made first to them before the OSG.

Petitioner also argues that technicalities must yield to substantial justice and the Court is allowed to relax the rules of procedure to best serve the interest of justice and fair play. Accordingly, the motion for extension must be allowed.

In its comment/opposition, respondent avers that a motion for extension must be filed prior to the expiration of the period sought to be extended. In counting the reckoning period, respondent contends that notice to any one of the several counsels on record is equivalent to notice to all and such notice starts the time running for appeal notwithstanding that the other counsel on record has not yet received a copy of the decision. It also posits that, while the MOA authorized OSG to depute the BIR lawyers to handle cases before the CTA *En Banc*, the BIR lawyers shall remain at all times under the direct control and supervision of the OSG.

We deny the motion.

Petitioner's *Motion for Extension of Time to File Petition for Review* was filed on July 21, 2023. Counting fifteen (15) days from the receipt of the OSG on July 5, 2023, petitioner had until July 20, 2023 to file the petition or a motion for extension. Consequently, the Motion for Extension of Time to File Petition for Review was belatedly filed.

As already enunciated in the Resolution dated December 4, 2023, the basic rule of remedial law that a motion for extension of time to file a pleading

RESOLUTION

CTA EB No. 2783 (CTA Case No. 10618)

Page 3 of 7

must be filed before the expiration of the period sought to be extended.¹ The court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court powerless to entertain or grant it.²

Petitioner argues that, considering that the lawyers from the Litigation Division of the BIR were duly deputized by the OSG to appear in cases appealed before the CTA *En Banc*, the reckoning period to file a petition or a motion for extension should be counted from the receipt of the BIR and not from the receipt of the OSG.

We do not agree.

In *National Power Corporation vs. National Labor Relations Commissions, et. al.*,³ the Supreme Court held that the OSG is the principal law officer and legal defender of the Government and that service to OSG should be the proper basis for computing the reglementary period to file an appeal, viz:

Pursuant to Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987, the **Office of the Solicitor General represents the government of the Philippines, its agencies and instrumentalities and is the "principal law officer and legal defender of the Government."** The OSG possesses the unequivocal mandate to appear for the Government in legal proceedings. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. Under number 8 of the same section, the OSG is empowered to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases."

The fact that the OSG is petitioner's counsel is unchallenged, the former having entered its appearance on September 15, 1986. The lawyer deputized and designated as "special attorney-OSG" is a mere representative of the OSG and the latter retains supervision and control over the deputized lawyer. **The OSG continues to be the principal counsel for the National Power Corporation, and as such, the Solicitor General is the party entitled to be furnished copies of orders, notices and decisions.** The deputized special attorney has no legal authority to decide whether or not an appeal should be made.

As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter. **We have likewise consistently held that the proper basis for computing the**

¹ *Vda. de Victoria v. Court of Appeals*, G.R. No. 147550, January 26, 2005.

² *Philippine Long Distance Telephone Co., Inc. v. Court of Appeals*, G.R. No. 57079, September 29, 1989.

³ G.R. Nos. 90933-61, May 29, 1997.

RESOLUTION

CTA EB No. 2783 (CTA Case No. 10618)

Page 4 of 7

reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG. In the present controversy, only the special attorney was served with a copy of the decision of the Labor Arbiter. Since service of said decision was never made on the OSG, the period to appeal the decision to the NLRC did not commence to run. Hence, the appeal memorandum filed by the OSG on July 17, 1989 was not filed belatedly.

Although jurisprudence regarding mandatory service of orders and decision on the OSG and not merely to its deputized special attorneys, pertain to court cases involving land registration and naturalization, the same rule should be observed in cases before the Labor Arbiter and the NLRC. The underlying justification for compelling service of pleadings, orders, notices and decisions on the OSG as principal counsel is one and the same. **As the lawyer for the government or the government corporation involved, the OSG is entitled to the service of said pleadings and decisions, whether the case is before the courts or before a quasi-judicial agency such as respondent commission. Needless to say, a uniform rule for all cases handled by the OSG simplifies procedure, prevents confusion and thus facilitates the orderly administration of justice.** (Emphasis ours)

Moreover, in the case of *Republic of the Philippines, represented by the Land Registration Authority vs. Raymundo Viaje, et. al.* (Viaje case),⁴ it was established that the OSG remains to exercise supervision and control over the deputized lawyers and is entitled to be furnished copies of all court orders, notices and decisions, *to wit*:

The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts **and exercise supervision and control over such legal officers with respect to such cases.**" But it is likewise settled that the **OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.** xxx" (Emphasis ours)

In the Viaje case, the OSG entered its appearance to the Court before the deputized lawyer from the Land Registration Authority (LRA). It also requested that it be furnished with copies of orders, notices and decisions of the Regional Trial Court (RTC) and instructed that only service to the OSG will bind the government. Moreover, in the said case, the lawyers from the LRA requested that it likewise be furnished with copies of the orders, notices and decisions. Still, the RTC only furnished copies to OSG.

⁴ G.R. No. 180993, January 27, 2016.

RESOLUTION

CTA EB No. 2783 (CTA Case No. 10618)

Page 5 of 7

The Supreme Court stated that it would have been more prudent to have furnished the deputized counsel of its notices. The Supreme Court held that furnishing the deputized counsel does not necessarily clear the OSG from its obligation to oversee the efficient handling of the case and the receipt of the deputized counsel of the copies of the Court's orders, notices and decisions will not be binding unless received by OSG.

In the instant case, even without OSG's entry of appearance and request to be served with notice, orders and decisions of the CTA, the fact remains that the OSG is still the lawyer of the government. Hence, service to it reckons the period to file a petition or a motion for extension.

Despite the MOA between the OSG and the BIR, where the lawyers from the Litigation Division were deputized by the former to appear and handle cases before the Court *En Banc*, OSG is not stripped off its power and duties as the lawyer of the government. The deputization of the BIR lawyers delegates the task of assisting the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts. Being the principal, the OSG still exercises supervision and control over such legal officers with respect to such case. Accordingly, petitioner, a government official acting in official function, is represented both by the OSG as the principal counsel, and the Litigation Division of the BIR, as deputized counsel. Thus, the ruling of the Supreme Court in the case of *Philippine Asset Growth Two, Inc. vs. Fastech Synergy Philippines, Inc.*,⁵ stating that where a party is represented by several counsels, notice to one is sufficient, is instructive, viz:

It is a long-standing doctrine that where a party is represented by several counsels, notice to one is sufficient, and binds the said party. Notice to any one of the several counsels on record is equivalent to notice to all, and such notice starts the running of the period to appeal notwithstanding that the other counsel on record has not received a copy of the decision or resolution.

Based on the foregoing, the OSG, being mainly in charge of the cases filed before this Court, is entitled to be furnished copies of all notices from this Court. Since service to any one of the counsels is a notice to all, service to OSG is likewise a notice to the BIR Litigation Department. Accordingly, service to OSG is the reckoning point of the period to file a petition or a motion for extension.

WHEREFORE, the Motion for Reconsideration (Re: Resolution Promulgated 04 December 2023) is DENIED for lack of merit.

⁵ G.R. No. 206528, June 28, 2016.

RESOLUTION

CTA EB No. 2783 (CTA Case No. 10618)

Page 6 of 7

SO ORDERED.

(On Official Business)

ROMAN G. DEL ROSARIO

Presiding Justice



MA. BELEN M. RINGPIS-LIBAN

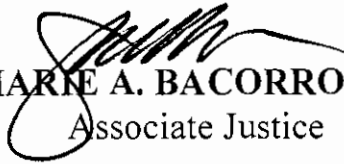
Associate Justice

(On Official Business)

CATHERINE T. MANAHAN

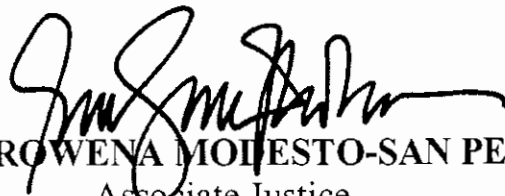
Associate Justice

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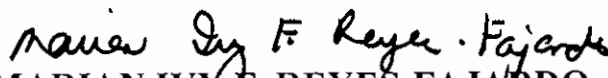
JEAN MARIE A. BACORRO-VILLENA

Associate Justice



MARIA ROWENA MOLESTO-SAN PEDRO

Associate Justice



MARIAN IVY F. REYES-FAJARDO

Associate Justice

ON LEAVE

LANEE S. CUI-DAVID

Associate Justice

RESOLUTION

CTA EB No. 2783 (CTA Case No. 10618)

Page 7 of 7


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice