REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

WHITE ROSE MERCHANDISING, INC., Plaintiff,	CTA EB No. 1181 (CTA CASE NO. 8401)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS and RINGPIS-LIBAN, JJ.
ALERT B. ALOCILJA, AS REGIONAL DIRECTOR OF REVENUE REGION NO. 14 IN 2010, AND REVENUE DISTRICT OFFICER CESAR R. BALANGATAN OF REVENUE DISTRICT NO. 088, OF REVENUE REGION NO. 14 (IN 2011), Respondents.	Promulgated: OCT 30 2014 11:10 a.m.

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DECISION

FABON-VICTORINO, J.:

In the instant Petition for Review, petitioner White Rose Merchandising, Inc. assails the 1.) Decision dated May 2, 2014, rendered by the Court in Division denying its Petition for Review for lack of jurisdiction, and the 2.) Resolution of May 23, 2014, denying its Motion for Leave to file Motion for Extension of Period to File Motion for Reconsideration, with attached Motion for Extension of Period to File Motion for Reconsideration.

THE FACTS AND THE PROCEEDINGS

Petitioner White Rose Merchandising, Inc. has its business and office address at Abad St., Naval, Biliran.

On the other hand, respondent Alert B. Alocilja is the Regional Director of the Bureau of Internal Revenue (BIR) Revenue Region of Zamboanga, with office address at the BIR Regional Office at Zamboanga City. He was the Regional Director of Revenue Region No. 14 on December 9, 2010.

The other respondent Cesar R. Balangatan is the Revenue District Officer of RDO No. 088, who holds office at the Government Center Palo, Leyte.

On October 21, 2008, the Office of the Revenue Regional Director of Revenue Region No. 14, issued an order authorizing Revenue Officer Gerardo Pabello, Jr. to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable year 2007.

On September 29, 2010, a Preliminary Assessment Notice (PAN) was issued finding petitioner liable for deficiency income tax (IT), value-added tax (VAT) and expanded withholding tax (EWT) in the total amount of P8,045,769.77, inclusive of interest and penalties. Petitioner was granted fifteen (15) days from receipt thereof to present its position in writing, lest it shall be considered in default.

Petitioner failed to comply with the said directive hence, was eventually declared in default by respondent Regional Director Alocilja. On or about December 23, 2010, petitioner received a Formal Letter of Demand (FLD) dated December 9, 2010 with Assessment Notices from BIR Revenue Region No. 14.

On September 12, 2011, Notices of Tax Lien were issued and together with the Warrants of Distraint and/or Levy were served upon petitioner on October 19, 2011.

On October 25, 2011, petitioner filed a "petition" with the Commissioner of Internal Revenue (CIR).

On December 26, 2011, petitioner filed with the Court in Division a Petition for Review[1] docketed as CTA Case No. 8401, on the ground of inaction on the part of the CIR praying for the cancellation of the assessment issued against it by respondent Alocilja for alleged deficiency tax liabilities for the year 2007 for lack of factual and legal bases.

In the Answer dated February 2, 2012,[2] respondent countered that the FAN issued by the Revenue Regional Office has attained finality since no protest was seasonably filed by petitioner. The failure to file an administrative protest within the period prescribed *ipso jure* makes the assessment final, unappealable and therefore demandable.[3] And even assuming that petitioner timely filed its protest on the subject assessment, the Court has no jurisdiction to entertain the petition for being prematurely filed. Furthermore, petitioner ignored the Preliminary Assessment Notice and Notice of Informal Conference previously sent to it. In fact, petitioner's representative refused to receive the FAN when served. In any event, all the assessments were made in accordance with the law. Lastly, the burden of proof lies on petitioner to prove that the assessment was not validly issued. Even assessments based on estimates are *prima facie* valid and lawful where it does not appear that they were arbitrarily or capriciously issued.

During trial on the merits, both parties presented both documentary and testimonial evidences.

In the assailed Decision dated March 2, 2014, the Court in Division denied the petition for lack of jurisdiction.[4]

On May 20, 2014, petitioner filed a Motion for Leave to file Motion for Extension of Period to File Motion for Reconsideration with attached Motion for Extension of Period to File Motion for Reconsideration. It stated therein that it

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[1] Division Docket, pp. 6-19.
[2] Division Docket, pp. 62-70.
[3] *Protector's Services Inc. vs. Commissioner of Internal Revenue,* G.R. No, 118176.
[4] *En Banc* docket, pp. 18-28.

received a copy of the Decision dated March 2, 2014 on May 7, 2014, thus, it had until May 22, 2014 to seek its reconsideration. However, it needed an extension of until May 30, 2014 as the signatory to its motion, Jocelyn L. Ang Marces, was unavailable because she needed to attend to her mother's medical needs. Ms. Ang Marces, as its President, would have to review the facts and circumstances relevant and material to the subject 2007 tax deficiencies.

In the similarly assailed Resolution dated May 23, 2014,[5] the Court in Division denied petitioner's Motion for Leave to file Motion for Extension of Period to File Motion for Reconsideration on the ground that the 15-day reglementary period for filing a motion for reconsideration is non-extendible.[6]

On June 9, 2014, petitioner filed the instant Petition for Review[7] with the lone issue, to wit:

> WAS THE COURT OF TAX APPEALS - SECOND DIVISION CORRECT WHEN IT DENIED FOR LACK OF JURISIDICTION THE PETITION FOR REVIEW OF THE PETITIONER UNDER SECTION 7, PAR. a. SUB PAR. 2 OF R.A. 1125, as amended.

RULING OF THE COURT *EN BANC*

The Petition for Review is devoid of merit, hence, should be denied.

Section 1, Rule 37 and Section 4, Rule 43 of the Rules of Court prescribes the period within which a party may file a motion for reconsideration, to wit:

[5] *En Banc docket, p. 16.*
[6] *Habaluyas Enterprises, Inc. vs. Japson, G.R. No. 165417, 142 SCRA 208.*
[7] *En Banc docket, pp 1-18.*

"RULE 37

New Trial or Reconsiderations

Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* — **Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order** and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result." (emphasis supplied)

"RULE 43

Appeals From the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals

Section 4. *Period of appeal.* — **The appeal shall be taken within fifteen (15) days 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*. 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 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." (emphasis supplied)

In relation to the foregoing, Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended, provides:

> "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."** (Emphasis supplied)

Likewise, Section 1, Rule 15 of the same Rules provides for the period within which to file a timely motion for reconsideration or new trial, thus:

> "SECTION 1. *Who may and when to file motion.* - **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 days from the date of receipt of notice of the decision, resolution or order of the Court in question."** (Emphasis Supplied)

Petitioner admitted that it received a copy of the assailed Decision dated May 2, 2014 on **May 7, 2014**. Thus, petitioner had fifteen (15) days from such receipt or until **May 22, 2014**, to file a motion for reconsideration.

However, instead of filing a motion for reconsideration, petitioner filed on **May 20, 2014**, a Motion for Leave to file

Motion for Extension of Period to File Motion for Reconsideration with attached Motion for Extension of Period to File Motion for Reconsideration, which the Court in Division denied on **May 23, 2014**. On **June 9, 2014**, petitioner filed the instant Petition for Review before the Court *En Banc*.

Evidently, the Court can no longer entertain the present Petition for Review since the assailed Decision of May 2, 2014 has attained finality when petitioner failed to file a motion for reconsideration within the prescribed period. Elementary is the rule that the period for filing a motion for reconsideration is **non-extendible**.

While the Rules allow motion for extension for filing of a petition for review before the Court, a similar motion seeking to extend the period for filing a motion for reconsideration is expressly prohibited, except in the Supreme Court. This principle was first laid down in the case of *Habaluyas Enterprises vs. Japzon*[8], where the Supreme Court held:

> "Beginning one month after the promulgation of this Resolution, **the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court**. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested." (emphasis supplied)

The ruling was echoed in *Rolloque vs. Court of Appeals*[9], where the Final Arbiter emphasized that the 15-day period for **filing a motion for new trial or reconsideration is non-extendible**. Hence, the filing of a motion for extension of time to file a motion for reconsideration did not toll the prescribed 15-day period to

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[8] 226 Phil. 144 (1986).
[9] 271 Phil. 40 (1991).

prevent the assailed Decision from becoming final and executory.

Petitioner's earlier Motion for Leave to file Motion for Extension of Period to File Motion for Reconsideration with attached Motion for Extension of Period to File Motion for Reconsideration did not suspend/toll the running of the 15-day reglementary period for filing a motion for reconsideration. Thus, the assailed Decision of May 2, 2014 is already beyond the review jurisdiction of the Court *En Banc*.

As held by the Supreme Court in the case of *Barnes vs. Padilla*[10], "[p]etitioner's failure to timely file a motion for reconsideration within the period fixed by law renders the assailed Decision final and executory. Such failure carries with it the result that no court can exercise appellate jurisdiction to review the case. Phrased elsewise, a final and executory judgment can no longer be attacked by any parties or be modified directly or indirectly, even by the highest court of the land."

The immutable and unalterable nature of the decision which has become final and executory is explained in *Pasiona, Jr. vs. Court of Appeals,*[11] in this wise, thus:

> "x x x With the full knowledge that courts are not infallible, the litigants submit their respective claims for judgment, and they have a right at some time or other to have final judgment on which they can rely as a final disposition of the issue submitted, and to know that there is an end to the litigation.
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> x x x x
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> This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice. In fact, nothing is more settled in law than that once a judgment attains finality it thereby

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[10] G.R. No. 160753, September 30, 2004.
[11] G.R. No. 165471, 137, July 21, 2008, 559 SCRA 137.

> 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.
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> x x x x
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> **The finality of decision is a jurisdictional event which cannot be made to depend on the convenience of the party.** To rule otherwise would completely negate the purpose of the rule on completeness of service, which is to place the date of receipt of pleadings, judgment and processes beyond the power of the party being served to determine at his pleasure.
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> It should be borne in mind that the right of the winning party to enjoy the finality of the resolution of the case is also an essential part of public policy and the orderly administration of justice. Hence, such right is just as weighty or equally important as the right of the losing party to appeal or seek reconsideration within the prescribed period."

Lastly, jurisprudence teaches us that the perfection of an appeal within the statutory or reglementary period is not only mandatory, but also jurisdictional.[12] This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law.[13] Failure to interpose a timely appeal (or a motion for reconsideration) renders the appealed decision, order or award final and executory and

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[12] *Yaneza vs. Court of Appeals,* G.R. No. 149322, November 28, 2008; *Petilla vs. Court of Appeals*, G.R. No. 150792, March 3, 2004, 424 SCRA 254, 261.
[13] *David vs. Cordova,* G.R. No. 152992, July 28, 2005, 464 SCRA 384, 395; *Delgado vs. Court of Appeals*, G.R. No. 137881, December 21, 2004, 447 SCRA 402, 413; *Fukuzumi vs. Sanritsu Great International Corporation,* G.R. No. 140630, August 12, 2004, 436 SCRA 228, 234; *Zaragosa vs. Nobleza*, G. R. No. 144560, May 13, 2004, 428 SCRA 410, 419.

this deprives the appellate body of any jurisdiction to alter the final judgment[14], more so, to entertain the appeal.[15]

WHEREFORE, the Petition for Review dated June 9, 2014 filed by petitioner White Rose Merchandising, Inc., is hereby **DENIED** on jurisdictional grounds. Accordingly, the assailed Decision dated May 2, 2014 is declared final and executory.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(On Leave)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[14] *San Miguel Corporation vs. National Labor Relations Commission*, G.R. No. 101021, April 6, 1993, 221 SCRA 48, 51; *Paramount Vinyl Corp. vs. NLRC*, G.R. No. 81200, October 17, 1990, 190 SCRA 525.
[15] Effective September 26, 1999.

MA. BELEN M. RINGPIS-LIBAN
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 among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice