REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF MANILA, ET. AL.
Petitioners,

C.T.A. EB No. 511
(C.T.A. AC No. 51)

-*versus*-

Present:
Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

SM LAND, INC., ET. AL.,
Respondents.

Promulgated:
SEP 0 3 2009 3:10 p.m.

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RESOLUTION

For resolution is respondents' "Motion for Reconsideration" of the July 24, 2009 Resolution of the Court *En Banc*, which was filed with the Court on August 12, 2009.

On July 8, 2009, petitioners received a copy of the Decision of the Second Division of the Court in C.T.A. AC No. 51 which was promulgated on July 3, 2009 and which partially granted their Petition for Review. On July 23, 2009, petitioners filed a "Motion for Extension of Time To File Petition For Review" with the Court *En Banc*.

Respondents, on the other hand, filed on July 24, 2009 with the Second Division of the Court, a "Motion for Partial Reconsideration" of the July 3, 2009 Decision of the Second Division which they received on July 9, 2009.

On even date, petitioners' "Motion for Extension of Time To File Petition For Review" was granted by the Court *En Banc* and petitioners were given a final and non-extendible period of fifteen (15) days from July 23, 2009 or until August 7, 2009 within which to file the Petition for Review.[1]

On August 7, 2009, petitioners filed a Petition for Review with the Court *En Banc*.

Hence, the instant Motion by respondents where they, through counsel, aver that:

> "With all due respect, Petitioners' elevation of the case with the Court of Tax Appeals - *En Banc* (CTA *En Banc*) through the filing of a Motion for Extension of Time To File Petition For Review should have been denied because an appeal with the CTA *En Banc* at this stage of the proceedings is premature and dismissable.
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> On 3 July 2009, the CTA's Second Division (Court in Division) rendered its Decision in CTA AC No. 51. Respondents received such Decision on 9 July 2009 and thereafter filed a timely Motion for Partial Reconsideration on 24 July 2009. On July 31, 2009, the Court in Division ordered Petitioners herein to file their comment on the said Motion for Partial Reconsideration within fifteen (15) days from notice thereof. Since Respondents' Motion for Partial Reconsideration remains unresolved, the Court in Division retains jurisdiction over this case."[2]

Respondents' Motion is meritorious.

Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals reads:

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[1] *Rollo*, p. 4, Minute Resolution signed by Atty. Elvessa P. Apolonario, Executive Clerk of Court IV.
[2] *Id.*, at pp. 126 – 127.

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**. *(Boldfacing supplied)*

The afore-quoted rule is in line with Sections 11 and 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 which provide:

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

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All other cases involving rulings, orders or decisions filed with the CTA as provided for in Section 7 shall be raffled to its Divisions. **A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration of new trial before the same Division of the CTA within fifteens (15) days from notice thereof**: *Provide, however,* That in criminal cases, the general rule applicable in regular Courts on matters of prosecution and appeal shall likewise apply.

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SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* — No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*. *(Boldfacing supplied)*

It is clear from the foregoing provisions that prior to the filing of a petition for review with the Court *En Banc*, a motion for reconsideration of the decision of the Court in Division must first be filed. This is a condition *sine qua non* which requires strict compliance.

A review of the records of the case at bench reveals that indeed petitioners failed to file any motion for reconsideration of the July 3, 2009 Decision of the Second Division. Instead, petitioners appealed the said Decision to the Court *En Banc* via a Petition for Review in violation of Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals and Sections 11 and 18 of Republic Act No. 1125, as amended by Republic Act No. 9282.

Moreover, the filing of a Petition for Review with the Court *En Banc* is premature in view of respondents' pending "Motion for Partial Reconsideration" of the July 3, 2009 Decision of the Second Division of the Court in C.T.A. AC No. 51 which was filed on July 24, 2009 with the Second Division of the Court. Consequently, the latter still has jurisdiction over this case. In fact, it required petitioners to file a comment on respondents' "Motion for Partial Reconsideration" in its Resolution dated July 31, 2009. Instead of filing a comment with the Second Division of the Court, petitioners filed with the Court *En Banc* a "Motion for Extension of Time To File Petition For Review" and a Petition for Review.

Therefore, the Court *En Banc* has no other recourse but to dismiss petitioners' Petition for Review.

WHEREFORE, respondents' "Motion for Reconsideration" is hereby **GRANTED.** The Resolution dated July 24, 2009 granting petitioners' "Motion for Extension of Time To File Petition For Review" is hereby **RECALLED** and **SET ASIDE** and petitioners' Petition for Review is hereby **DISMISSED**.

SO ORDERED.

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

OLGA PALANCA-ENRIQUEZ
Associate Justice