REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF MANILA AND RIZAL DEL ROSARIO in his capacity as OIC-City Treasurer of Manila,
Petitioners,

CTA EB No. 1869
(CTA AC No. 171)

-versus-

Present:
Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

SMART COMMUNICATIONS, INC.,
Respondent.

Promulgated:
NOV 06 2019
11:08 a.m.

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DECISION

CASTAÑEDA, JR., *J.* :

For review before this Court is the Petition for Review filed by petitioners on June 6, 2018 assailing the December 18, 2017 Decision[1] and the May 17, 2018 Resolution[2] rendered by the then CTA Third Division (CTA Division) in the case entitled, *"City of Manila and Rizal Del Rosario in his capacity as OIC-City Treasurer of Manila v. Smart Communications, Inc."*, docketed as CTA AC No. 171.

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[1] *Rollo*, pp. 17-32; Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justice (now retired) Lovell R. Bautista and Associate Justice Ma. Belen M. Ringpis-Liban.
[2] *Id.*, pp. 34-39.

The dispositive portion of the assailed Decision promulgated on December 18, 2017 states that:

> **WHEREFORE,** premises considered, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**

The dispositive portion of the assailed May 17, 2018 Resolution states that:

> **WHEREFORE,** petitioners' *Motion for Reconsideration* filed on January 18, 2018 is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**

THE FACTS

The facts of the case as stated in the December 18, 2017 Decision[3] are:

> Petitioner City of Manila is a local government unit with the legal capacity to sue and be sued, while its co-petitioner, Rizal Del Rosario, is the Officer-in-Charge (OIC) of the Office of the City Treasurer of the City of Manila, primarily responsible for the imposition and collection of taxes within the territorial jurisdiction of the City of Manila. They were the respondents in Civil Case No. 15-134374 filed by Smart Communications, Inc. with the RTC of Manila, Branch 47.
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> Respondent Smart Communications, Inc., is a domestic corporation engaged in the business of providing telecommunications services to the general public. Its principal office is located at the SMART Tower, 6799 Ayala Avenue, Makati City, Philippines. It was the petitioner in Civil Case No. 15-134374.
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> On March 27, 1992, respondent was granted a legislative franchise under Republic Act No. 7294 to "establish, install, maintain, lease and operate integrated telecommunications/computer/electronic services, and fixed

[3] *Rollo*, pp. 17-24.

mobile stations throughout the Philippines for public domestic and international telecommunications and to install corresponding transmitting and receiving stations at such places in the Philippines as it may consider necessary and convenient." Further, it was authorized by the National Telecommunications Commission (NTC) to construct, install, operate, and maintain a nationwide Cellular Mobile Telephone Service (CMTS) system.

Pursuant to its legislative franchise, respondent operates a network of cell sites throughout the Philippines giving its subscribers sufficient connectivity and cellular phone coverage. It also offers telecommunications services such as sale of mobile phones, and subscriber identity modules [SIM] cards, broadband wireless internet access, postpaid lines and prepaid cellular load in its business centers and authorized distributors nationwide, including the City of Manila.

On April 29, 2015, and upon the request of the Oversight Committee of the City Council of Manila, respondent submitted to the Office of petitioner City Treasurer of the City of Manila five (5) Certifications indicating its gross sales for the years 2010 to 2014 to Mega Cellular Network, Inc. (Mega), its exclusive distributor in the City of Manila, as follows:

Year	Sales	Output VAT	Total
2010	2,766,176,131.94	331,941,135.83	3,098,117,267.77
2011	2,945,706,737.22	353,484,808.47	3,299,191,545.69
2012	3,030,226,870.21	363,627,224.43	3,393,854,094.64
2013	2,978,995,852.99	357,479,502.36	3,336,475,355.35
2014	2,837,526,757.86	340,503,210.94	3,178,029,968.80

On the basis of these Certifications, petitioner City of Manila through Assistant City Treasurer Ma. Jazmin M. Talegon, issued against respondent Smart a Letter of Assessment dated 18 May 2015 for local business tax deficiencies, surcharges, and interest/penalties in the amount of ₱59,826,155.08, covering the years 2011 up to 2015.

Subsequently, a second Letter of Assessment dated June 16, 2015 was issued by petitioner Del Rosario reiterating the earlier assessment for local business tax, with additional assessment for regulatory fees and charges amounting to ₱42,009,851.00, allegedly covering around 208 cell sites of respondent in Manila.

On June 19, 2015, respondent filed separate protests against the two Letters of Assessment.

On June 25, 2015, respondent received from petitioner Del Rosario two (2) letters both dated June 22, 2015 denying its protests.

On July 27, 2015, respondent filed an appeal with the RTC of Manila, Branch 47 challenging the denial of its protests against the assessments issued by petitioners, to wit:

a. Regulatory fees and charges for its cell sites in the amount of ₱42,009,851.00; and

b. Local Business Tax as a wholesaler on its gross receipts derived from franchise operations in the amount of ₱59,826,155.08.

On August 14, 2015, respondent paid the assessed amounts under protest to prevent any disruption in its operations within the City of Manila. On this account, respondent filed with the RTC an Amended Petition dated August 25, 2015, to reflect the payment it made under protest.

During the pre-trial in the RTC, the parties agreed to expedite the proceedings by just filing their respective memoranda given that the facts of the case remained undisputed.

On March 9, 2016, the RTC promulgated the assailed Decision, the dispositive portion of which reads:

> ***WHEREFORE,*** premises considered, the appeal of SMART Communications, Inc., is hereby **GRANTED.** The Assessments dated 18 May 2015 and 16 June 2015 issued by [Petitioners] City of Manila and Office of the City Treasurer against SMART for local business tax and regulatory fees are hereby DECLARED INVALID and VOID.
>
> [Petitioners] are further ***ORDERED*** to ***REFUND*** the amounts collected and paid as alleged local business tax as a wholesaler on [respondent's]

> gross receipts derived from franchise operations in the amount of Fifty Nine Million Eight Hundred Twenty Six Thousand One Hundred Fifty-Five Pesos and 08/100 (Php59,826,155.08), considering that [respondent] is NOT liable to the City of Manila for local business taxes on its gross receipts derived from franchise operations and realized with the City of Manila's territorial jurisdiction;
>
> [Petitioners] are likewise ***ORDERED to REFUND*** the amount of Forty-Two Million Nine Thousand Eight Hundred Fifty-One Pesos (PhP42,009,851.00). This is without prejudice to any revised assessment which may be issued to reflect the correct and proper regulatory fees and charges of [Respondent], the correct number of cell sites based on the appropriate tax rates and bases, and at a maximum period of five (5) years there being no proof of fraud committed and including the year of the assessment.
>
> SO ORDERED.

In finding for respondent, the RTC ratiocinated that being a holder of a franchise from Congress, respondent is thereby subject only to taxes as expressly stated therein, to the exclusion of all other forms of charges and fees, including local business tax. The RTC also held that even assuming that respondent may be liable to pay local business taxes despite its legislative franchise, still the assessment is erroneous for categorizing the nature of its business as a wholesaler. The RTC agreed with respondent that it is not selling an article of commerce but providing public services, as provided under its legislative franchise.

Further, after a review of petitioner City of Manila's current Revenue Code, Ordinance No. 8331, which took effect during the taxable year 2014, and its 1993 Revenue Code known as Ordinance No. 7794, the RTC found that the assessment issued by petitioners were based on a different tax rate and tax base. This, according to the RTC, confirmed that such assessments suffer from legal and factual infirmities rendering them without legal effect. ge

In view of the adverse ruling, petitioners filed a *Motion for Reconsideration* dated April 6, 2016.

On the other hand, respondent filed a *Motion to Expunge [Petitioners'] Motion for Reconsideration dated 06 April 2016 and Motion to Declare the Decision dated 09 March 2016 as Final and Executory* dated April 22, 2016, on the ground that petitioners' *Motion for Reconsideration* dated April 6, 2016, lacked the required notice of hearing mandated in Sections 4 and 5 of Rule 15 of the 1997 Rules of Civil Procedure.

On May 23, 2016, the RTC promulgated the equally assailed Order, the dispositive portion of which reads:

> ***"WHEREFORE,*** premises considered, the court rules as follows:
>
> a. [Petitioners] Motion for Reconsideration dated April 6, 2016 is considered ***EXPUNGED*** from the records; and
>
> b. The Decision of March 9, 2016 is hereby declared as final and executory. Let it be entered into the Book of entries of Judgment.
>
> SO ORDERED."

Hence, the instant *Petition for Review* filed by petitioners on June 23, 2016, praying for the Court (1) to SET ASIDE and ANNUL the assailed Decision and Order rendered by the RTC; and (2) to DISMISS the Appeal of respondent from the denial of its protests by petitioners.

Petitioners aver that their *Petition for Review* is a call for the exercise of the Court's prerogative to suspend or relax procedural rules even of the most mandatory character in order to serve the higher interests of substantial justice. They agree that the three (3)-day notice requirement in a motion is mandatory but the underlying rationale for this rule is simply to avoid surprises to the adverse party and give him time to study and meet the arguments of the motion. Petitioners assert that with the timely service of a copy of the Motion for Reconsideration upon respondent, it had every opportunity to study and meet the arguments raised in the motion.

Moreover, both the assailed Decision and Order are contrary to law and jurisprudence. They argue that it is a complete and reversible error on the part of the court *a quo* to eradicate respondent's taxability. Further, the assailed Order expunging the *Motion for Reconsideration* is too harsh and extreme. According to the petitioners, while the *Motion for Reconsideration* had inadvertently lacked a Notice of Hearing, it cannot be said that respondent, having been duly furnished with the same, was seriously prejudiced.

Respondent, on the other hand, argues that the instant Petition must be dismissed, as the assailed Decision and Order issued by the court *a quo* have already attained finality. Likewise, the instant Petition for Review should be dismissed considering that petitioners did not furnish the court *a quo* a copy of the *Petition for Review* as required under Section 1, Rule 42 of the Rules of Court. Nevertheless, respondent contends that the court *a quo* correctly ruled that:

1. Respondent is only liable for taxes, charges and fees enumerated in its legislative franchise;

2. Respondent's gross sales in the City of Manila were derived pursuant to its lawful and legitimate franchise operations and is therefore not subject to local business taxes;

3. Respondent is not liable for local business tax based on the express provisions of the Local Government Code;

4. The imposition of local business tax upon respondent by petitioners is tantamount to direct double taxation;

5. Respondent is exempt from the payment of local franchise tax in the City of Manila pursuant to Ordinance No. 8229;

6. That the assessment for local business tax suffer from legal and factual infirmities, as it was based on an improper tax base and rate; *ge*

7. That the assessment issued to respondent for regulatory fees and charges are void for being without factual and legal bases; and

8. That respondent is entitled to a refund of its payment for alleged local business tax and regulatory fee liabilities.

With the submission of their respective Memorandum, the instant petition was deemed submitted for decision on December 20, 2016.

In a Decision dated December 18, 2017, the CTA Division dismissed the petition for lack of jurisdiction.

In a Resolution dated May 17, 2018, the CTA Division denied petitioners' Motion for Reconsideration for lack of merit.

On June 6, 2018, petitioners filed their Petition for Review to the CTA *En Banc.*

On June 8, 2018, petitioners filed a Manifestation and Motion to Admit, with attached Affidavit of Service.

On July 31, 2018, this Court noted the Manifestation. However, the admission of the Affidavit of Service was denied. Petitioners were also ordered to take appropriate action relative to the foregoing observation of the Court and submit a compliant proof of service in accordance with Section 13, Rule 13 of the 1997 Rules of Civil Procedure.

On August 31, 2018, petitioners filed their Motion for Reconsideration.

On September 19, 2018, this Court granted petitioners' motion, and admitted the Affidavit of Service. Also, this Court ordered respondent to file its Comment to the petition.

On October 11, 2018, this Court granted the Motion for Extension of Time to File Comment filed by respondent on October 9, 2018. *gr*

On October 23, 2018, respondent filed its Comment. Thereafter, this case was submitted for decision on November 15, 2018.

Hence, this Decision.

ISSUE

WHETHER THE DISMISSAL OF THE CASE IS PROPER.

Petitioners allege that a rigid application of the rules will undoubtedly result in manifest failure or miscarriage of justice where petitioner City stands to lose over P100 million in precious taxes if the legal issue of the tax liability of respondent SMART is not properly ventilated.

Petitioners aver that the interest of substantial justice would likewise be served if the issue of respondent's actual tax exemption status under its legislative franchise in connection with local taxation can be comprehensively elaborated instead of relegating or worse, out-rightly dismissing the same to the dustbin of procedural technicalities.

Petitioners allege that there is grave and evident injustice brought on petitioner City by reason of the admitted inadequacies of its counsel which hardly corresponds to nor should result from such excusable, almost innocuous negligence, careless lapses and honest oversight.

Although there was absence of notice of hearing in petitioners' Motion for Reconsideration filed with the RTC, petitioners stressed that respondent was not denied procedural due process. Petitioners state that records will show the undisputed reality that respondent was nevertheless duly furnished with a copy of the Motion for Reconsideration. Consequently, the fundamental purpose of a notice of hearing had been served and respondent had every opportunity to study and answer the arguments raised in the motion.

Respondent in its Comment states that time and again, the Supreme Court has ruled that the absence of notice and hearing is fatal. A motion without the required notice of hearing is pro forma, a mere scrap of paper. The court has no reason to consider it and the clerk has no right to receive it.

Respondent argues that being a worthless piece of paper, petitioner's motion for reconsideration filed with the RTC is deemed not to have been filed and hence did not toll the running of the reglementary period for the filing of a petition for review. There being no motion, the reglementary period should be reckoned from the date of receipt of the RTC's decision dated March 9, 2016.

Respondent concludes that petitioners foreclosed their right to file an appeal by way of petition for review.

Respondent avers that considering that the RTC decision had already attained finality, there was no need to discuss whether the RTC and the CTA Third Division erred in invalidating the assessments of petitioners.

Respondent believes that even if the CTA Third Division had jurisdiction to entertain the petition for review, petitioners nonetheless failed to furnish the RTC with a copy of the petition in violation of Sec. 1, Rule 42 of the Rules of Court, and the same is sufficient ground for the dismissal of the petition pursuant to Sec. 3, Rule 42 of the Rules of Court.

Respondent argues that petitioners also do not deny that the motion for reconsideration they filed with the RTC lacked the required notice of hearing. Respondent states that petitioners offered no explanation other than "inadvertence" and admitted "inadequacies" of the counsel, and they come before this Court invoking "the interest of substantial justice" to dispense with the procedural rules. The bare invocation of the "interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules.

Respondent contends that there is also no "substantial justice" that may be served in disregarding the procedural infirmities because the RTC in its March 9, 2016 decision, completely laid down the basis for declaring the invalidity of petitioners' assessments, to wit: (1) that respondent, being a holder of legislative franchise, is subject only to taxes as expressly stated therein to the exclusion of all forms of charges and fees; (2) that petitioners erroneously categorized respondent as "wholesaler" liable for business taxes; (3) that imposing on respondent another business tax in addition to franchise tax is double taxation; (4) that petitioners are exempted under Ordinance No. 8229; (5) that the garbage collection fee, mayor's permit fee, sanitary inspection fee, zoning fee and processing fee, and other regulatory fees are excessive and beyond the limits provided under City's tax codes, old or new.

THIS COURT'S RULING

The petition is denied.

Indeed, while it is true that litigation is not a game of technicalities — it is equally true, however, that every case must be established in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[4]

It is undisputed that the RTC in its Order dated May 23, 2016 expunged from the records petitioners' Motion for Reconsideration dated April 6, 2016 because it lacked the required notice of hearing as mandated in Sections 4[5] and 5[6] of Rule 15 of the 1997 Rules of Civil Procedure; and that the Decision of March 9, 2016 was declared as final and executory.

A perusal of the RTC Records of this case shows that there was a Certificate of Finality dated December 2, 2016 of the Order dated May 23, 2016.[7] It states, "That to this date, no appeal and or opposition has been filed with this Court." Further, the said Certificate states that "**WHEREFORE, in view of the foregoing, said Order dated May 23, 2016 has now become final and executory.**"

It is worthy to mention that petitioners filed the Petition for Review before the CTA Division on June 23, 2016, without furnishing the RTC with a copy of the said petition.

Even before the CTA Division rendered the assailed Decision on December 18, 2017, the RTC Order dated May 23, 2016 was already final and executory as stated in the Certificate of Finality dated December 2, 2016.

In the case of *Reyes v. Insular Life Assurance Co., Ltd.,*[8] the Supreme Court rendered moot and academic the petition with the entry of judgment. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts.[9]

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[4] *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, G.R. No. 192024, July 1, 2015.

[5] SEC. 4. *Hearing of motion.*—Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[6] SEC. 5. *Notice of hearing.*—The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[7] RTC Records, p. 443.

[8] G.R. No. 180098, April 2, 2014, 720 SCRA 407.

[9] *Id.*

"A case is said to be moot or academic when it ceases to present a justiciable controversy by virtue of supervening events, so that a ruling would be of no practical use or value. **Courts generally decline jurisdiction over moot cases because there is no substantial relief to which petitioner would be entitled and which would anyway be negated by the dismissal of the petition.**"[10]

"A final judgment, once rendered, leaves nothing more to be done by the court. Consequently, a final judgment also becomes executory by operation of law; it becomes a fact upon the lapse of the reglementary period to appeal if no appeal or motion for new trial or reconsideration is filed or perfected. It becomes incumbent for the clerk of court to enter in the book of entries the judgment and the date of finality of the judgment shall also be deemed to be the date of the entry of judgment."[11]

This Court, thus, agrees with the CTA Division in dismissing the petition for review.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. Accordingly, the Decision and the Resolution of the then CTA Third Division dated December 18, 2017 and the May 17, 2018, respectively, are **AFFIRMED.**

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[10] *Tanog v. Balindong et al*, G.R. No. 187464, November 25, 2015 citing *Ilusorio v. Baguio City Country Club Corporation*, G.R. No. 179571, July 2, 2014, 728 SCRA 592, 598; *Emphasis Supplied.*
[11] *Reyes v. Insular Life Assurance Co., Ltd.*, G.R. No. 180098, April 2, 2014, 720 SCRA 407.

(On Leave)

CIELITO N. MINDARO-GRULLA
Associate 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

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