

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

CTA EB CASE NO. 602
(CTA Case Nos. 7668)

-versus-

Present:

**ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.**

**PACIFIC EAST ASIA CARGO
AIRLINES, INC. AND PETRON CORP.,**
Respondents.

Promulgated:

JUN 02 2010 
2:45 PM

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R E S O L U T I O N

MINDARO-GRULLA, J.:

This resolves respondents' Motion for Reconsideration of the Order granting petitioner's Motion for Extension of Time to File Petition for Review, seeking to cancel the Court *en banc*'s Resolution dated March 18, 2010.

On November 10, 2009, petitioner received the Decision of the former First Division of this Court dated November 5, 2009 dismissing the instant case and ordering petitioner to issue a tax refund or a tax credit certificate in favor of respondents. Thereafter, on December 4, 2009, petitioner filed a Motion to Admit Attached Motion for Reconsideration with attached Motion for Reconsideration, nine (9) days after the required fifteen (15)-day period to file the same reckoned from the date of receipt of notice of the Decision as



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provided by the Rules.¹ Respondents, in turn, filed their Comment/Opposition to the Motion for Reconsideration.

On February 25, 2010, the Special First Division issued a Resolution denying the Motion for Reconsideration filed by Petitioner for lack of merit, the pertinent portion of which reads as follows:

"Respondent's motion was filed on December 4, 2009 or nine (9) days after the fifteen (15)-day period to file Motion for Reconsideration has lapsed. Moreover, respondent has not shown any valid explanation that warrants the liberal application of Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals.

WHEREFORE, respondent's '**Motion to Admit Attached Motion for Reconsideration**' is hereby **DENIED** for lack of merit.

SO ORDERED."

On March 1, 2010, petitioner received the above-cited Resolution of this Court and thereafter on March 9, 2010, filed a Motion for Extension of Time to File Petition for Review by registered mail. On March 18, 2010, the Court *en banc* issued the Resolution granting petitioner a final and non-extendible period of fifteen (15) days within which to file the Petition for Review, which reads:

"Subject to the condition that the motion for extension was timely filed, petitioner Commissioner of Internal Revenue is granted a final and non-extendible period of fifteen (15) days only from March 16, 2010 or until March 31, 2010, within which to file his Petition for Review."

On March 23, 2010, respondents filed a Motion for Reconsideration of the Resolution granting petitioner's Motion for Extension to file Petition for Review. Respondents allege as ground that petitioner failed to comply with the requirement under Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals as it belatedly filed a motion for reconsideration of the Decision of this Court's former First Division nine (9) days after the lapse of the fifteen (15)-day period to file the same under the Rules.

¹ Section 1, Rule 15 of the 2005 Revised Rules of the CTA, as amended.

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Hence, the issue is whether respondents' motion for reconsideration may be granted or not.

The issue is answered affirmatively.

Section 1, Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, provides:

"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 a 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." [Emphasis supplied]

Likewise, Section 1, Rule 15 of the same Rules provides for the period within which to file a timely motion for reconsideration or new trial, thus:

"SECTION 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question." [Emphasis Supplied]

In the case at bar, it is undisputed that petitioner's Motion to Admit Attached Motion for Reconsideration of the Decision promulgated by this Court's former First Division was clearly filed out of time. Petitioner received the notice of the Decision of the said Court on November 10, 2009 and it had until November 25, 2009 within which to file a Motion for Reconsideration before the same Division. However, it belatedly filed the aforesaid Motion on December 4, 2009. Therefore, the decision of the Special First Division had already become final and executory on November 26, 2009.

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Hence, the Special First Division of this Court denied the said Motion for Reconsideration for having been filed out of time, which Resolution was received by petitioner on March 1, 2010. Undaunted, petitioner filed a Motion for Extension of Time to file Petition for Review on March 9, 2010 with the CTA *en banc*, which granted a final and non-extendible period of fifteen (15) days to file Petition for Review subject to the condition that the motion for extension was timely filed.

In light of the foregoing premises, it is pristine clear that the petitioner failed to file its Motion for Reconsideration of the Decision of this Court's former First Division within the fifteen (15)-day reglementary period, thereby rendering the said Decision final, executory, and non-appealable.

WHEREFORE, premises considered, the instant Motion for Reconsideration of the Order Granting Petitioner's Motion for Extension of Time to file Petition for Review is **GRANTED** and the Resolution of the Court *en banc* dated March 18, 2010 is **RECALLED AND SET ASIDE**. Accordingly, the Decision of the Special First Division dated November 5, 2009 is declared final and executory. *G*

SO ORDERED.

ON LEAVE
ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice

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OLGA PALANCA-ENRIQUEZ
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice