

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

HONEST SERVICE PROVIDERS
INC., represented by its
Accountant, MELINDA BEJASA,
Petitioner,

C.T.A. EB NO. 479
(C.T.A. AC NO. 40)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

-versus-

CITY OF MAKATI and CITY
TREASURER NELIA A. BARLIS,
Respondents.

Promulgated:

FEB 02 2010

*As Promulgated
11:30 p.m.*

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DECISION

PALANCA-ENRIQUEZ, J.:

It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the

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court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment (*Vios et al. vs. Pantangco, Jr., G.R. No. 163103, February 6, 2009*).

THE CASE

This is a "Petition for Review" filed by Honest Service Providers, Inc., represented by its Accountant, Melinda Bejasa, under *Section 2, Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, in relation to Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks to set aside the Resolutions dated December 2, 2008 and March 12, 2009 issued by the Former First Division of this Court in C.T.A. AC No. 40, the respective dispositive portions of which read, as follows:

"**WHEREFORE**, petitioner's Motion for Issuance of Resolution on Motion for Reconsideration and Cancellation of Entry of Judgment is hereby **DENIED** for lack of merit.

SO ORDERED."

"**WHEREFORE**, petitioner's Motion for Reconsideration (of the Resolution dated December 2, 2008) is hereby **DENIED** for lack of merit.

SO ORDERED."

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THE PARTIES

Petitioner Honest Service Providers, Inc. (hereafter "petitioner") is a domestic corporation, duly created and existing under the laws of the Republic of the Philippines, with principal office at 7/F Vernida Condominium, 120 Amorsolo Street, Legaspi Village, 1229 Makati City and duly represented herein by its accountant, Melinda Bejasa. Petitioner is engaged in janitorial and messengerial services with clients within Manila and nationwide. Petitioner and its counsel may be served with court notices and/or other processes at SAN BUENAVENTURA LAW OFFICES, at 3/F CAP Building, 126 Amorsolo Street, Legaspi Village, 1229 Makati City.

On the other hand, respondent City of Makati is a local government unit of the Republic of the Philippines, with postal address at Makati City Hall, J.P. Rizal Street, Makati City; while respondent Nelia A. Barlis is the incumbent City Treasurer of Makati City and impleaded herein in her official capacity as such.

THE FACTS

The antecedent facts, as summarized by the Former First Division, are hereunder adopted, to wit:



“Petitioner has been faithfully securing its yearly business permit and paying its local taxes due to respondent City of Makati. In January of 2005, when petitioner applied for a renewal of their business permit, the amount due was P817,248.48 which was far different from the previous year’s business tax around P50,000.00. Hence, petitioner was not able to renew its business permit.

Due to the above assessment, petitioner’s Accountant and Vice President visited the office of respondent City Treasurer, and they were informed that an examiner will be sent to petitioner’s office for the verification of the records. Thereafter, a Letter of Authority No. LA-2006-001 was issued, authorizing Revenue Examiner Felito A. Manrique to verify the records of petitioner. But instead of conducting an actual examination or verification of records, the Revenue Examiner requested copies of petitioner’s Audited Financial Statements for years 2002 up to 2005.

On February 27, 2006, petitioner received a copy of the Notice of Assessment dated February 22, 2006 demanding payment of P2,415,509.42 representing deficiency city business taxes, fees and charges for taxable period 2003-2005.

On April 11, 2006, petitioner responded with a written protest requesting for a reconsideration of the assessment, and raising the following arguments:

- “a. The assessment is oppressive/confiscatory and, therefore, violative of the right to due process of the taxpayer;
- b. The assessment is null and void because the basis of the assessment was not stated in the assessment;



- c. The assessment of the City of Makati failed to consider the taxes paid by the taxpayer; and
- d. The assessment failed to consider the direct costs representing reimbursements of salaries and contributions to the Government Agencies and Taxes paid.”

On April 12, 2006, respondents denied petitioner's request for reconsideration, and petitioner was given thirty (30) days from receipt thereof to pay the deficiency taxes, charges and fees or to elevate or appeal the Notice of Assessment to a court of competent jurisdiction. Petitioner received respondent's denial on April 18, 2006.

Consequently, petitioner appealed and filed its complaint before the Makati City Regional Trial Court (RTC) on May 18, 2006. Its complaint was docketed as Civil Case No. 06-410. On November 3, 2006, the RTC rendered its Decision dismissing petitioner's Appeal for lack of merit. The Decision partly reads:

‘And as can be obviously inferred from the very definition of the term ‘gross sales or receipts’, the same includes compensation or service fee, plus the amount charged or materials supplied with the services. Thus, clearly, the contention of plaintiff that the ‘salaries and wages of the janitors and messengers’ and costs of ‘cleaning material used for the clients’ should not be included in the computation of gross receipts is misplaced.

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The Court, therefore, finds the subject assessments to be valid. The assailed assessments against plaintiff were the results of the examinations undertaken by the Makati City Revenue Examiners under Letters of Authority issued by the City Treasurer. Contrary to the erroneous allegations of the plaintiff, the said assessments are true and correct based on the secured financial documents of the former.

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Likewise, it must be emphasized that defendant City of Makati has never deviated from its mandate by law which may cause oppression and violation of the rights of any taxpayer, as the plaintiff so claims. The demand for deficiency taxes was just simply that plaintiff was found to have understated its gross sales or receipts as reflected in the Official Receipts of the Mayor's business permits for the taxable years covered; hence, the subject assessment.'

Petitioner filed a Motion for Reconsideration of the Decision but was denied in an Order dated July 10, 2007."

On August 30, 2007, petitioner appealed the decision of the Regional Trial Court dated November 3, 2006 and Order dated July 10, 2007 by way of Petition For Review to this Court, docketed as C.T.A. AC No. 40.



On September 20, 2007, respondents were ordered to file comment to the petition, within ten (10) days from notice. On October 5, 2007, respondents filed their comment.

On October 24, 2007, the parties were ordered to submit their simultaneous memoranda, within thirty (30) days from notice. Both parties complied therewith. Hence, the case was deemed submitted for decision on January 7, 2008.

On May 29, 2008, the Former First Division rendered a decision, dismissing petitioner's petition for lack of merit and affirmed the Decision of the RTC dated November 3, 2006 and Order dated July 10, 2007.

On June 20, 2008, petitioner filed a "Motion For Reconsideration", which was denied by the Former First Division in a Resolution dated August 6, 2008.

On October 2, 2008, the Clerk of Court of this Court issued an Entry of Judgment in C.T.A. AC No. 40.

On October 8, 2008, petitioner received a copy of the Entry of Judgment. On October 10, 2008, petitioner filed a "Motion for Issuance



of Resolution on Motion For Reconsideration and Cancellation of Entry of Judgment” and “Notice of Change of Address”.

On December 2, 2008, the Former First Division denied petitioner’s motion for lack of merit. On January 5, 2009, petitioner filed a “Motion For Reconsideration (of the Resolution dated December 2, 2008)”, which was denied for lack of merit by the Former First Division in a Resolution dated March 12, 2009.

Hence, the instant Petition for Review raising the following:

ISSUES

I

WHETHER OR NOT THE HONORABLE TAX COURT SERIOUSLY ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT THAT THE SALARIES AND WAGES OF JANITORS AND MESSENGERS AND THE JANITORIAL CLEANING MATERIALS USED AND CHARGED TO THE CLIENTS AT COST WITHOUT ANY ELEMENT OF PROFIT TO PETITIONER, BEING DIRECT EXPENSES, ARE PART OF GROSS RECEIPT.

II

WHETHER OR NOT THE HONORABLE TAX COURT SERIOUSLY ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT THAT PAYMENTS FROM CLIENTS OUTSIDE THE CITY SHOULD BE TAXED BY THE CITY CONSIDERING THAT IT DID NOT PERFORM SERVICES TO THE PETITIONER, ITS



EMPLOYEES AND CLIENTS WHO WERE
ASSIGNED/LOCATED OUTSIDE ITS JURISDICTION.

III

WHETHER OR NOT THE HONORABLE TAX COURT
SERIOUSLY ERRED IN AFFIRMING THE DECISION
OF THE TRIAL COURT THAT THE NOTICE OF
ASSESSMENT WAS NOT NULL AND VOID FOR
FAILURE TO STATE THE BASIS OF THE
ASSESSMENT AND FOR LACK OF ACTUAL
EXAMINATION OF THE PETITIONER'S
BOOKS/RECORDS.

IV

WHETHER OR NOT THE HONORABLE TAX COURT
SERIOUSLY ERRED IN AFFIRMING THE DECISION
OF THE TRIAL COURT THAT THE ASSESSMENT WAS
NOT ARBITRARY, UNREASONABLE, UNFAIR,
BASELESS, CONFISCATORY AND, THEREFORE,
VIOLATIVE OF PLAINTIFF'S SUBSTANTIVE RIGHTS
AND DUE TO DUE PROCESS UNDER THE PRESENT
PRO-GOD AND PRO-PEOPLE CONSTITUTION.

V

WHETHER OR NOT THE HONORABLE TAX COURT
SERIOUSLY ERRED IN HOLDING THAT THE
ATTEMPTED PERSONAL SERVICE TO THE OFFICE
OF THE PETITIONER'S LAWYER WAS DEEMED
COMPLETED EVEN IF THE PROCESS SERVER WAS
DULY INFORMED OF THE CHANGE OF ADDRESS
AND HE DID NOT SERVE TO THE NEW ADDRESS
AND, WORSE, NO COPY WAS SENT VIA MAIL TO
THE FORMER ADDRESS OF COUNSEL AND/OR TO
THE PETITIONER ITSELF AT ITS ADDRESS AT 7F

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VERNIDA 1 CONDOMINIUM, NO.120 AMORSOLO ST.,
LEGASPI VILLAGE, MAKATI CITY AS REFLECTED IN
ALL PLEADINGS FILED BEFORE THIS HONORABLE
COURT SINCE ITS INCEPTION OF THE APPEAL UP
TO THIS DAY.

Without necessarily giving due course to the Petition for Review,
we ordered respondents to file a comment, not a motion to dismiss, within
ten (10) days from notice; afterwhich, the petition shall be deemed
submitted for decision.

On June 15, 2009, respondents filed their Comment to the Petition
for Review. Hence, the case was deemed submitted for decision.

On September 14, 2009, petitioner filed a "Notice of Change of
Address", which the Court noted.

THE COURT *EN BANC*'S RULING

The petition has no merit.

A perusal of the issues raised in the instant "Petition For Review"
shows that herein petitioner assails the merits of the decision rendered by
the Former First Division in C.T.A. AC No. 40. However, record shows
that said decision dated May 29, 2008 had already become final and
executory on August 26, 2008 and Entry of Judgment was accordingly
issued.



Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case.

Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause involved therein should be laid to rest. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law (*Filipro, Inc. vs. Permanent Savings & Loans Bank*, 503 SCRA 430, 438). Having long become final and executory, the decision dated May 29, 2008 of the former First Division can no longer be assailed in this appeal at this point in time.



As regards petitioner's claim that its counsel did not receive a copy of the Resolution dated August 6, 2008 denying petitioner's "Motion For Reconsideration", despite the fact that the process server was allegedly informed of counsel's change of address; and that the Former First Division seriously erred when it failed to serve copy of the Resolution dated August 6, 2008 to petitioner and in issuing the Entry of Judgment despite the fact that no copy of the Decision was effectively served upon petitioner, the same is likewise devoid of merit.

Records show that a copy of the Resolution dated August 6, 2008 denying petitioner's "Motion for Reconsideration" for lack of merit was sent to petitioner's counsel, Atty. Myra SJ. San Buenaventura and Atty. Leopoldo E. San Buenaventura, through registered mail, under registry receipt no. 003101, at San Buenaventura Law Office, 2/F Raha Sulayman Building, 108 Benevidez Street, Legazpi Village, 1229 Makati City, which is the address of record of petitioner's counsel. However, records show that said copy of the Resolution dated August 6, 2008 sent to petitioner's counsel by registered mail was returned to this Court unserved with postal notation "transferred to another address". Records, however, do not show that petitioner's counsel filed a Notice of Change



of Address. As far as the records show, the address of record of petitioner's counsel at San Buenaventura Law Office, 2/F Raha Sulayman Building, 108 Benevidez Street, Legazpi Village, 1229 Makati City, remains to be his address of record when a copy of the Resolution dated August 6, 2008 was sent to petitioner's counsel by registered mail. In fact, records show that a "Notice of Change of Address" was filed by petitioner's counsel with the Former First Division only on October 29, 2008, through registered mail, after receipt on October 8, 2008 of the copy of the Entry of Judgment. Pursuant to *Section 10, Rule 13 of the 1997 Rules of Civil Procedure, as amended*, service of the Resolution dated August 6, 2008 upon petitioner's counsel is deemed complete. Consequently, the corresponding Entry of Judgment was duly issued.

As aptly ruled by the Former First Division in its Resolution dated December 2, 2008 denying petitioner's "*Motion for Issuance of Resolution on Motion for Reconsideration and Cancellation of Entry of Judgment*":

"Jurisprudence provides that when a party is represented by counsel, notice should be made upon the counsel of record at his given address to which notices of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of



address, unless service upon the party himself is by court order. Being so, it is the duty of a lawyer to arrange matters that official and judicial communications sent by mail will reach him promptly and should he fail to do so, not only he but his client as well must suffer the consequences of his negligence.

Petitioner claims that on June 28, 2008, its counsel prepared a Notice of Change of Address for all cases handled before this Court but cannot locate the proof of mailing of the notice.

A perusal of the records shows that petitioner's counsel did not file a Notice of Change of Address, or at the very least, to present any proof for filing the same. There was also a failure on the part of petitioner's counsel to monitor, as an act of prudence, the status of this case considering that, he received no actions from this Court for more than two months from the filing of the Motion for Reconsideration on July 2, 2008 until the filing of the instant motion.

The service of the Resolution on the petitioner's Motion for Reconsideration at the old address of petitioner's counsel, which is the address of record when the said Resolution was promulgated, is valid upon its counsel and petitioner. The negligence of petitioner's counsel in failing to inform this Court of a change in his address which resulted to the non-receipt of the Resolution binds petitioner. Therefore, there is no reason for this Court to cancel the Entry of Judgment and to issue once again the Resolution on petitioner's Motion for Reconsideration.

As the Supreme Court categorically states that to rule otherwise would be to negate the purpose of the rule on completeness of service, which is to place the date of receipt of pleadings, judgments and processes beyond the power of

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the party being served to determine at his pleasure. The finality of a decision is a jurisdictional event which cannot be made on the convenient of a party.”

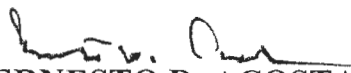
Finding no reversible error, we affirm the assailed Resolutions dated December 2, 2008 and March 12, 2009 issued by the Former First Division of this Court.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

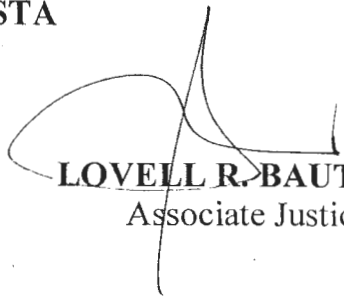
SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice

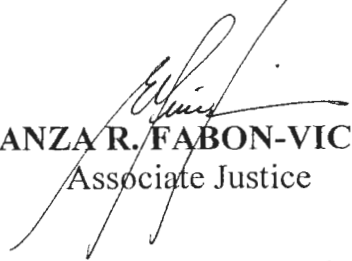

LOVELL R. BAUTISTA
Associate Justice



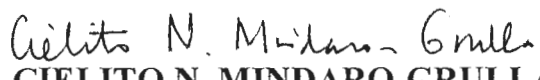
ERLINDA P. UY
Associate Justice



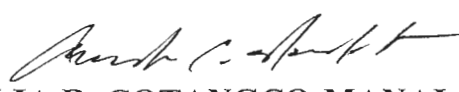
CAESAR A. CASANOVA
Associate Justice



ESPERANZA R. FABON-VICTORINO
Associate Justice



CIELITO N. MINDARO-GRULLA
Associate Justice



AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.



ERNESTO D. ACOSTA
Presiding Justice