

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB NO. 2228
(CTA OC No. 021)

Present:

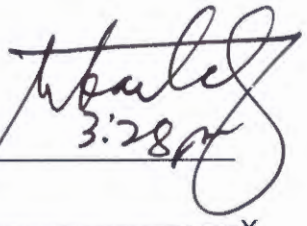
- versus -

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

GEORGE A. TALAMAYAN, JR.,
Respondent.

Promulgated:

MAY 25 2022


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RESOLUTION

UY, J.:

For resolution is petitioner's "**MOTION FOR RECONSIDERATION**" filed on March 17, 2022. In the said Motion, petitioner prays that the Court's Decision dated February 24, 2022, be reversed and set aside. The dispositive portion thereof reads:

"**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated December 3, 2019 and the Resolution dated January 23, 2020 rendered by the Second Division of this Court in CTA OC No. 021 are hereby **AFFIRMED**."



Consequently, petitioner Commissioner of Internal Revenue or any person acting on his behalf is hereby **ENJOINED** from enforcing the collection of deficiency taxes assessed against George A. Talamayan, Jr. for taxable year 2008.

SO ORDERED.”

In support of his Motion, petitioner argues that:

1. Respondent was not denied due process because it was able to participate in the administrative proceedings and present its side.
2. Respondent was not denied due process because it was clearly informed of the identity of the revenue officers who will continue the investigation/audit.
3. The Memorandum of Assignment, Referral Memorandum, Letter Notice, or an equivalent document does not usurp the functions of a Letter of Authority.
4. The Honorable Supreme Court erred in ruling that Section D (5) of Revenue Memorandum Order (RMO) No. 43-90 is an implementing rule of the National Internal Revenue Code (NIRC) of 1997.

THE COURT’S RULING

Petitioner’s Motion is filed out of time.

As provided under Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen (15) days from the date of receipt of notice of the decision, resolution or order of the Court in question.¹

In the instant case, the Court notes that petitioner’s *Motion for Reconsideration*² failed to state the pertinent material date, *i.e.*, petitioner’s date of receipt of the assailed Decision dated February 24, 2022. 

¹ A.M. No. 05-11-07-CTA.

² EB Docket, pp. 76 to 86.

While there is no specific rule in the RRCTA, or the 1997 Rules of Civil Procedure, as amended, requiring the statement of material dates in a motion for reconsideration, it is still of utmost necessity, as it determines whether the subject motion is timely filed.³

Considering petitioner's failure to state the date of receipt of the assailed Decision, reference is made to the court records to determine the date of service thereof. In this case, records of the court show that petitioner acknowledged receipt of the assailed Decision on March 1, 2022.⁴ Thus, petitioner had fifteen (15) days, or until March 16, 2022, within which to file its Motion for Reconsideration. However, petitioner filed his Motion for Reconsideration only on March 17, 2022, or one (1) day late. Clearly, the same was filed out of time.

It bears stressing that a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal.⁵ In other words, a party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law for the purpose loses the right to do so.⁶

It is settled that judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The court need not even pronounce the finality of the order as the same becomes final by operation of law.⁷

The belated filing of the subject Motion for Reconsideration is fatal to petitioner's case, as the assailed Decision of this Court, sitting *En Banc*, has already attained finality. As a final judgment, the issues are already laid to rest and it can no longer be reviewed. Courts are charged with putting an end to controversies. In keeping with this function, judgments must become final at some definite time fixed by law.⁸

³ Cf. *Spouses Mariano Cordero and Raquel Cordero vs. Leonila M. Octaviano*, G.R. No. 241385, July 7, 2020, citing *Technological Institute of the Philippines Teachers and Employees Organization (TIPTEO) vs. Court of Appeals*, 608 Phil. 632 (2009).

⁴ EB Docket, p. 52.

⁵ *People of the Philippines vs. Benedicta Mallari and Chi-Wei-Neng*, G.R. No. 197164, December 4, 2019, citing *Barrio Fiesta Restaurant vs. Beronia*, 789 Phil. 520, (2016).

⁶ *Id.*, citing *Lopez vs. Court of Appeals*, G.R. Nos. 163959 & 177855, August 1, 2018.

⁷ *Id.*, citing *Philippine Savings Bank vs. Papa*, G.R. No. 200469, January 15, 2018.

⁸ *Far East Bank & Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006, citing *Ilasco, Jr. vs. Court of Appeals*, G.R. No. 88983, December 14, 1993, 228 SCRA 413.

In view of the foregoing, there is no need to resolve the other issues raised by petitioner.

WHEREFORE, in light of the foregoing considerations, the instant **MOTION FOR RECONSIDERATION** is hereby **DENIED** for being filed out of time.

SO ORDERED.

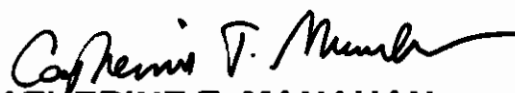

ERLINDA P. UY
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

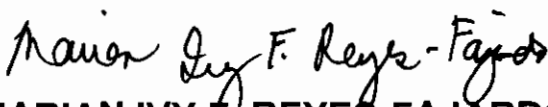

JUANITO C. CASTANEDA, JR.
Associate Justice


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


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice