

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ARROW FREIGHT
CORPORATION,

Petitioner,

CTA EB NO. 2594
(CTA Case No. 9567)

Present:

- versus -

DEL ROSARIO, *PJ*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ*.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

NOV 15 2023

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D E C I S I O N

FERRER-FLORES, J.:

Before this Court is an appeal, by way of a Petition for Review, filed by **Arrow Freight Corporation (AFC)**, pursuant to Section 2 of Rule 4,¹ in conjunction with Section 3(b), Rule 8² of the Revised Rules of Court of Tax

¹ SECTION 2. *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

² SECTION 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

Appeals (RRCTA), assailing the Decision dated August 23, 2021 (assailed Decision)³ and the Resolution dated March 29, 2022 (assailed Resolution)⁴ of the Court of Tax Appeals (CTA) First Division (CTA in Division) in the case entitled "*Arrow Freight Corporation vs. Commissioner of Internal Revenue*" docketed as CTA Case No. 9567.

The dispositive portion of the assailed Decision reads:

"WHEREFORE, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is ordered to **REFUND** in favor of petitioner Arrow Freight Corporation the amount of ₱15,585,247.89 representing its excess and unutilized creditable withholding taxes for taxable year 2014.

SO ORDERED."

The dispositive portion of the assailed Resolution states:

"WHEREFORE, premises considered: (1) respondent's **Motion to Admit** is **NOTED** for being moot and academic; (ii) respondent's **Motion for Reconsideration** is **DENIED** for lack of merit; and, (iii) petitioner's **Motion for Partial Reconsideration (On the Decision promulgated on August 23, 2021)** is **DENIED** for being filed out of time.

SO ORDERED."

THE FACTS

The parties and the facts of this case, as stated in the assailed Decision,⁵ are as follows:

"Petitioner is a domestic corporation organized and existing under the laws of the Philippines xxx xxx xxx It is authorized to, among others, engage in the business of hauling and transporting passengers, freight goods, wares, produce, merchandise and other property by means of truck, buses, trailers, vans and other forms of motor vehicle or conveyance as a common carrier or otherwise, in any point or part of the Philippines and in such foreign countries as may be allowed by Philippine Law, and to acquire, own, operate, lease and dispose of like business. It is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-231-942-000 under BIR Certificate of Registration No. OCN

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. (Rules of Court, Rule 42, sec. 1a)

³ *Rollo*, pp. 24 to 48; Penned by Presiding Justice Roman G. Del Rosario, and concurred in by Associate Justice Catherine T. Manahan.

⁴ *Id.*, pp. 51 to 58; Penned by Presiding Justice Roman G. Del Rosario, and concurred in by Associate Justice Catherine T. Manahan.

⁵ *Id.*, pp. 24 to 28; Citations omitted; Petitioner refers to AFC, while respondent pertains to CIR.

4RC0000955892 dated June 24, 1994 issued by Revenue District No. 024, Revenue Region No. 005.

Respondent is the Commissioner of the BIR with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City. He is empowered to perform the duties of his office, including acting upon on protest cases and approving claims for refund or tax credit as provided by law and implementing regulations.

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On April 15, 2015, petitioner filed its Annual Income Tax Return (ITR) (BIR Form No. 1702-MC) for TY 2014.

On August 27, 2015, petitioner filed with the BIR an administrative claim for refund in the aggregate amount of ₱33,286,861.00, relative to the alleged excess CWT for TY 2014.

Claiming inaction on its claim for refund, petitioner filed the present Petition for Review before the Court on April 7, 2017. The case was raffled to the Third Division.

On July 6, 2017, petitioner filed its Motion to Declare Respondent in Default, which was granted by the Court in the Resolution dated July 18, 2017.

On August 8, 2017, respondent filed its Motion for Reconsideration and Motion to Admit Respondent's Answer to the Petition for Review, which the Court granted on September 28, 2017. Hence, respondent's Answer, which was attached to respondent's motion, was admitted.

In his Answer, respondent interposed the following special and affirmative defenses: (i) there is no sufficient proof to establish that petitioner is entitled to claim refund in the amount of ₱33,226,861.00; (ii) there is actually no overpayment of income tax; (iii) failure of petitioner to withhold expanded withholding tax on various income payments results to deficiency income tax liability; and, (iv) claims for refund partake the nature of tax exemption, hence, are not favored and to be construed *strictissimi juris* against the person or entity claiming the refund.

The Pre-Trial Brief for Petitioner was filed on January 30, 2018, while Respondent's Pre-Trial Brief was filed on February 2, 2018.

During the February 13, 2018 Pre-Trial Conference, the parties were ordered to file their Joint Stipulation of Facts and Issues.

On February 23, 2018, the parties filed their Joint Stipulation of Facts and Issues. On March 26, 2018, the Court issued the Pre-Trial Order and terminated the Pre-Trial.

During trial, petitioner presented Ms. Ma. Milagros F. Padernal, Independent Certified Public Accountant (ICPA), and Mr. Paulino R. Roque, Finance Manager of petitioner, as witnesses.

On August 28, 2018, petitioner filed its Formal Offer of Evidence. Respondent filed his Comment thereon on August 29, 2018.



In view of the reorganization of the three (3) Divisions of the Court, pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018, the present case was transferred to this Division in the Order dated September 25, 2018.

In the Resolutions dated January 30, 2019 and January 23, 2020, the Court admitted petitioner's exhibits in evidence, except the following: Exhibit "P-21" for failure of the exhibit described in the ICPA Report to correspond with the document pre-marked by the ICPA; and, Exhibits "P-32", and "P-33" for not being found in the records of the case.

On the other hand, respondent presented his sole witness, Revenue Officer (RO) Flordeliza C. Lapira, on February 20, 2020.

On February 28, 2020, Respondent filed his Formal Offer of Exhibits. Respondent's offered exhibits were admitted in the Court's Resolution dated July 28, 2020, after taking into consideration respondent's Comment thereon filed on March 11, 2020. In the same Resolution, the parties were given a period of thirty (30) days from receipt thereof within which to file their respective memoranda.

On September 11, 2020, petitioner filed its Memorandum.

On September 28, 2020, respondent filed an Ex-Parte Urgent Motion for Extension of Time to File Memorandum with Manifestation, which the Court denied in the Resolution dated October 6, 2020 for being a prohibited pleading under Section 12, Rule 15 of the 2019 Amendments to the Rules of Civil Procedure. In the same Resolution, the case was submitted for decision.

On October 12, 2020, respondent filed his Memorandum (with Motion to Admit), which the Court noted without action in the October 16, 2020 Resolution, in view of the October 6, 2020 Resolution."

In the assailed Decision, the CTA in Division partially granted AFC's claim for refund and ordered the Commissioner of Internal Revenue (CIR) to refund the amount of Fifteen Million Five Hundred Eighty-Five Thousand Two Hundred Forty-Seven Pesos and Eighty-Nine Centavos (₱15,585,247.89), representing its excess and unutilized creditable withholding taxes (CWT) for taxable year (TY) 2014, out of the aggregate amount being claimed of Thirty-Three Million Two Hundred Eighty-Six Thousand Eight Hundred Sixty-One Pesos (₱33,286,861.00).

In the assailed Resolution, the CTA in Division denied, for lack of merit, the CIR's Motion for Reconsideration filed through electronic mail and *via* courier on October 26, 2021 and November 2, 2021, respectively. On the other hand, AFC's Motion for Partial Reconsideration (On the Decision promulgated on August 23, 2021), was also denied for being filed out of time.

On May 6, 2022, AFC filed its Petition for Review within the period of extension given by the Court.



Thereafter, the CIR filed his Comment/Opposition (Re: Petition for Review En Banc) on May 19, 2022.

On June 22, 2022, this Court submitted this case for decision.

Hence, this decision.

THE ISSUES

AFC raised the following issues in its Petition for Review:

1. Whether or not the Honorable CTA First Division erred in denying Petitioner's Motion for Partial Reconsideration for being filed out of time?
2. Whether or not the Honorable First Division erred in denying Petitioner's excess and unutilized creditable withholding taxes for taxable year 2014 relative to income payments earned in TY 2012 and TY 2013 for which the Certificates of Creditable Tax Withheld (BIR Form No. 2307) were issued by the payor to the Petitioner only in the TY 2014?

AFC's Arguments

As to the first issue, AFC submits that the date of receipt of the Notice of Decision by its counsel on October 16, 2021, as indicated in the records of the CTA, is a fake and may have been photo-shopped.⁶ It calls upon the CTA *En Banc* to take judicial notice of the fact that October 16, 2021 is a Saturday, and that its counsel's law office does not hold office on Saturdays. It alleges that it is also highly improbable for the process servers of the CTA to serve notices or orders of the Court on Saturdays fully knowing that it is a non-working day.⁷ It reiterates that the receiving stamp and the dater stamp purportedly appearing in the Notice is a counterfeit and not the one being (genuinely) used by the counsel's law office.⁸ Further, it alleges that the signature appearing therein does not belong to any of the counsel's law office staff or employee; thus, it submits that the signature appearing therein is a forgery.⁹

AFC states that it was only on November 15, 2021 (Monday) that its counsel's law office received the Notice of Decision with attached Decision

⁶ *Rollo*, p.11.

⁷ *Id.*

⁸ *Id.*, p. 12.

⁹ *Id.*

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promulgated on August 23, 2021 by the Court in Division.¹⁰ Thus, it strongly submits that its Motion for Partial Reconsideration was duly filed on time and the same should be resolved based on merits and not on very questionable technicalities.¹¹

AFC submits that the Court in Division erred when it ruled that income payments amounting to Three Hundred Forty-Eight Million Eight Hundred Five Thousand Six Hundred Eighty-Three Pesos and Eighty-Nine Centavos (₱348,805,683.89) with corresponding CWTs of Sixteen Million Three Hundred Sixty-Seven Thousand Seven Hundred Ninety-Nine Pesos and Eight Centavos (₱16,367,799.08) actually earned in TY 2012 and TY 2013 should be disallowed as they do not pertain to the subject period of claim. It contends that it was only in TY 2014 when the same were collected and the corresponding Certificates of Creditable Tax Withheld (BIR Form No. 2307) were issued by the payor to AFC.¹²

The CIR's Arguments

In his Comment-Opposition (Re: Petition for Review En Banc), the CIR invokes the jurisprudential precept and basic rule on evidence that each party must prove its material allegations. According to respondent, a mere allegation is not evidence and that he who alleges forgery must prove with sufficient evidence the truth of his allegations.¹³ The CIR also states that AFC's allegations of irregularities are of a serious nature which if not duly proven should be a ground for contempt or other administrative disciplinary sanctions by this Court inasmuch as the documents being questioned by AFC emanated from this Court and being served by court personnel or process server and the presumption of regularity applies to court personnel unless proven otherwise.¹⁴

The CIR also agrees with the Court in Division with its denial of AFC's Motion for Partial Reconsideration (On the Decision promulgated on August 23, 2021) for being filed out of time. He contends that, being filed out of time, AFC lost its right of appeal.¹⁵

The CIR likewise counter-argues that for failure of AFC to comply with all the requirements for refund, the same should be denied outright.¹⁶ He reiterates the well-established doctrine in taxation that tax refunds are in the

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*, pp. 12 to 13.

¹³ *Id.*, p. 88.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*, p. 89.

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nature of tax exemptions, the statutes of which are construed in *strictissimi juris* against the taxpayer in favor of the taxing authority.

THIS COURT'S RULING

The instant petition should be dismissed.

***For failure to file a timely motion
for reconsideration with the Court
in Division, the assailed Decision
has already become final.***

As a rule, forgery cannot be presumed. An allegation of forgery must be proved by clear, positive and convincing evidence, and the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.¹⁷

October 16, 2021 was indeed a Saturday; however, this Court is not convinced that there is a forgery with respect to the alleged signature of the recipient of the Notice of Decision. AFC failed to present proof to show that the signature appearing therein does not belong to any of the staff or employee of the counsel's law office. Moreover, AFC failed to prove that there is only one dater stamp and receiving stamp, which its counsel's law office claims to "genuinely" use.

More importantly, this Court finds greater weight on the proof of service (Notice of Decision) as found in the docket of the case,¹⁸ and its certified true copy¹⁹ by the Records Officer of this Court on the presumption that official duty has been regularly performed.²⁰

As to the timeliness of the filing of a motion for reconsideration assailing any decision, resolution or order rendered by the Court, Section 1 of Rule 15 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), states:

¹⁷ *Moises G. Coro vs. Montano B. Nasayao*, G.R. No. 235361, October 16, 2019, citing *Almeda, et al. vs. Santos, et al.*, G.R. No. 194189, September 14, 2017, and *Gepulle-Garbo vs. Spouses Garabato*, G.R. No. 200013, January 14, 2015.

¹⁸ Notice of Decision, Division Docket – Vol. 2, p. 1026.

¹⁹ *Rollo*, p. 22.

²⁰ Sec.3 (m) of Rule 131 of the Revised Rules on Evidence, as amended.

“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. He **shall** file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question.” (*Emphasis supplied*)

In the consolidated cases of *Asiitrust Development Bank, Inc. v. Commissioner of Internal Revenue*,²¹ and *Commissioner of Internal Revenue v. Asiitrust Development Bank, Inc.*²² (“*Asiitrust*” case), the Supreme Court ruled that an appeal to the CTA *En Banc* must be preceded by the filing of a **timely** motion for reconsideration or new trial with the Court in Division, *viz.*:

“An appeal to the CTA En Banc must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division.

Section 1, Rule 8 of the Revised Rules of the CTA states:

SECTION 1. *Review of cases in the Court en banc.* - In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division **must be preceded by the filing of a timely motion for reconsideration or new trial with the Division**

Thus, in order for the CTA *En Banc* to take cognizance of an appeal *via* a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. **Failure to do so is a ground for the dismissal of the appeal as the word ‘must’ indicates that the filing of a prior motion is mandatory, and not merely directory.**” (*Emphases supplied*)

A motion for reconsideration is a step to allow the court to correct itself before review by a higher court; thus, it must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal.²³

At this juncture, this Court reiterates that AFC’s Motion for Partial Reconsideration (On the Decision promulgated on August 23, 2021) on November 29, 2021 was filed out of time, as found by the Court in Division.²⁴

²¹ G.R. No. 201530, April 19, 2017.

²² G.R. Nos. 201680-81, April 19, 2017.

²³ *People of the Philippines vs. Benedicta Mallari et al.*, G.R. No.197164, December 4, 2019.

²⁴ Assailed Resolution, *Rollo*, pp. 56 to 57.

“Records disclose that petitioner’s counsel received the assailed Decision on **October 16, 2021**. Under Section 1, Rule 15 of RRCTA, petitioner had fifteen (15) days from receipt of the assailed Decision, or until **November 2, 2021**, within which to file a motion for reconsideration of the assailed Decision of this Court.

The filing of pleadings and motions was suspended until October 26, 2021 pursuant to Supreme Court Administrative Circular Nos. 83-2021 and 85-2021. The filing and service of pleadings and motions resumed on October 27, 2021. **Thus, from October 27, 2021, petitioner has fifteen (15) days, or until November 10, 2021, within which to file its motion for reconsideration. Petitioner’s filing of its Motion for Partial Reconsideration (On the Decision promulgated on August 23, 2021) on November 29, 2021 is clearly made out of time.”** (*Emphasis supplied*)

In *People of the Philippines vs. Benedicta Mallari et al. (Mallari)*,²⁵ the Supreme Court ruled that the CTA First Division’s December 14, 2009 Resolution had already attained finality because of petitioner’s failure to file a Motion for Reconsideration within the fifteen (15)-day reglementary period allowed under the CTA’s revised internal rules. As a result, it now becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land.

Based on the foregoing discussions, this Court agrees with the Court in Division’s ruling that the assailed Decision dated August 23, 2021 has already attained finality.²⁶

In the case of *Bureau of Internal Revenue vs. TICO Insurance Co., Inc.*,²⁷ the Supreme Court held that:

“It is settled that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional. **This means that the failure to interpose a timely appeal deprives the appellate body of any jurisdiction to alter the final judgment, more so to entertain the appeal.** Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not, and no court — not even the Supreme Court — has the power to revise, review, change or alter the same. The right to appeal is not a part of due process of law, but is a mere statutory privilege to be exercised only in the manner, and in accordance with, the provisions of the law. After a decision is declared final and executory, vested rights are acquired by the winning party.” (*Emphasis supplied*)

²⁵ G.R. No.197164, December 4, 2019

²⁶ Assailed Resolution, *Rollo*, p. 57.

²⁷ G.R. No. 204226, April 18, 2022.

Clearly, this Court cannot consider AFC's Petition for Review because its Motion for Reconsideration filed before the Court in Division was filed out of time; thus, it already lost its right to appeal. Failure to interpose a timely appeal deprives the appellate body of any opportunity to alter the final judgment, more so to entertain the appeal.

In the assailed Decision, the Court in Division determined the total valid income payments and the corresponding CWTs of AFC for TY 2014 amounted to ₱327,701,499.96 and ₱15,585,247.89, respectively.²⁸ It disallowed CWTs not supported by Statements of Account (SOAs), income payments earned in TY 2012 and TY 2013, income payments not reported in the Monthly Revenue Summary (MRS), and income payments not supported by a valid BIR Form No. 2307 per the Court in Division's further verification.

For easy reference, we reproduce the table showing the computation,²⁹ as follows:

Particulars	Income Payment	CWT
Petitioner's Claim	₱ 708,758,535.53	₱ 33,226,860.78
Less: Disallowances		
CWTs not supported by SOA	13,226,484.30	634,924.93
Income Payments earned in TY 2012 and TY 2013	348,805,683.89	16,367,799.08
Income payments not reported in the MRS	9,048,947.29	140,092.88
Income payments not supported by a valid BIR Form No. 2307 per Court's further verification	9,975,920.09	498,796.00
Total Valid Claim	₱ 327,701,499.96	₱ 15,585,247.89

In this case, AFC appeals the disallowance pertaining to income payments earned in TY 2012 and TY 2013 amounting to ₱348,805,683.89, with CWTs in the amount of ₱16,367,799.08.

In the assailed Decision, the Court noted the ICPA's determination that the income payments in the amount of ₱348,805,683.89 with corresponding CWTs of ₱16,367,799.08 were actually earned in TY 2012 and TY 2013; hence, these amounts should be disallowed as they do not pertain to the subject period claim.³⁰ The instant case involves refund representing CWTs for taxable year 2014. As a result, the Court in Division granted a partial refund of the claim, *i.e.*, ₱15,585,247.89 out of the total claim for refund amounting to ₱33,226,860.78.

²⁸ *Rollo*, p. 42.

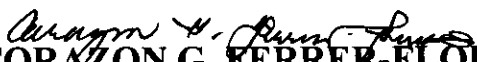
²⁹ *Id.*

³⁰ Assailed Decision, *Rollo*, p. 37.

Applying the case of *Mallari* and considering the assailed Decision had become final and unappealable, there is no need to resolve the aforesaid issue raised by AFC. The assailed Decision can no longer be reviewed nor be modified by the Court *En Banc* on appeal; thus, dismissal is proper.

WHEREFORE, premises considered, the instant Petition for Review is **DISMISSED** for lack of jurisdiction. The Decision dated August 23, 2021 of the CTA First Division in CTA Case No. 9567 had lapsed into finality and is already beyond our power to review.

SO ORDERED.


CORAZON G. FERRER-FLORES
Associate Justice

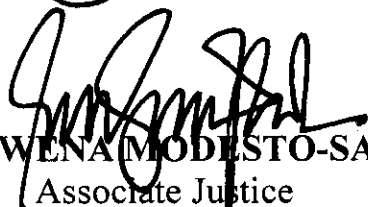
WE CONCUR:

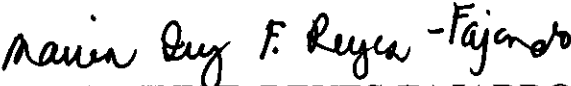

ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


HENRY S. ANGELES
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