REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1682
(CTA Case No. 9359)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
JAN 18 2019
11:39 a.m.

x- -x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated April 17, 2017 ("Assailed Decision") and Resolution[2] dated June 27, 2017 ("Assailed Resolution") of the Court of Tax Appeals Second Division ("Second Division"), denying the Petition for Revival of Judgment filed by Petitioner pursuant to Section 6 of Rule 39 of the Rules of Court, for being time-barred. The Petition for Revival of Judgment seeks the revival of judgment of the consolidated case entitled *Lepanto Consolidated Mining Co. v. Commissioner of Internal Revenue,* docketed as CTA Case Nos. 6368 and 6480, and promulgated by the Court of Tax Appeals First Division on December 15, 2004.

1 Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova and Catherine T. Manahan concurring. Docket, pp. 250-263.

2 Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Catherine T. Manahan concurring. Associate Justice Caesar A. Casanova is on leave. Docket, pp. 295-298.

The Facts

The facts as found by the Second Division are as follows:

"Petitioner Lepanto Consolidated Mining Company is a corporation duly organized and existing under Philippine laws, with office address at 21st Floor Lepanto Building, 8747 Paseo de Roxas, 1226 Makati City. It is a large-scale underground domestic mining company engaged in the exploration, development, and extraction of gold and copper ore from its mine site in Mankayan, Benguet.

Respondent, on the other hand, is the former Commissioner of the Bureau of Internal Revenue (BIR) and is impleaded in her capacity as such, with office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On December 20, 2001, [P]etitioner filed a Petition for Review Ex Abundanti Ad Cautelam with the Court to question the disallowance by the BIR, through [R]espondent's predecessor, of [P]etitioner's application for tax refund/credit for input tax payments for the first (1st) quarter of 2001, which was docketed as CTA Case No. 6368.

Thereafter, on May 15, 2002, [P]etitioner filed another Petition for Review with the Court seeking to reverse the disallowance by the BIR, through [R]espondent's predecessor, of its application for tax refund/credit for its input tax payments for the second (2nd) quarter of 2001, which was docketed as CTA Case No. 6480.

The two petitions were consolidated and heard by the former First (1st) Division of the Court (Court in Division).

On December 15, 2004, the Court in Division rendered its Decision in the consolidated case granting [P]etitioner's tax credit claim, albeit in the reduced amount of [Php]424,844.20, the dispositive portion of which reads:

> '**WHEREFORE**, premises considered, petitioner's claims for tax credit are hereby **GRANTED** in the reduced amount of [Php]424,844.20, computed as follows:

Amount Claimed		
First Quarter of 2001	[Php]2,769,081.78	
Second Quarter of 2001	4,037,000.00	[Php]6,806,081.78
Less: Disallowances:		
Per Commissioned Independent CPA Report	[Php] 560,373.71	
Per Court's Determination:		
Invoices/ORs dated 'outside the period of claims'	5,820,863.87	6,381,237.58
Amount Refundable		[Php] 424,844.20

Accordingly, [R]espondent is **ORDERED to ISSUE a TAX CREDIT CERTIFICATE** in favor of the [P]etitioner in the amount of [Php]424,844.20 representing unutilized input VAT on domestic purchases of goods and services for the first and second quarters of taxable year 2001.

SO ORDERED.'

On January 19, 2005, [P]etitioner filed a Motion for Reconsideration seeking the reversal of the above Decision. Unfortunately, the same was denied.

The denial of its Motion for Reconsideration prompted [P]etitioner to file a Petition for Review with the Court of Tax Appeals (CTA) *En Banc* on May 6, 2005, docketed as CTA EB No. 84. However, the Petition for Review was dismissed on August 11, 2005, for having been filed beyond the reglementary period. Petitioner's Motions for Reconsideration were similarly denied in the Resolutions dated October 7, 2005 and December 14, 2005.

On January 4, 2006, [P]etitioner filed a Petition for Review with the Supreme Court, docketed as G.R. No. 170814, seeking the reversal of the Resolutions dismissing the Petition for Review filed before the CTA *En Banc.* However, the Supreme Court denied the Petition for Review in a Resolution dated February 1, 2006. Petitioner's Motion for Reconsideration was likewise denied by the Supreme Court in the Resolution dated May 2, 2006.

The Supreme Court issued an Entry of Judgment stating that its Resolution dated February 1, 2006 denying [P]etitioner's Petition for Review became final and executory on June 23, 2006.

On May 26, 2016, [P]etitioner filed the present Petition for Revival of Judgment."[3]

The Ruling of the Second Division

On June 27, 2017, the Second Division promulgated the Assailed Decision denying the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, the present Petition for Revival of Judgment is **DENIED** for being time-barred.
>
> **SO ORDERED.**"[4]

Aggrieved, Petitioner filed a "Motion for Reconsideration (Of the Decision dated 17 April 2017)"[5] on May 03, 2017, which the Second Division denied in the Assailed Resolution on June 27, 2017, thus:

> "**WHEREFORE**, premises considered, [P]etitioner's **Motion for Reconsideration (Of the Decision dated 17 April 2017)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[6]

On July 18, 2017, Petitioner filed the present "Petition for Review".[7]

On August 18, 2017, the Court issued a Resolution[8] ordering Respondent to comment on the Petition for Review within ten (10) days from receipt thereof.

On October 19, 2017, a Records Verification Report was issued by the Judicial Records Division stating that Respondent failed to file a comment on the Petition for Review.[9]

On December 07, 2017, the Court issued a Resolution[10] giving due course to the Petition for Review and which ordered the parties to file their respective memoranda within thirty (30) days from notice.

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[3] *Id.*, pp. 251-253.
[4] *Id.*, p. 262.
[5] *Id.*, pp. 500-506.
[6] *Id.*, p. 298.
[7] Rollo, pp. 1-11. Record shows that petitioner received the Assailed Resolution on July 04, 2017; Docket, p. 294.
[8] Rollo, pp. 196-197.
[9] *Id.*, p. 198.
[10] *Id.*, pp. 200-201.

On January 31, 2018, Respondent filed his "Memorandum"[11] while Petitioner filed its "Memorandum"[12] on February 09, 2018. On February 23, 2018, the Court issued a Resolution[13] submitting the case for decision.

The Issues

Petitioner raises the following arguments in support of its petition:

1. Contrary to the ruling in the Assailed Decision and Resolution, the right of Petitioner to file a separate action to revive the CTA Decision has not yet prescribed at the time it filed the Petition for Revival of Judgment;

    a) Under Rule 45 of the Rules of Court, litigants may appeal the Decision of the Honorable Court to the Supreme Court on questions of law. The CTA Decision was appealed by Petitioner to the Supreme Court principally on a question of law – the correct interpretation of the laws on the period to file a Petition for Review with the Honorable Court;

    b) The CTA Decision did not immediately become final and executory because Petitioner exercised its right to appeal said decision to the Supreme Court; and

2. Since the Petition for Revival of Judgment was timely filed and all of the requisites for revival have been met, the CTA Decision should be revived.[14]

In other words, the sole issue in this case is whether or not the judgment in the consolidated cases of CTA Case Nos. 6368 and 6480, entitled *Lepanto Consolidated Mining Co. v. Commissioner of Internal Revenue*, may be revived.

The Ruling of the Court

The petition is bereft of merit.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. It merely reiterates the arguments it raised in its Motion

[11] *Id.*, pp. 202-208.
[12] *Id.*, pp. 210-220.
[13] *Id.*, pp. 222-223.
[14] *Id.*, p. 5.

for Reconsideration which have been extensively addressed by this Court in the Assailed Resolution.

The arguments advanced by Petitioner are merely rehashed from its previous pleadings before the Court in Division. Each and every issue has been extensively discussed, sufficiently determined and passed upon in the Assailed Decision and Assailed Resolution. Nevertheless, We shall discuss them anew if only to reinforce the earlier disquisition of the Court in Division.

It is well settled that execution of a judgment may be either through a motion or an independent action. The two modes of execution under the 1997 Revised Rules of Civil Procedure ("Rules of Court") are available, depending on the timing when the prevailing party invoked its right to enforce the court's judgment. Section 6, Rule 39 of the Rules of Court, states:

> "**Sec. 6.** *Execution by motion or by independent action.* - A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. **After the lapse of such time, and <u>before</u> <u>it</u> <u>is</u> <u>barred</u> <u>by</u> <u>the</u> <u>statute</u> <u>of</u> <u>limitations</u>, a judgment may be enforced by action.** The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations."[15]

In relation thereto, Articles 1144(3) and 1152 of the Civil Code provides for the statute of limitations on court judgments:

> "Art. 1144. The following actions must be brought within **<u>ten</u> years** from the time the right of action accrues:
>
> xxx xxx xxx
>
> (3) Upon a **judgment**
>
> xxx xxx xxx
>
> Art. 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment **commences from the time the judgment <u>became</u> <u>final</u>**."[16]

Following the above provisions, execution by motion is only available if the enforcement of the judgment was sought within five (5) years from the date

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[15] *Emphasis and underscoring supplied.*
[16] *Emphasis and underscoring supplied.*

of its entry. This is a matter of right. On the other hand, execution by independent action is mandatory if the five-year prescriptive period for execution by motion had already elapsed. The said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court. The action must be filed before it is barred by the statute of limitations which, under the Civil Code, is ten (10) years from the finality of the judgment.[17]

Since what Petitioner filed before the court *a quo* was an action for revival of judgment, it must be determined therefore whether or not such action was filed within the period prescribed by law and the rules. In particular, this Court must ascertain whether or not the Petition for Revival of Judgment dated May 26, 2016 was filed before the lapse of ten (10) years reckoned from the finality of judgment.

When did the judgment in the consolidated cases of CTA Case Nos. 6368 and 6480, entitled *Lepanto Consolidated Mining Co. v. Commissioner of Internal Revenue*, become final?

We agree with the findings of the Second Division that the Court Decision in CTA Case Nos. 6368 and 6480 became final and executory on April 22, 2005, after the lapse of the fifteen-day reglementary period to appeal.

A decision issued by a court becomes final and executory when such decision disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, such as when after the lapse of the reglementary period to appeal, no appeal has been perfected.[18]

In the case at bar, Petitioner appealed the First Division's Decision and Resolution in CTA Case Nos. 6368 and 6480 to the Court *En Banc* on May 06, 2005. Under Section 4, Rule 43 of the Rules of Court, appeals from a resolution of a Division of the Court of Tax Appeals on a motion for reconsideration or new trial must be filed within fifteen (15) days from receipt of such resolution, thus:

> "**Section 4.** *Period of appeal.* — **The appeal shall be taken <u>within</u> <u>fifteen</u> <u>(15)</u> <u>days</u> from notice of the** award, judgment, **final order or resolution**, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo.

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[17] Daniel A. Villareal, Jr. v. Metropolitan Waterworks and Sewerage System, G.R. No. 232202, February 28, 2018 *citing* Olongapo City v. Subic Water and Sewerage Co., Inc., G.R. No. 171626, August 06, 2014 and Rubio Et. Al. v. Alabata, G.R. No. 203947, February 26, 2014.

[18] Eastern Shipping Lines, Inc., and/or Congressman Erwin L. Chiongbian v. Julio C. Canja, G.R. No. 193990, October 14, 2015 *citing* Virgilio S. Delima v. Susan Mercaida Gois, G.R. No. 178352, June 17, 2008.

> Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (n)"[19]

Petitioner received the First Division's Resolution denying its Motion for Reconsideration on April 06, 2005.[20] Hence, it had only until April 21, 2005 within which to file its Petition for Review with the Court of Tax Appeals *En Banc*. Since it filed its Petition for Review on May 06, 2005 which is already beyond the reglementary period provided for under the rules, its appeal was not perfected and the Decisions in CTA Case Nos. 6368 and 6480 was already rendered final and executory the next day, April 22, 2005. This is exactly the reason why the Court of Tax Appeals *En Banc* dismissed the Petition for Review docketed as CTA EB No. 84 in a Resolution[21] dated August 11, 2005.

Said resolution was effectively affirmed by the Supreme Court when it declared in a Resolution[22] dated February 01, 2006 that there was no sufficient showing that the Court of Tax Appeals *En Banc* committed any reversible error in the challenged Resolutions as to warrant the exercise of the High Court's discretionary appellate jurisdiction.

We further agree with the Second Division that a judgment becomes final by operation of law, even without any pronouncement of the same, thus:

> "As a corollary, the Supreme Court in the case of *Testate Estate of Maria Manuel Vda. De Biascan v. Biascan*, held that:
>
> > 'It is well-settled that judgment or orders become final and executory by operation of law and not by judicial declaration. **Thus, finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or motion for reconsideration or new trial is filed. The trial court need not even pronounce the finality of the order as the same becomes final by operation of law.**'"[23]

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[19] *Emphasis and underscoring supplied.*
[20] Docket, p. 125.
[21] *Id.*, pp. 123-129.
[22] *Id.*, p. 165.
[23] *Id.*, p. 258.

Having established that the reckoning date for the ten (10) year prescriptive period within which to file the action for revival of judgment starts on April 22, 2005, the next question is whether or not the instant Petition for Revival of Judgment dated May 26, 2016 was timely filed.

In computing the time limit for enforcing a final judgment, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party or otherwise.[24]

In relation thereto, it must be emphasized that an appeal to the Supreme Court *via* a Petition for Review on *Certiorari* stays the judgment, award or order appealed from[25], while an appeal to the Court of Tax Appeals *En Banc* does not.[26]

Consequently, we see no reversible error when the court *a quo* ruled that the present Petition for Revival of Judgment is seven (7) months and sixteen (16) days late.

The Court *En Banc* agrees with the Second Division in disposing the issue in the following fashion:

> "In view of the foregoing rule, this Court holds that the period of time covering the pendency of [P]etitioner's Petition for Review on *Certiorari* before the Supreme Court, *i.e.*, from the date of its filing on January 4, 2006 until the same was denied with finality on June 23, 2006, should be excluded in the computation of the prescriptive period...
>
> xxx xxx xxx
>
> On the other hand, the period of time during which petitioner's appeal to the CTA *En Banc* was pending cannot be deducted because, unlike the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, such appeal does not stay the execution of the award or judgment sought to be reviewed. This is expressly provided under Section 12 of Rule 43 of the Rules of Court which states:

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24 Esteban Yau v. Ricardo C. Silverio, Sr., G.R. Nos. 158848 and 171994, February 04, 2008 *citing* Francisco Motors Corporation v. Court of Appeals, G.R. Nos. 117622-23, October 23, 2006.

25 Cesar T. Quiambao and Eric C. Pilapil v. People of the Philippines, Et. Al., G.R. No. 185267, September 17, 2014 *citing* Atty. Alfonso Paa v. Court of Appeals, Et. Al., G.R. No. 126560, December 04, 1997.

26 1997 Rules of Civil Procedure, Rule 43, Section 12.

'SEC. 12. *Effect of appeal.* — **The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed** unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.' (Emphasis supplied)

The table below summarizes the relevant dates in the present case and their corresponding intervals:

<table>
<tr><td>Date of finality of CTA Division decision</td><td>22-Apr-05</td><td rowspan="2">8 months, 13 days</td></tr>
<tr><td>Filing of petition with the Supreme Court</td><td>4-Jan-06</td></tr>
<tr><td>Date of finality of SC decision denying the petition</td><td>23-Jun-06</td><td rowspan="2">9 years, 11 months, 3 days</td></tr>
<tr><td>Date of filing of Petition for Review</td><td>26-May-16</td></tr>
<tr><td colspan="2">Total</td><td>10 years, 7 months, 16 days</td></tr>
</table>

Counting from April 22, 2005 (date of finality of the Court in Division's Decision) up until January 4, 2006 (date of filing of the Rule 45 Petition before the Supreme Court), a period of eight (8) months and thirteen (13) days had elapsed. On the other hand, from June 23, 2006 (date of finality of the denial of the Rule 45 Petition) up until May 26, 2016 (date of filing of the present Petition), a period of nine (9) years, eleven (11) months, and three (3) days had elapsed. Accordingly, a total of ten (10) years, seven (7) months, and sixteen (16) days had passed from date of finality of the decision sought to be revived until the filing of the present Petition for its revival. Considering that petitioner only has 10 years to revive, the present Petition for Revival of Judgment is clearly seven (7) months and sixteen (16) days late."[27]

To reiterate, the decision of the CTA Division partially granting Petitioner's tax credit claim in the consolidated cases docketed as CTA Case Nos. 6368 and 6480 in the reduced amount of Php424,844.20, became final on April 22, 2005. And yet, it took Petitioner until May 26, 2016 to file its Petition for Revival of Judgment with the Court *a quo*. Since Petitioner's Petition for Revival of Judgment was clearly filed when the statute of limitations under the Civil Code had already set in, this Court has no choice but to deny Petitioner's claim. Petitioner has no one to blame but itself for belatedly enforcing the judgment in CTA Case Nos. 6368 and 6480.

[27] Docket, pp. 260-261.

As aptly stated by Associate *Justice Mendoza* in the case *Ernesto Villeza v. German Management and Services, Inc.*[28], *viz*:

> "The Court has pronounced in a plethora of cases that it is revolting to the conscience to allow someone to further avert the satisfaction of an obligation because of sheer literal adherence to technicality; that although strict compliance with the rules of procedure is desired, liberal interpretation is warranted in cases where a strict enforcement of the rules will not serve the ends of justice; and that it is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result. These cases, though, remain exceptions to the general rule. The purpose of the law in prescribing time limitations for enforcing judgment by action is precisely to prevent the winning parties from sleeping on their rights. **This Court cannot just set aside the statute of limitations into oblivion every time someone cries for equity and justice. Indeed, if eternal vigilance is the price of safety, one cannot sleep on one's right for more than a 10th of a century and expect it to be preserved in pristine purity**."[29]

WHEREFORE, finding no cogent reason to disturb the findings and conclusions reached by the Second Division in the Assailed Decision dated April 17, 2017 as well as in the Assailed Resolution dated June 27, 2017, the same are **AFFIRMED**. Accordingly, the Petition for Review filed with the Court *En Banc* on July 18, 2017 is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen S. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[28] G.R. No. 182937, August 08, 2010.
[29] *Emphasis and underscoring supplied.*

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
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