REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ASIASEC EQUITIES, INC.,
Respondent.

CTA EB No. 1112
(CTA CASE NO. 8242)

Present:

DEL ROSARIO, *PJ*;
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

APR 2 1 2014 9:00 a.m.

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DECISION

Fabon-Victorino, J.:

Before the Court is the Petition for Review dated January 30, 2014 filed by petitioner assailing the (1) Decision dated November 4, 2013, which granted respondent's claim for refund/tax credit in the amount of P1,139,608.50, representing its erroneously paid Documentary Stamp Tax on Secondary Trading of listed shares in the Philippine Stock Exchange for the period March 25, 2009 to May 6, 2009, and the (2) Resolution dated December 19, 2013, which denied petitioner's Motion for Reconsideration, both rendered by the Court in Division.

THE FACTS AND THE PROCEEDINGS

Petitioner is the Commissioner of Internal Revenue with authority to abate or cancel tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed. She holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

Respondent Asiasec Equities Inc. is a Philippine corporation with principal office at 8th Floor, Chatham House Building, 116 Valero corner V.A. Rufino Streets, Salcedo Village, Makati City. It is registered with the Securities and Exchange Commission (SEC) with SEC Registration No. 170885 and is primarily engaged in the brokerage business of stocks, bonds and other financial securities and in all activities directly or indirectly connected therewith or incidental thereto and to be a member of any stock exchange. It has a license to operate as a broker dealer in securities, with Certificate of Registration No. 01-2004-00016 issued by the SEC on December 23, 2010.

In a Memorandum of Agreement (MOA) dated March 17, 2009, the Department of Finance (DOF) and the Philippine Stock Exchange (PSE) formally agreed that during the period March 20, 2009 to June 30, 2009, broker-dealer taxpayers who transacted in shares of stock listed in the stock exchange shall file documentary stamp tax (DST) returns and remit the DST on the transactions to the BIR through any of its Authorized Agent Banks (AAB).

The MOA likewise provides that in the event that the Philippine Congress passes a new law on or before June 30, 2009 exempting from DST listed shares traded through the stock exchange, or the new law providing for such exemption has retroactive effect to March 20, 2009, the DST collected on shares traded in the stock exchange will be refunded to the broker-dealer taxpayers through the AABs.

For the period March 20, 2009 to April 30, 2009, respondent purchased/traded listed shares of stock through the PSE, filed DST return on each transaction and paid the corresponding DST via Electronic Filing and Payment System (EFPS) to Security Bank Corporation (SBC), Head Office-Cash and Commercial Accounts Department, an AAB of the BIR.

On various dates, respondent made the following DST payments on the purchased/traded listed shares of stock through the PSE via EFPS to SBC for the period March 25, 2009 to May 6, 2009, to wit:

Date Remitted	Total Amount Remitted
March 25, 2009	P 10,659.75
March 26, 2009	9,622.50
March 27, 2009	7,335.00
March 30, 2009	20,936.25
March 31, 2009	36,451.50
April 1, 2009	48,727.50
April 2, 2009	18,486.00
April 3, 2009	37,480.50
April 7, 2009	24,045.75
April 8, 2009	92,208.00
April 13, 2009	22,498.50
April 14,2009	16,761.75
April 15, 2009	20,914.50
April 16, 2009	78,416.25
April 17, 2009	23,807.25
April 20, 2009	36,651.00
April 21, 2009	67,114.50
April 22, 2009	157,704.75
April 23, 2009	38,411.25
April 24, 2009	55,389.75
April 27, 2009	37,428.75
April 28, 2009	21,378.75
April 29, 2009	57,997.50
April 30, 2009	12,561.75
May 4, 2009	59,883 .75
May 5, 2009	55,473.75
May 6, 2009	71,262.00
TOTAL	**P 1,139,608.50**

Subsequently, Republic Act (R.A.) No. 9648 was enacted and took effect on June 30, 2009, exempting from DST the sale, barter or exchange of shares of stocks listed and traded through the local stock exchange, retroactive to March 20, 2009.

Pursuant to the MOA of March 17, 2009 by and between the DOF and PSE and with the enactment of R.A. No. 9648, respondent sent a letter dated July 7, 2009 to SBC requesting for the refund of the DST payments it made for the trading/purchase of listed shares of stocks in the stock exchange for the period March 25, 2009 to May 6, 2009.

However, SBC could no longer refund the amount of P1,139,608.50 on the ground that it already remitted it to the BIR account.

On August 4, 2009, respondent filed with the BIR RDO No. 50 an administrative claim for tax refund/tax credit in the amount of P1,139,608.50, representing erroneously paid DST on the Secondary Trading of listed shares in the PSE for the period March 25, 2009 to May 6, 2009, which had been remitted to the BIR.

On March 24, 2011, respondent, alleging inaction on the part of petitioner, filed with the Court in Division a Petition for Review,[1] for tax refund/tax credit, docketed as CTA Case No. 8242.

In her Answer[2] filed on May 18, 2011, petitioner claimed that under R.A. No. 9648, it was the AAB that should refund to the taxpayer the DST and interest earned thereon and not the BIR. This was reiterated in the Circular Letter No. CL-2009-019 issued by Deputy Governor Nestor A. Espenilla, Jr. Further, there was no provision in the MOA of March 17, 2009 that stated that the BIR shall refund to the brokers-taxpayers the DST and interest earned thereon. Lastly, the burden was on respondent to prove its entitlement to refund by presenting clear and convincing evidence that all the requirements for that purpose have been satisfied.

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[1] Rollo, Annex "D", pp. 39-58.
[2] Rollo, Annex "E", pp. 59-64.

During the trial, only respondent adduced evidence while petitioner opted not to present any.

After the trial on the merits, the Court in Division rendered the assailed Decision dated November 4, 2013,[3] granting respondent's claim for refund in this wise:

> WHEREFORE, the Petition for Review is hereby GRANTED. Accordingly, respondent is hereby ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE to petitioner in the amount of One Million One Hundred Thirty Nine Thousand Six Hundred Eight and 50/100 pesos (P1,139,608.50), representing erroneously paid Documentary Stamp Tax (DST) on Secondary Trading of listed shares in the Philippine Stock Exchange for the period March 25, 2009 to May 6, 2009.
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> SO ORDERED.

In the Resolution dated December 19, 2013,[4] the Court in Division denied petitioner's Motion for Reconsideration.

On January 7, 2014, petitioner filed a Motion for Extension to File Petition for Review[5] alleging that it received the assailed Resolution of December 19, 2013 denying her Motion for Reconsideration, thus it had fifteen (15) days from the said receipt or until January 10, 2014, within which to appeal before the Court *En Banc* pursuant to Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals. However, due to heavy pressure of work, it could not possibly file her Petition for Review on time, thus, the plea for extension of fifteen (15) days within which to file the proposed pleading.

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[3] Rollo, Annex "A", pp. 14-28.
[4] Rollo, Annex "B", pp. 30-35.
[5] Rollo, pp. 1-2.

In the Resolution dated January 13, 2014,[6] the Court *En Banc* granted petitioner's motion in this wise:

> As prayed for and subject to the condition that the motion for extension is timely filed, petitioner is granted a final and non-extendible period of fifteen (15) days from January 10, 2014 or until <u>January 25, 2014</u> (not January 30, 2014), within which to file her Petitioner for Review.
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> (Per En Banc Resolution No. 01-04-05 CTA, as amended by En Banc Resolution No. 02-2007).

On January 30, 2014, petitioner filed the instant Petition for Review with the lone issue, viz.,:

> THE HONORABLE COURT OF TAX APPEALS (SPECIAL SECOND DIVISION), WITH ALL DUE RESPECT, ERRED WHEN IT GRANTED THE INSTANT PETITION FOR REVIEW AND ORDERED THE REFUND AND ISSUANCE OF A TAX CREDIT CERTIFICATE TO PETITIONER IN THE AMOUNT OF ONE MILLION ONE HUNDRED THIRTY NINE THOUSAND SIX HUNDRED EIGHT AND 50/100 PESOS (P1,139,608.50), REPRESENTING ERRONEOUSLY PAID DOCUMENTARY STAMP TAX (DST) ON SECONDARY TRADING OF LISTED SHARES IN THE PHILIPPINE STOCK EXCHANGE FOR THE PERIOD MARCH 25, 2009 TO MAY 6, 2009.

On February 7, 2014, respondent filed a Manifestation informing the Court that petitioner failed to file her Petition for Review within the fifteen-day reglementary period provided under the Revised Rules of the Court of Tax Appeals. Worse, she filed her Petition for Review well beyond the final and non-extendible period granted by the

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[6] Rollo, p. 4.

Court *En Banc* of until January 25, 2014. Moreover, the pleading itself revealed that it was executed only on January 27, 2014 when the period granted already lapsed. Apart from this, petitioner furnished respondent with a copy of the Petition for Review by registered mail only on January 29, 2014. In the meantime, the assailed Decision dated November 4, 2013 and the Resolution dated December 19, 2013 have become final and executory.

On February 13, 2014, or fourteen (14) days after petitioner filed her Petition for Review before the Court *En Banc*, petitioner filed a Motion to Admit and explained with apologies that she made a mistake when she reckoned the fifteen-day period from January 15, 2014 since the number was the same as the period she prayed for in her Motion for Extension of Time. Petitioner averred that she had no deliberate intent to delay the final disposition of the case and invoked for a relaxation of the rules of procedure in order to serve the ends of justice and to insure that substantive rights of the parties are protected.

RULING OF THE COURT *EN BANC*

The instant Petition for Review must fail.

Section 4(b) of the Revised Rules of Court of Tax Appeals provides:

> RULE 8
> PROCEDURE IN CIVIL CASES
>
> SEC. 4. Where to appeal; mode of appeal –
>
> (a) xxx xxx xxx
> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The court *en banc* shall act on the appeal.

Further, Section 1, Rule 7 of the same Revised Rules of the Court of Tax Appeals states:

> SECTION 1. Applicability of the Rules of Court on procedure in the Court of Appeals, exception. — The procedure in the Court en banc or in Division in original or in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in these Rules.

In relation to the foregoing, Section 4, Rule 43 of the Rules of Court provides:

> SEC. 4. Period of appeal. - The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee 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 (15) days.

Evident from the foregoing provisions that an appeal from a decision or resolution of the Court in Division shall be taken to the Court *En Banc* via a petition for review within fifteen (15) days from notice of the judgment or resolution subject of appeal. However, the Court *En Banc* may grant the petitioner an extension of fifteen (15) days for filing a Petition for Review without further extension except for the most compelling reason and in no case to exceed fifteen (15) days.

Clear as a day that petitioner failed to comply with the rules pertinent to her appeal. The Resolution of January 13, 2014 granted petitioner of "until January 25, 2014 (not January 30, 2014), within which to file her Petition for Review". Notwithstanding the explicit directive of the Court En Banc, petitioner filed her Petition for Review before the Court *En Banc* only on January 30, 2014 or five days beyond the period granted.

It was also too presumptuous on the part of petitioner to readily consider that her motion would be granted by the Court. Assuming for the sake of argument that mistakes were inadvertently committed in the computation of period of extension, the lapses could have been remedied earlier had an extra mile been taken to verify the status of her motion, what with the ease that modern communications technology provides.

The nail that indubitably pinned petitioner to her lapses is her Motion to Admit the Petition for Review filed fourteen (14) days after she learned that the 15-day period she requested actually expired on January 25, 2014, and that her Petition for Review was belatedly filed on January 30, 2014. Notably, the said motion was filed six (6) days after respondent filed its Manifestation dated February 6, 2014 inviting the attention of the Court *En Banc* to petitioner's belated filing of the instant Petition for Review.

In the meantime, the assailed Decision of November 4, 2013 and Resolution of December 19, 2013 had become final and executory removing them from the province of the Court. Having lost its jurisdiction from the time the assailed Decision and Resolution became final and executory, the Court *En Banc* can no longer entertain the appeal. In the case of *Estoesta, Sr. v. Court of Appeals,*[7] the Supreme

[7] G.R. No. 74817, November 8, 1989, 179 SCRA 203.

Court ruled that when a decision has already become final and executory, an appellate court loses jurisdiction to entertain an appeal much less to alter, modify or reverse the final and executory judgment.

It must be stressed that the right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[8]

An appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court. Deviations from the Rules cannot be tolerated. The rationale for this strict attitude is not difficult to appreciate as the Rules are designed to facilitate the orderly disposition of appealed cases. In an age where courts are bedeviled by clogged dockets, the Rules need to be followed by appellants with greater fidelity. Their observance cannot be left to the whims and caprices of appellants.[9] Obviously, petitioner failed to consider that just as the losing party has the privilege to file an appeal within the prescribed period, the prevailing party also has a correlative right to enjoy the finality of a decision in his favor.[10]

Also significant is the ruling that perfection of an appeal in the manner and within the reglementary period allowed by law is **not only mandatory but also jurisdictional**.[11]

Even assuming *in gratia argumenti* that the instant Petition for Review was seasonably filed, it will still be denied, for lack of merit. The allegations in the present Petition for Review are mere reiteration of petitioner's Answer filed with the Court in Division on May 18, 2011 which had been considered and found by the Court in Division to be without merit.

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[8] *Boardwalk Business Ventures vs. Elvira A. Villareal et. al.*, G.R. No. 181182, April 10, 2013.
[9] *Fenequito, et al. vs. Vergara, Jr.*, G.R. No. 172829, July 18, 2012.
[10] *Supra*, Note 7.
[11] *Tiger Construction and Development Corporation v. Reynaldo Abay, et al.*, G.R. No. 164141, February 26, 2010.

But if only to disabuse petitioner's mind, the Court seriously went over the arguments she raised anew but found no justification to modify much less reverse the ruling of the Court in Division.

Significantly, petitioner categorically states that she does not dispute the facts as established during the trial of the case. In fact, she did not present any controverting evidence and submitted the case for decision on the basis of the evidence presented and the pleadings filed.

In the instant case, petitioner merely claims that respondent lacks the legal personality to ask for refund of the erroneously paid and collected DST on secondary trading of listed shares in the PSE for the period March 25, 2009 to May 6, 2009. If at all, it should be the SBC, the AAB of the BIR in this particular case, which received the payment from respondent, that should file the claim for refund with the BIR and with the Court. Petitioner anchors her position to the provision of the R.A. 9648 and the MOA of March 17, 2009.

Petitioner's argument is however defeated by her own admission that legally, the person entitled to claim a tax refund is the statutory taxpayer or the person liable for or subject to tax, which in this particular case is the respondent. Note that the provision invoked by petitioner is in the NIRC, as amended, which also provides the exemption from DST in favor of respondent.

It must also be stressed that respondent, in compliance with R.A. 9648 and the MOA, formally sought refund from SBC, the AAB of the BIR, before it timely filed its application for refund with petitioner. SBC however informed respondent that it could no longer refund the DST paid in the total amount of P1,139,608.50 since it had already been remitted to the BIR account, a fact amply backed-up by sufficient and competent documentary evidence.

As ruled by the Court in Division after it meticulously laid down the background of the pertinent provisions on the DST exemption of respondent, "[S]ince the sale of shares of stock listed and traded through the local stock exchange is exempt from DST pursuant to Section 199(e) of the NIRC of

1997, as amended by R.A. No. 9648, the DST paid by petitioner (herein respondent) in the amount of P1,139,608.50 constitutes erroneously paid tax which may be a proper subject of a claim for refund under Sections 204(c) and 229 of the NIRC of 1997, as amended.

It is therefore beyond cavil that respondent has the right to claim for refund and petitioner has the legal obligation to refund the amount collected lest it will result in unjust enrichment on the part of government as represented by petitioner.

On the matter, the Supreme Court ruled in the case of *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*[12], in this fashion:

> A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.
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> Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, solutio indebiti, which covers not only mistake in fact but also mistake in law.
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> The Government is not exempt from the application of solutio indebiti. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to

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[12] G.R. Nos. 167274-75, July 21, 2008.

> refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case.

WHEREFORE, the Petition for Review filed by petitioner Commissioner of Internal Revenue on January 30, 2014 is hereby **DENIED,** for lack of merit. Accordingly, the assailed Decision dated November 4, 2013, and the assailed Resolution dated December 19, 2013, are AFFIRMED *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice