REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BUREAU OF INTERNAL REVENUE represented by COMMISSIONER KIM S. JACINTO-HENARES,
Petitioner,

-versus-

HON. LEILA M. DE LIMA in her capacity as SECRETARY OF JUSTICE, GEORGE ERWIN M. GARCIA,
Respondents.

CTA EB NO. 1694
(CTA CASE NO. 9171)

Present:
Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:
SEP 22 2017 2:28 p.m.

x---x

RESOLUTION

CASTAÑEDA, JR., *J.*:

This case was raffled for completion of records on August 29, 2017.

After a careful perusal of petitioner's Petition for Review with its Annexes filed on August 18, 2017, this Court finds the following:

1. Revenue Delegation Authority Order No. 2-2007 (RDAO 2-2007) was not attached to the Petition. Paragraph 1 of the Verification and Certification states that Revenue Delegation Authority Order No. 2-2007 (RDAO 2-2007) was attached to the Petition.[1] However, it was not found in the CTA *En Banc* docket of this case.

[1] *Rollo,* p. 30.

2. Petitioner mistakenly counted the 15-day period to file an appeal from the receipt of the July 14, 2017 Resolution and not from the receipt of the June 30, 2017 Resolution (the resolution on petitioner's motion for reconsideration of the Decision dated March 29, 2017). In filing the "Motion for Extension of Time to File the Petition for Review" on August 3, 2017, petitioner counted it from July 19, 2017, which is the date of receipt of the July 14, 2017 Resolution, a resolution which merely noted Reply and stated that said Reply was mooted by the June 30, 2017 Resolution.

Pertinent to this case is Section 3 (b) of Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, which states:

RULE 8
PROCEDURE IN CIVIL CASES

xxx xxx xxx

SEC. 3. *Who may appeal; period to file petition.* —

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or 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 for 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.

Based on the foregoing, a party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial is given a 15-day period to appeal to the CTA *En Banc* by filing a Petition for Review, reckoned from receipt of the questioned decision or resolution. The Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file a petition for review.

In this case, petitioner filed a "Motion for Extension of Time to File the Petition for Review" on August 3, 2017 alleging, among others, that:

> "1. On July 19, 2017, Plaintiff received a copy of the Notice of Resolution with attached Resolution promulgated July 14, 2017 by the Third Division of this Honorable Court, denying Petitioner's Motion for Reconsideration (of the Decision Promulgated on March 29, 2017) filed on May 9, 2017."[2]

In a Minute Resolution dated August 7, 2017, the Court granted the said motion stating that:

> "As prayed for and subject to the condition that the motion for extension is filed on time, petitioner is granted a final and non-extendible period of fifteen (15) days from August 3, 2017, or until August 18, 2017, within which to file its Petition for Review."[3]

Within the period of extension, petitioner filed the Petition for Review with Annexes.[4] However, after a scrutiny of the petition and annexes, this Court finds that after the promulgation of the assailed Decision dated March 29, 2017, there were two (2) resolutions promulgated by the CTA Third Division on June 30, 2017 and July 14, 2017, respectively. At this point, in order to ascertain whether the CTA *En Banc* has jurisdiction, it is important to determine which resolution resolved petitioner's motion for reconsideration and the date of receipt of such resolution.

The dispositive portion[5] of the June 30, 2017 Resolution states:

> **WHEREFORE,** premises considered, Petitioner's "Motion for Reconsideration (of the Decision Promulgated March 29, 2017)" is hereby **DENIED** for failure to comply with procedural requirements AND for lack of merit.
>
> Respondent George Erwin M. Garcia's "Urgent Ex Parte Motion for Additional Time to File Opposition (To the Petitioner's Motion for Reconsideration dated 9 May 2017)" filed on June 07, 2017 is hereby **NOTED**.
>
> **SO ORDERED.**

---

[2] *Rollo*, p. 1.
[3] *Id.*, p. 6.
[4] *Id.*, p.7.
[5] *Id.*, p. 41.

A mere reading of the June 30, 2017 Resolution shows that it is the Court's resolution on petitioner's "Motion for Reconsideration (of the Decision Promulgated March 29, 2017)."

On the other hand, the July 14, 2017 Resolution merely noted petitioner's "Reply (To Respondent's Comment to the Motion for Reconsideration dated 9 May 2017)" filed on July 07, 2017 and declared that said Reply has been rendered moot by the Court's Resolution dated June 30, 2017. Pertinent portions of the July 14, 2017 Resolution state:

> The Court **NOTES** Petitioner's "Reply (To Respondent's Comment to the Motion for Reconsideration dated 9 May 2017)" filed on July 07, 2017, praying that its "Motion for Reconsideration (of the Decision Promulgated March 29, 2017)" filed on May 9, 2017 be given due course.
>
> Petitioner's "Reply (To Respondent's Comment to the Motion for Reconsideration dated 9 May 2017)" has been rendered **MOOT** by the Court's Resolution dated June 30, 2017. The said Resolution states:
>
> xxx xxx xxx

In this case, petitioner should have reckoned the counting of the 15-day period to appeal from receipt of the June 30, 2017 Resolution on July 12, 2017.[6] Counting from July 12, 2017, petitioner has until July 27, 2017 within which to file a petition for review or a motion for extension of time to file petition for review with the *CTA En Banc*. Petitioner, however, filed its "Motion for Extension of Time to File the Petition for Review" on August 3, 2017 which is already beyond the period to appeal with the CTA *En Banc*. Consequently, the CTA *En Banc* is precluded from acquiring jurisdiction over the case. This case should be dismissed outright.

"It has been ruled that perfection of an appeal in the manner and within the period laid down by law is **not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.** At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law."[7] *(Emphasis Supplied)*

---

[6] *Rollo*, p. 36.
[7] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010, 628 SCRA 96.

WHEREFORE, for lack of jurisdiction, the Petition for Review is **DISMISSED.**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice