REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB NO. 1989 (CTA Case No 9494) Present:
- versus -	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR. UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
MTI ADVANCE TEST DEVELOPMENT CORP. Respondent.	Promulgated: JUL 24 2019 2:14 p.m.

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RESOLUTION

On December 17, 2018, petitioner Commissioner of Internal Revenue filed through registered mail a Motion for Extension of Time to File Petition for Review, praying for an additional thirty (30) days from December 18, 2018 or until January 17, 2019, within which to file his Petition for Review.

On January 17, 2019, petitioner filed his Petition for Review[1] before the Court *En Banc*, praying for 1) an order to stay the execution of the judgment in CTA Case No. 9494 rendered by of the Court in Division; and 2) the reversal of the assailed Decision and Order respectively dated July 26, 2018[2] and November 28, 2018[3] issued by the Court in Division, partially granting respondent's claim for refund/tax

[1] Docket, pp. 5-17.
[2] Annex "A" of the Petition for Review, docket, pp. 20-37.
[3] Annex "B" of the Petition for Review, docket, pp. 39-44.

credit in the amount of ₱8,796,386.95, representing its unutilized input Value-Added Tax (VAT) attributable to its zero-rated sales for the four quarters of FY ending March 31, 2015.

In its Resolution[4] dated January 29, 2019, the Court *En Banc* granted petitioner's motion for extension to file his Petition for Review but only for a period of fifteen (15) days from December 18, 2018 or until January 3, 2019[5], and not for thirty (30) days as prayed for in his motion.

On February 21, 2019, petitioner filed an Omnibus Motion (A. To Reconsider the Resolution dated Jan. 29, 2019 of this Hon. Court; B. To Admit Petitioner's Petition for Review filed on Jan. 17, 2019 With Profuse Offer of Apology).

Petitioner states that he is not unaware of the rules under Section 4, Rule 43 of the Rules of Court[6] relative to the filing of an appeal before the Court *En Banc* and has no intention to disregard the same. Allegedly, his counsel was constrained to ask for a 30-day extension due to inordinate volume of work and overload of tax cases assigned to him not to mention lack of material time caused by equally important pleadings that had to be prioritized. Moreover, the filing of the Petition for Review fell due during the Christmas season and that his counsel went on Vacation Leave from December 27, 2018 to December 28, 2018 and on Emergency Leave on January 3, 2019. Thus, petitioner prays that his Petition for Review filed on January 17, 2019 be admitted especially considering that he has a meritorious defense against respondent's claim for refund as stated in

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[4] Docket, pp. 52-53.

[5] January 2, 2019 is a Special Non-Working Holiday for the government employees as declared by the Office of the President and the Supreme Court, therefore, per Section 1, Rule 22 of the Rules of Court, the deadline will be on the next working day.

[6] Section 4, Rule 43 of the Rules of Court states:

> Section 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 reconsiderations 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 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.

his Petition for Review. Petitioner finally invokes the liberal application of the rules in his favor stressing that in not a few instances, the Court has relaxed the stringent application of the technical rules in order to resolve the case on the merits.

By way of Comment/Opposition, respondent argues that as a general rule a Petition for Review assailing the decision of the Court in Division must be filed within 15 days from notice of judgment as mandated in Section 4, Rule 43 of the Rules of Court. However, as an exception, an extension of 15 days may be granted but only for compelling reasons and subject to the sole discretion of the Court.

Also settled is the rule that heavy pressure of work is not considered a compelling reason to justify a request for extension of time to file a Petition for Review. The movant must substantiate and show proof of such compelling reason in an affidavit of merit.

In laying the basis for its opposition, respondent cites Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, which provides that an appeal from a decision or ruling of the Court in Division shall be taken to the Court *En Banc* by filing a petition for review as provided in Rule 43 of the Rule of Court. Respondent argues that under Section 4, Rule 43 of the Rules of Court, an appeal assailing the decision or ruling of the Court in Division shall be taken within 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.* The provision also states that the Court may grant an additional period of 15 days only within which to file the petition for review and no further extension shall be granted except for the most compelling reason and in no case shall exceed 15 days.

Section 4 of Rule 43 is instructive on the matter, it provides, thus:

> Section 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.*** (Emphasis supplied.)

The foregoing evidently mandates that an appeal from the Decision and Resolution of the Court in Division must be filed with the Court *En Banc* within 15 days from the notice of judgment or from the denial of the motion for reconsideration. No further extension shall be granted except for most compelling reason and in no case more than 15 days.

In this case, petitioner received the Resolution of November 28, 2018 denying his motion for reconsideration on December 3, 2018. Hence, it had until December 18, 2018 to file a Petition for Review. However, instead of filing a Petition for Review, petitioner, through registered mail, filed a Motion for Extension of Time to File Petition for Review on December 17, 2018, praying for a thirty-day extension of until January 17, 2019. Unmindful of the clear provision of the rules and presuming that its request for a 30-day extension would be granted, petitioner filed his Petition for Review on January 17, 2019, or the last day for filing, as prayed for in his Motion for Extension of Time to File Petition for Review. In any event, the Court *En Banc* granted petitioner's request for extension in its Resolution[7]

[7] Docket, pp. 52-53.

dated January 29, 2019 but only for a period of 15 days from December 18, 2018 or until January 3, 2019[8].

Verily, by filing his Motion for Extension of Time to File Petition for Review for a period of thirty (30) days[9] citing volume of work, the Christmas season and his vacation leave as grounds therefor, petitioner flouted the clear restriction on the period for taking an appeal as provided under Section 4 Rule 43 of the Rules of Court. Worse, petitioner, spreading the patience of the Court too thin, repeated the same grounds in his Omnibus Motion (A. To Reconsider the Resolution dated Jan. 29, 2019 of this Hon. Court; B. To Admit Petitioner's Petition for Review filed on February 21, 2019. The Court has repeatedly ruled, that heavy volume of work hardly qualifies as an imperative cause for moderation of the rules.[10]

Significantly, petitioner claims knowing the restrictions in the rules, hence, should have exercised due diligence by filing the proper petition within the allowable period,[11] or at the very least, ascertained from the Court whether its motion for extension had been acted upon.[12] Note that a Motion for Extension is not granted as a matter of right, but in the sound discretion of the Court.

In fine, the Petition for Review filed by petitioner on January 17, 2019 beyond the reglementary period provided under the rules thereby, depriving the Court with the required competence to hear and determine the same.

It is doctrinally entrenched that appeal is not a constitutional right, but a mere statutory privilege. Hence, parties who seek to avail themselves of it must comply with

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[8] January 2, 2019 is a Special Non-Working Holiday for the government employees as declared by the Office of the President and the Supreme Court, therefore, per Section 1, Rule 22 of the Rules of Court, the deadline will be on the next working day.
[9] *Muñez v. Jomo*, G.R. No. 173253, October 30, 2006, 506 SCRA 300, 307.
[10] *Bernardo v. People of the Philippines*, G.R. No. 166980, April 4, 2007, 520 SCRA 332, 341-342. See also *Philippine Amusement and Gaming Corporation v. Angara*, G.R. No. 142937, November 15, 2005, 475 SCRA 41, 51; *Marcial v. Hi-Cement Corporation/Union Cement Corporation*, G.R. No. 144900, November 18, 2005, 475 SCRA 388, 396.
[11] *Gochan v. Gochan*, 446 Phil. 433, 456 (2003); *Spouses. Galen v. Atty. Paguirigan*, 428 Phil. 590, 596 (2002).
[12] *Ang v. Grageda*, G.R. No. 166239, June 8, 2006, 490 SCRA 444.

the statutes or rules allowing it.[13] The perfection of an appeal within the period and in the manner prescribed by law is mandatory; noncompliance with this legal requirement is fatal, and has the effect of making the questioned judgment final and executory.[14]

Also, the Rules of Procedure, especially those prescribing the period within which certain acts must be done, have often been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business.

Lastly, a judgment must become final at the time appointed by law[15]-- this is a fundamental principle upon which rests the efficacy of our courts whose processes and decrees command obedience only when these are perceived to have some degree of permanence and predictability. Thus, an appeal from such judgment, not being a natural right but a mere statutory privilege, must be perfected according to the mode and within the period prescribed by the law and the rules; otherwise, the appeal is forever barred, and the judgment becomes binding.[16]

WHEREFORE, the Omnibus Motion (A. To Reconsider the Resolution dated Jan. 29, 2019 of this Hon. Court; B. To Admit Petitioner's Petition for Review filed on Jan. 17, 2019 With Profuse Offer of Apology) filed by petitioner on February 21, 2019, is hereby **DENIED,** for lack of merit. Accordingly, the Petition for Review filed by the Commissioner of Internal Revenue on January 17, 2019, is hereby **DISMISSED** on jurisdictional ground.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[13] *Cuevas v. Bais Steel Corporation*, 391 SCRA 192 (2002).
[14] *Bello v. NLRC*, G.R. 146212, September 5, 2007, 532 SCRA 232.
[15] *Far East Bank and Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006, 502 SCRA 87, 91.
[16] *Ang v. Grageda*, *supra* note 14 at 424, 438; *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005, 469 SCRA 633, 646; *Petilla v. Court of Appeals*, G.R. No. 150792, March 3, 2004, 424 SCRA 254, 262.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(Took No Part)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(Took No Part)
MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice