REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AG COUNSELORS CORPORATION, Petitioner,	**CTA CASE NO. 9329**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	JAN 27 2021 4:09 pm

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RESOLUTION

CASTANEDA, JR., *J.*:

For resolution is respondent's **Motion for Reconsideration (On the Resolution promulgated on July 29, 2020)**, filed through registered mail on September 30, 2020 and received by the Court on October 12, 2020, without petitioner's comment as per Records Verification dated January 11, 2021.

Respondent seeks reconsideration of this Court's Resolution dated July 29, 2020, which reads:

> "Accordingly, let Entry of Judgment be issued in this case, and the Clerk of Court shall forthwith enter the Decision dated October 25, 2019 in the Book of Entries of Judgements (Section 6, Rule 14, Revised Rules of CTA).
>
> **SO ORDERED**."

On October 25, 2019, the Court promulgated the Decision partially granting petitoner's Petition for Review and ordering the CIR to refund or issue a tax credit certificate amounting to Php 10,992,786.35 in favor of petitioner, representing the latter's excess and unutilized CWT for CY 2013.

Unssatisfied with the reduced amount of refund granted in its favor, petitioner then filed a Motion for Reconsideration on November 11, 2019 seeking for the reversal of the Court's decision on the disallowed portion of the claim. Also aggrieved, respondent likewise filed a Motion for Partial Reconsideration through registered mail on November 8, 2019 and received by the Court on November 19, 2019. Both motions were denied for lack of merit in a Resolution dated March 2, 2020, copies of which were received by the parties on March 4, 2020.

Subsequently, the Court ordered the issuance of the Entry of Judgment since no appeal has been taken by any of the parties per Records Verification dated July 22, 2020.[1]

As such, respondent filed a Motion for Reconsideration (On the Resolution promulgated on July 29, 2020), alleging that a timely Motion for Partial Reconsideration was filed on November 8, 2020, hence, it prays for the recall of the Resolution dated July 29, 2020. In support of the relief sought thereof, respondent attached a photocopy of the registry receipt issued by Makati Central Post Office,[2] a copy of the BIR Letter dated September 25, 2020, requesting for a status update of the mailed Motion, addressed to the Postmaster of Makati Central Post Office,[3] Certification dated September 28, 2020 issued by the Makati Central Post Office confirming the dispatch of the said mail on November 11, 2019,[4] and a copy of respondent's Motion for Partial Reconsideration.[5] Petitioner failed to file its comment[6] thereto despite due notice,[7] thus, respondent's motion was deemed submitted for resolution.

The Court finds the motion bereft of merit. *gr*

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[1] Resolution dated July 29, 2020.
[2] Annex A, respondent's Motion for Reconsideration (On the Resolution promulgated on July 29, 2020).
[3] Annex B, respondent's Motion for Reconsideration (On the Resolution promulgated on July 29, 2020).
[4] Annex C, respondent's Motion for Reconsideration (On the Resolution promulgated on July 29, 2020).
[5] Annex D, respondent's Motion for Reconsideration (On the Resolution promulgated on July 29, 2020).
[6] Records Verification dated January 11, 2021.
[7] Resolution dated October 20, 2020.

Prefatorily, an examination of the records of the case creates a nagging doubt as to whether proper procedure was followed by respondent, thus, the Court deemed it wise to analyze and scrutinize the facts of the case, more specifically the relevant dates to determine the propriety of the motion filed by respondent.

Under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), a party who wishes to interpose an appeal with the Court En Banc from a decision or resolution of the Division of the Court, may do so by filing a petition for review within fifteen (15) days from receipt of the questioned decision or resolution, thus:

> SEC. 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 of the reglementary period 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. (*Emphasis provided*)

It is doctrinally entrenched that appeal is not a constitutional right, but a mere statutory privilege. Hence parties who seek to avail themselves of it must comply with the statutes or rules allowing it.[8] Perfection of an appeal in the manner and within the period prescribed by law is not only mandatory, but jurisdictional, and non compliance is fatal having the effect of rendering the judgment final and executory.[9]

In the present case, records bear that respondent received the March 2, 2020 Resolution of the Court, denying the respective Motions for Reconsideration of the assailed Decision filed by both petitioner and respondent, on March 4, 2020. However, instead of

[8] *Dalton-Reyes vs. Court of Appeals*, G.R. No. 149580, March 16, 2005.
[9] *Caballen vs. Court of Appeals*, G.R. No. 93090, March 3, 1999.

filing the appropriate Petition for Review or at least a Motion for Extension of Time to File the Petition for Review with the Court *En Banc* within fifteen (15) days therefrom, respondent filed the instant motion by registered mail on September 30, 2020.

Peculiarly, respondent is of the view that the Court should recall or hold in abeyance the issuance of the Entry of Judgement considering the Motion for Partial Reconsideration allegedly filed on November 8, 2020. Respondent obviously overlooked the fact that the Motion for Partial Reconsideration he is referring to was actually filed on November 8, **2019** as shown by Annexes "A" to 'D" attached by respondent himself to the instant Motion for Reconsideration. Certainly, the issues and arguments raised by respondent therein had already been passed upon and resolved by the Court in the Resolution dated March 2, 2020, of which all the parties were duly notified as evidenced by the stamp "received March 4, 2020" appearing on the Notice of Resolution of even date.

It bears to reiterate that instead of filing the appropriate Petition for Review or at least a Motion for Extension of Time to File the Petition for Review with the Court *En Banc*, respondent filed yet another Motion for Reconsideration, which is an improper remedy, thereby rendering the Resolution dated March 2, 2020 final and executory. Correspondingly, it became the ministerial duty of the Court to issue the Entry of Judgment in this case.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (On the Resolution promulgated on July 29, 2020)** is **DENIED** for lack of merit.

SO ORDERED.

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

I concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice