

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB NO. 2646
(CTA Case No. 9341)

-versus-

Present:
Del Rosario, P.J.,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David,
Ferrer-Flores, and
Angeles, JJ.

JUAN MIGUEL M. ARROYO AND
MA. ANGELA M. ARROYO
(GOMECO METAL CORP.),
Respondents.

Promulgated:

OCT 23 2023

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner¹ Commissioner of Internal Revenue (CIR) to seek nullification of the Decision² dated March 18, 2022 (assailed Decision), the dispositive portion thereof reads:

“WHEREFORE, premises considered, the present Petition for Review is **GRANTED**. Accordingly, the subject assessment issued against petitioners for deficiency income tax, inclusive of increments, in the aggregate amount of P305,735, 910.71, for taxable years 2004 to 2009, as embodied in the FDDA dated April 4, 2016, is **CANCELLED** and **SET ASIDE**.”

¹ Respondent in CTA Case No. 9341.

² Rollo, CTA EB Case No. 2646, pp. 24-44.

SO ORDERED.”

and the Resolution³ dated June 9, 2022 (assailed Resolution) of the same Second Division of the Court (Court in Division) dismissing the CIR’s Motion for Reconsideration, the dispositive portion thereof reads:

“WHEREFORE, premises considered, the motion is **DISMISSED** for lack of jurisdiction.

SO ORDERED.”

THE PARTIES

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondents Juan Miguel M. Arroyo (Mr. Arroyo) is a registered taxpayer of Revenue District No. 39, South Quezon City with TIN 914-841-267-000. He was the Vice-Governor of the Province of Pampanga for two (2) consecutive terms, or from 2004-2010. Petitioner Ma. Angela M. Arroyo (Mrs. Arroyo) on the other hand, is registered as a One-Time Transaction (“ONETT”) taxpayer of Revenue District No. 50, South Makati with TIN 185-405-985-000.⁴

THE FACTS

The facts as stated in the assailed Decision⁵ are as follows:

“On April 5, 2011, petitioner Juan Miguel M. Arroyo and his wife, Ma. Angela Arroyo, received two (2) Letters of Authority (LOA Nos. 211-2011-00000083 and 211-2011-00000084), both dated April 4, 2011, issued by respondent Commissioner of Internal Revenue, to examine their books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2002 to December 31, 2009.

³ Rollo, pp. 46-48.

⁴ Decision, p. 2.

⁵ Citations omitted.

On April 7, 2011, the BIR filed a Complaint Affidavit with the Department of Justice (DOJ) for violation of Sections 254 and 255 of the National Internal Revenue Code of 1997 (NIRC).

Thereafter, a Preliminary Assessment Notice ("PAN") dated September 20, 2011 with Details of Discrepancies was issued against petitioners, against which a Protest was filed by Petitioners on November 25, 2011.

On January 10, 2012, a Formal Letter of Demand ("FLD") with Details of Discrepancies and Final Assessment Notices ("FAN") were issued demanding the payment of the alleged deficiency income taxes for Taxable Years 2004-2009.

A protest to the FAN was filed on March 9, 2012.

At the same time, the following cases against the Petitioners were filed:

1. Criminal Case Nos. O-247 to O-249, entitled "People v. Juan Miguel M. Arroyo," with the Court of Tax Appeals, for Failure to Supply Correct and Accurate Information in his Income Tax Return for taxable years 2004, 2006 and 2007.
2. Criminal Case Nos. Q-11-172641 to Q-11-172647, entitled "People v. Ma. Angela M. Arroyo", with the Regional Trial Court of Quezon City, for failure to file Income Tax Return for 2003, 2004, 2005 2006, 2007 2008, 2009.
3. Criminal Case Nos. Q-11-172638 to Q-11-172640, entitled, "People v. Juan Miguel M. Arroyo", with the Regional Trial Court of Quezon City, for failure to file Income Tax Return for 2005, 2008, 2009.

On April 5, 2016, the spouses received a Final Decision on Disputed Assessment ("FDDA") dated April 4, 2016, signed by the Commissioner, denying the Protest against the alleged deficiency tax assessments for taxable years 2004 to 2009. The FDDA finds Petitioner Spouses liable for alleged deficiency income taxes for the taxable years 2004-2009 in the aggregate amount of P305,735,910.71.

Meanwhile on August 14, 2017, the Regional Trial Court of Quezon City, issued an Order dismissing Criminal Case Nos. Q-11-172641-47.

Subsequently on March 21, 2018, this Court promulgated its Decision in CTA Criminal Case Nos. O-247 to O-249 acquitting Juan Miguel M. Arroyo for failure of the prosecution to prove his guilt beyond reasonable doubt.”⁶

On May 4, 2016, respondents filed a Petition for Review⁷ before the Court in Division, docketed as CTA Case No. 9341, entitled “*Juan Miguel Arroyo & Ma. Angela Arroyo (GOMECO Metal Corp.) vs. Commissioner of Internal Revenue.*”

On September 19, 2016, the petitioner CIR filed his Answer,⁸ interposing the following defenses, to wit: that the Net Worth Method was properly applied; that the total unreported income of respondents was established by using the Net Worth Method, an authorized method under Revenue Memorandum Order (RMO) No. 15-95, as amended by RMO 31-95, where a comparison was made between an increase in net worth and the reported taxable income over time in order to determine the legitimacy of the taxpayer’s reported income; that the use of Net Worth Method in investigating the tax case of the respondents is embodied in Sections 6(B) and 43 of the NIRC of 1997, as amended; that the instant case is not barred by prescription; that Mr. Arroyo filed false or fraudulent returns for taxable years 2004, 2005 & 2006, and did not file his ITRs for taxable years 2007, 2008 and 2009, while Mrs. Arroyo failed to file her ITRs for taxable year 2003 to 2009; that the applicable period to assess is ten (10) years and not three (3) years; that the imposition of fifty percent (50%) surcharge as fraud penalty is consistent with the provisions of the law and therefore justified; that the burden of proof is on the taxpayer contesting the validity of the assessment to prove not only that the CIR is wrong but the taxpayer is right; and all presumptions are in favor of the correctness of tax assessments.

The sole issue stated in the Pre-Trial Order dated June 4, 2018 is “Whether petitioners are liable to pay the aggregate amount of P305,735,910.71 as deficiency Income Tax for taxable years 2004 up to 2009 as well as 50% surcharge and 20% deficiency and delinquency interest for late payment until fully paid pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC), of 1997.”⁹

On March 18, 2022, the Court in Division rendered the assailed Decision. On June 9, 2022, the Court in Division rendered the assailed Resolution.

⁶ Docket, CTA Case No. 9341, pp. 1147-1149.

⁷ Ibid., pp. 10-30.

⁸ Ibid., pp. 172-182.

⁹ Page 2, Pre-Trial Order.

Aggrieved, the CIR filed before the Court *En Banc* this Petition for Review¹⁰ on July 1, 2022.

On August 4, 2022, the Court *En Banc* issued a Resolution ordering respondents to file their Comment/Opposition to the Petition for Review, within ten (10) days from notice.¹¹

On August 19, 2022, respondents filed their “Opposition.”¹²

On September 27, 2022, the Court *En Banc* issued a Resolution noting respondents’ “Opposition” and referring the instant case to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for initial appearance on November 8, 2022 at 1:30 p.m.¹³

On November 10, 2022, the Court *En Banc* received PMC-CTA Form 6- No Agreement to Mediate, stating that the parties decided not to have their case mediated by the PMC-CTA.¹⁴

In the Resolution dated December 15, 2022,¹⁵ the Court notes respondents’ “Opposition” and the PMC-CTA Form 6- No Agreement to Mediate. In view thereof, the instant case was deemed submitted for decision.

THE ISSUE

The main issue for the Court *En Banc*’s consideration is “Whether or not the Court *En Banc* has jurisdiction to review the Court in Division’s Decision and Resolution.”

THE ARGUMENTS

The CIR contends that technical rules of procedure are liberally construed to promote substantial justice; that the Court in Division denied petitioner’s motion for reconsideration for lack of jurisdiction because the motion was filed out of time; that the motion was filed only one day late; that as representative of the government in the collection and enforcement of taxes, petitioner should not be bound by the errors of its agents; that in the interest of substantial justice and pursuant to the settled rule that litigants should, as much as possible be decided on their merits and not on technicalities; that the net worth method of assessing a taxpayer was properly applied in the instant case; that respondents were

¹⁰ Rollo, CTA EB Case No. 2646, pp. 1-15, with Annexes.

¹¹ Ibid. pp. 50-51.

¹² Ibid., pp. 52-84.

¹³ Ibid., pp. 267-268.

¹⁴ Ibid., p. 269.

¹⁵ Ibid pp. 271-272.

accorded due process; and that the issuance and service of the Notice of Informal Conference (NIC) to respondents was never denied by respondents, hence, it is unnecessary for petitioner to offer evidence to prove the contrary.

On the other hand, respondent counter-argues that the Court in Division correctly denied petitioner's motion for reconsideration for lack of merit; that judgments or orders become final and executory by operation of law, and not by judicial declaration; that petitioner admitted that his office received the Decision dated March 18, 2022 on March 21, 2022; that the motion for reconsideration was therefore due on April 5, 2022; that the postmark on the attached Affidavit of Service, as well as the Affidavit itself, indicates that the Motion was mailed on April 6, 2022; that petitioner did not attempt to explain why his motion was late; that the relaxation of rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity; that the motion for reconsideration, even if allowed, should still be denied because it is not impressed with merit; and that the Court in Division correctly cancelled and set aside the assessment because the Net Worth Method cannot be applied.

THE RULING OF THE COURT *EN BANC*

After consideration, the Court *En Banc* finds that the CIR's opportunity to appeal has already lapsed since the assailed Decision has become final and executory for failure of the CIR to file a motion for reconsideration in accordance with the rules.

The CIR's right to appeal is a statutory privilege that must be exercised in the manner provided by law.

Sections 1 and 3, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provide:

SECTION 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

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SECTION 3. *Who may appeal; period to file petition.*– (a) xxx

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xxx.



(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or a new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit of costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

The records of this case show that the CIR received a copy of the Decision on March 21, 2022.¹⁶

Based on the above-mentioned provisions, the CIR had fifteen (15) days from March 22, 2022 or **until April 5, 2022** within which to file his motion for reconsideration. April 5, 2022 is a Tuesday.

On April 6, 2022, the CIR filed before the Court in Division a “Motion for Reconsideration [re: Decision dated March 18, 2022]” dated April 4, 2022.¹⁷ Hence, the CIR’s right to appeal has already lapsed.

A party who fails to question an adverse decision by not filing a motion for reconsideration within the period prescribed by the rules loses its right to do so, since the decision as to him, becomes final and binding. In *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*,¹⁸ the Supreme Court ruled that:

“It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.

The CTA, even if vested with special jurisdiction, is, as courts of general jurisdiction can only take cognizance of such matters as are clearly within its statutory authority. Relative thereto, when it appears from the pleadings or evidence on record that the

¹⁶ Ibid. p. 1144.

¹⁷ Docket, pp. 1167-1173.

¹⁸ G.R. No. 185666, February 04, 2015.

court has no jurisdiction over the subject matter, the court shall dismiss the claim.”

In the case of *Bureau of Internal Revenue vs. TICO Insurance Company, Inc., Glowide Enterprises, Inc., and Pacific Mills, Inc.*,¹⁹ the Supreme Court extensively discussed the effect of failure to file on time a motion for reconsideration, viz:

It is settled that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional. This means that the failure to interpose a timely appeal deprives the appellate body of any jurisdiction to alter the final judgment, more so to entertain the appeal. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not, and no court — not even the Supreme Court — has the power to revise, review, change or alter the same. The right to appeal is not a part of due process of law, but is a mere statutory privilege to be exercised only in the manner, and in accordance with, the provisions of the law. After a decision is declared final and executory, vested rights are acquired by the winning party.

In the same vein, "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." "Under Section 1, Rule 52 of the Rules of Court, a motion for reconsideration of a judgment or final resolution should be filed within 15 days from notice. If no appeal or motion for reconsideration is filed within this period, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgment, as provided under Section 10 of Rule 51. The 15-day reglementary period for filing a motion for reconsideration is non-extendible."

Provisions of the Rules of Court prescribing the time within which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays, and to the orderly and speedy discharge of judicial business. While this Court has previously allowed the liberal application of procedural rules, these are exceptions that are sufficiently justified by meritorious and exceptional circumstances attendant therein, which are notably not present in the instant petition. Not every plea for relaxation of rules of procedure shall be granted by the Court for it will render such rules inutile.



¹⁹ G.R. No. 204226, April 18, 2022, citations omitted.

Significantly, the BIR failed to adduce any cogent or exceptional reason that would warrant the liberal application of the rules. It merely invoked the inadvertence of its counsel's Document Management Division in failing to file its motion for reconsideration on time. However, a counsel's tardiness in complying with reglementary periods for filing pleadings that are attributed to the negligence of said counsel's secretary or clerk is not a valid reason. "It is the counsel's duty to adopt and to strictly maintain a system that ensures that all pleadings should be filed and duly served within the period; and if he fails to do so, the negligence of his secretary or clerk to file such pleading is imputable to the said counsel."

That the motion for reconsideration was filed only one day late is immaterial; the Court has similarly refused to admit motions for reconsideration which were filed late without sufficient justification. Indeed, "[j]ust as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the case."

In fine, the BIR's failure to seasonably file its motion for reconsideration rendered the December 16, 2011 Decision of the CA final and executory, and beyond the courts' power to amend or revoke."

Since the assailed Decision of the Court in Division has become final and executory, the Court *En Banc* cannot exercise appellate jurisdiction to review the decision. Accordingly, the Court *En Banc* must deny the instant petition.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.

SO ORDERED.



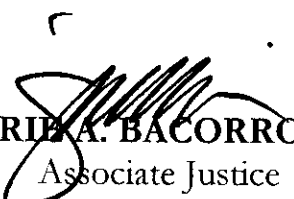
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

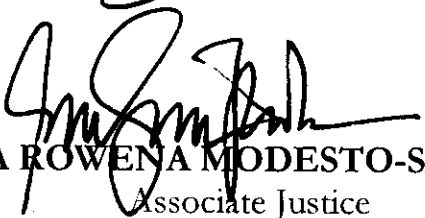
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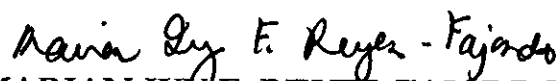


ROMAN G. DEL ROSARIO
Presiding Justice

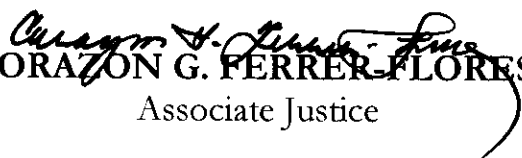

CATHERINE T. MANAHAN
Associate Justice


JEAN MARIA A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

(Took No Part)
HENRY S. ANGELES
Associate Justice

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice