

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

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

CTA *EB* NO. 2075
(CTA Case No. 9362)

-versus-

Present:

**DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.***

WHOLESOME FOODS, INC.,
Respondent.

Promulgated:

SEP 22 2020

4:19 p.m.

X- - - - - X

D E C I S I O N

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* is a Petition for Review¹ filed on June 19, 2019 seeking the nullification of the Decision dated January 4, 2019 promulgated by the Special Third Division of this Court (Court in Division) and docketed as CTA Case No. 9362, the dispositive portion of which reads as follows:

¹ *EB* Docket, pp. 6-14. *an*

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Decision dated January 4, 2019

“WHEREFORE, the Petition for Review dated May 27, 2016 filed by Petitioner Wholesome Foods, Inc. is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of Php10,850,000.00 representing excessive and illegally collected penalties.

SO ORDERED.”

On February 4, 2019, respondent Commissioner of Internal Revenue (CIR) filed a Motion for Partial Reconsideration of the assailed Decision but was denied by the Court in Division in a Resolution dated May 14, 2019 on the ground that said motion was filed beyond the period prescribed by law for filing the same. We quote the pertinent and significant portions of the Resolution dated May 14, 2019, thus:

“Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that a party dissatisfied with the decision of the Court must file a motion for reconsideration or new trial within fifteen (15) days from receipt thereof, thus:

Rule 15

Motion for Reconsideration or New Trial

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 for fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

As applied in this case, the assailed Decision dated January 4, 2019 was received by respondent on January 17, 2019. **Counting fifteen (15) days therefrom, he had until February 1, 2019 within which to seek reconsideration of (sic) adverse Decision. Respondent however filed the instant Motion for Reconsideration on February 4, 2019, or three (3) days after the last date prescribed by the rules for filing the same, rendering the assailed Decision of January 4, 2019 final and incontrovertible, hence, may no longer be disturbed.”** (emphasis supplied) *un*

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As mentioned earlier, the CIR proceeded to file a Petition for Review with the Court *En Banc* on June 19, 2019 requesting for a re-examination of the assailed Decision of the Court in Division, citing two grounds, to wit:

“1. The Special 3rd Division of this Honorable Court erred in ruling that the amount of Php10,850,000.00 imposed and collected by respondent upon the petitioner as compromise penalty for its failure to keep books of account, issue official receipts, no back end report and unaccounted POS, as excessive and illegal.

2. The Special 3rd Division of this Honorable Court erred in denying petitioner’s Motion for Reconsideration without delving on the merits of the case.”

In a Resolution dated July 19, 2019,² the Court noted that one of the counsels who signed the Petition for Review on behalf of (now) petitioner CIR, did not indicate her Mandatory Continuing Legal Education (MCLE) Number while the other counsels indicated their MCLE number but only for the fifth compliance period. The Court then directed all counsels of petitioner CIR, to submit an amended portion of the Petition for Review indicating their updated MCLE compliance numbers for the sixth or seventh period, within ten (10) days from notice. In this same Resolution, the Court ordered respondent, Wholesome Foods, Inc., to file its Comment (and not a Motion to Dismiss), to the Petition for Review within ten (10) days from notice.

On August 14, 2019, respondent filed its *Comment/Opposition to Petition for Review dated 19 June 2019*.³

On October 23, 2019, the Court issued a Resolution submitting the above-captioned case for decision.⁴

At this point, it must be carefully emphasized that apart from a narration of the events leading up to the filing of the Petition for Review and the filing of the Comment by respondent, this Court can no longer delve on the issues raised by both parties due to lack of jurisdiction.

² *EB Docket*, pp.44-47.

³ *EB Docket*, pp. 53- 64.

⁴ *EB Docket*, pp. 77-78. *un*

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It is clear from the aforequoted Resolution issued by the Court in Division on May 14, 2019 that the assailed Decision promulgated on January 4, 2019 is already final and incontrovertible, hence, may no longer be disturbed.

The facts, as borne by the records, glaringly show that respondent failed to timely file a Motion for Reconsideration within the time prescribed by Section 1 of Rule 52 of the Revised Rules of Court, and we quote:

**“Rule 52
Motion for Reconsideration**

Section 1. *Period for filing.* – A party may file a motion for reconsideration of a judgment or final resolution **within fifteen (15) days from notice** thereof, with proof of service on the adverse party.” (emphasis supplied)

The aforequoted Section 1 of Rule 52 was adopted by the Court in its Rules (Section 1 of Rule 15 of the RRCTA) which was cited by the Court in Division in its Resolution dated May 14, 2019.

To reiterate, then respondent CIR received the assailed Decision of the Court in Division dated January 4, 2019 on January 17, 2019,⁵ thus he had until February 1, 2019 (a Friday) to file a Motion for Reconsideration of the assailed Decision. Records however show that the CIR filed his Motion for Partial Reconsideration only on February 4, 2019⁶ (a Monday) which is three (3) days late rendering the assailed Decision final and incontrovertible.

The Court in Division then denied the CIR’s Motion for Partial Reconsideration for being filed out of time.⁷

We find it apt to quote the ruling of the Supreme Court in the case of *Landbank of the Philippines vs. Court of Appeals*,⁸ where it illustrated the link between non-compliance to the rules as regards the time of filing of an appeal and the consequent loss of jurisdiction of the court as follows:

⁵ Court in Division Docket, page 198.

⁶ Court in Division Docket, pp. 220-226.

⁷ *EB* Docket, pp. 36- 39.

⁸ G.R. No. 221636, July 11, 2016. 

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“Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. **Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory.**” (emphasis supplied)

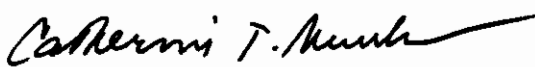
The Supreme Court, in the case of *Francis M. Zosa, et.al. vs. Consilium, Inc.*,⁹ again emphasized the importance of compliance with the provisions of the law and the rules concerning the manner and period to appeal, and we quote:

“Fundamental is the rule that the provisions of the law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements, hence cannot simply be discounted under the guise of liberal construction.” (emphasis supplied)

In the case of *Gregorio de Leon, doing business as G.D.L. Marketing vs. Hercules Agro Industrial Corporatio*,¹⁰ the Supreme Court ruled that the requirements for perfecting an appeal must be strictly followed and that failure to timely file a *Motion for Reconsideration* within the reglementary period resulted to the finality of the decision. A decision that has attained finality becomes the law of the case regardless of any claim that it is erroneous.¹¹ It is, as correctly pointed out by the Court in Division, final and incontrovertible.

WHEREFORE, premises considered, the Petition for Review filed by petitioner with the Court *En Banc* is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

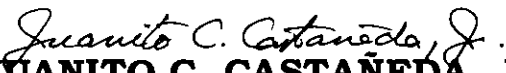
⁹ G.R. No. 196765, September 19, 2018.

¹⁰ G.R. No. 183239, June 2, 2014.

¹¹ *Mayor Marcial Vargas and Engineer Raymundo del Rosario vs. Fortunato Cajucom*, G.R. No. 171095, June 22, 2015.

WE CONCUR:

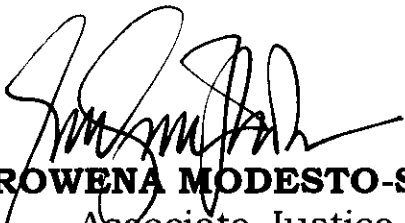

ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice