

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

**LEPANTO CONSOLIDATED
MINING COMPANY,**
Petitioner,

CTA CASE NO. 9359

Members:

- versus -

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, JJ.

**HON. KIM J. HENARES in
her capacity as the
COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

Promulgated:

JUN 27 2017

9:12 AM



X ----- X

RESOLUTION

CASTAÑEDA, JR., J.:

For resolution is petitioner's **Motion for Reconsideration (Of the Decision dated 17 April 2017)**, filed on May 3, 2017, with respondent's **Opposition (Re: Motion for Reconsideration dated 3 May 2017)**, filed on May 23, 2017.

Petitioner seeks reconsideration of the Court's Decision promulgated on April 17, 2017 (assailed Decision), the dispositive portion of which reads:

"WHEREFORE, the present Petition for Revival of Judgment is **DENIED** for being time-barred.

SO ORDERED."

In its motion, petitioner argues that the Decision in CTA Case Nos. 6368 and 6480 became final and executory after the entry of 

the Resolution of the Supreme Court in G.R. No. 170814 considering that petitioner still had the right to appeal the Resolutions of the Court *En Banc* to the Supreme Court, especially since what was principally contested in the appeal was the prescribed period for the filing of the petition for review with the Court *En Banc*.

Petitioner maintains that in the case of the Court of Tax Appeals (CTA) Decision, it did not become final and executory when the Court *En Banc* issued its Resolution dated August 11, 2005 because petitioner still had the right to appeal to the Supreme Court (as it did exercise said right) through Rule 45 of the Rules of Court.

Petitioner contends that under Rule 45 of the Rules of Court, a party desiring to appeal the decision, final order or resolution of the Court of Appeals, Sandiganbayan, Court of Tax Appeals and Regional Trial Court may file a verified petition for review with the Supreme Court but only questions of law may be raised in such petition.

A question of law allegedly exists when there is doubt or controversy as to what the law is on a certain state of facts. Applying the foregoing definition, petitioner argues that the correct interpretation of the laws on prescriptive period for filing of the petition for review with the Court *En Banc* is considered a question of law. Petitioner emphasizes that what was raised in the Supreme Court was the Court *En Banc's* interpretation of the pertinent provision of Republic Acts Nos. 9282 and 1125 and Bata Pambansa Blg. 129, all of which pertain to the prescribed period within which to file a petition for review with the Court *En Banc*.

Therefore, petitioner claims that it still had a recourse – an appeal to the Supreme Court by Rule 45 of the Rules of Court – hence, the Resolutions dated August 11, 2005 and October 7, 2005 of the Court *En Banc* cannot be said to have already achieved finality.

Considering that the instant petition was timely filed and that all of the requirements for an action for revival of judgment have been complied with, petitioner concludes that the CTA Decision should be revived.

In his opposition, respondent points out that in the Resolution promulgated on August 11, 2005 by the Court *En Banc*, the petition for review filed by petitioner was dismissed for being filed out of time. As stated in the said Resolution, the Decision and Resolution of 

the CTA First Division have become final and executory. Thus, applying Articles 1144(3) and 1152 of the Civil Code and Section 6, Rule 39 of the Rules of Court to the instant case, when petitioner filed the complaint for revival of judgment, it had already been eleven (11) years from the finality of judgment.

After weighing the parties' arguments, the Court stands by its ruling denying the present Petition for Revival of Judgment, considering that no new or substantial matter was raised by petitioner in its Motion for Reconsideration to merit a reversal or modification of the assailed Decision.

Since petitioner's argument had already been considered and thoroughly passed upon in the assailed Decision, the Court will no longer discuss the same in detail.

To reiterate, "it is well-settled that judgment or orders become final and executory by operation of law and not by judicial declaration. Thus, finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or motion for reconsideration or new trial is filed. The trial court need not even pronounce the finality of the order as the same becomes final by operation of law."¹

There is no question that a party desiring to appeal by *certiorari* from a judgment or final order or resolution of the CTA may file with the Supreme Court a verified petition for review on *certiorari*. Unfortunately, when petitioner appealed, by way of petition for review, the Resolutions dated August 11, 2005, October 7, 2005 and December 14, 2005 of the CTA *En Banc* to the Supreme Court, the petition was denied in the Resolution² dated February 1, 2006 for failure to state the material dates showing when notice of the assailed resolutions dated August 11, 2005 and October 7, 2005 were received. The Supreme Court further held that, in any event, petitioner failed to sufficiently show that the CTA committed any reversible error in the challenged resolutions as to warrant the exercise of the Supreme Court's discretionary appellate jurisdiction. On May 2, 2006, the Supreme Court resolved to deny petitioner's Motion for Reconsideration of the Resolution dated February 1, 2006 with finality.³ *Je*

¹ *Testate Estate of Maria Manuel Vda. De Biascan vs. Biascan*, G.R. No. 138731, December 11, 2000.

² Docket, p. 165.

³ Docket, p. 166.

In *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*⁴, the Supreme Court held that:

"It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. xxx When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. xxx"

Applying the foregoing to the instant case, the Supreme Court effectively affirmed the Resolutions dated August 11, 2005, October 7, 2005 and December 14, 2005 of the Court *En Banc* holding that the Court in Division's Decision dated December 15, 2004 and Resolution dated March 30, 2005 in CTA Case Nos. 6368 and 6480 have become final and executory, no appeal having been perfected, considering that the petition for review was filed with the Court *En Banc* on May 6, 2005 or beyond the 15-day reglementary period to appeal.

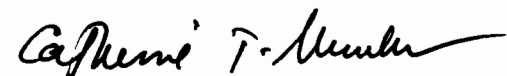
WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Of the Decision dated 17 April 2017)** is **DENIED** for lack of merit.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(On Leave)
CAESAR A. CASANOVA
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

⁴ G.R. No. 167330, Resolution dated September 18, 2009.