**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

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| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **CTA EB No. 1276** (CTA Case No. 8324) |
| | Present: |
| - versus - | **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.* |
| **SYMMETRY PHILIPPINES, INC.,** Respondent. | Promulgated: JUL 03 2015 1:15 p.m. |

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## RESOLUTION

**UY, *J.*:**

Records show that on February 13, 2015, petitioner filed, through registered mail, her **"MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW"**;[1] and that on February 25, 2015, petitioner filed, likewise through registered mail, a "**PETITION FOR REVIEW**".[2] It is noted that the filing of the said Motion for Extension of Time and Petition for Review is in relation to the appeal by petitioner to the Amended Decision dated October 15, 2014 and the Resolution dated January 21, 2015, both promulgated by the Third Division of this Court (hereinafter referred to as the "Court in Division"), in CTA Case No. 8324, entitled *"Symmetry Philippines,*

[1] Docket, pp. 1 to 4.
[2] Docket, pp. 5 to 14.

*Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent".*

However, the said Motion for Extension of Time and the said Petition for Review were both filed out of time.

In assailing the said Decision and Resolution of the Court in Division, petitioner's recourse before this Court, sitting *En Banc,* is governed by Section 18 of Republic Act (RA) No. 1125, as amended RA No. 9282, to wit:

> "SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matter 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.
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> **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.*"** *(Emphasis supplied)*

In relation thereto, Sections 3(a) and 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provide as follows, to wit:

> "RULE 8
> PROCEDURE IN CIVIL CASES
>
> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition.* –
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> xxx xxx xxx
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> (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 <u>within fifteen (15) days from receipt of a copy of the questioned decision or resolution</u>. 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 herein fixed, **the Court may grant**

> **an additional period not exceeding fifteen (15) days from the expiration of the original period within which to file the petition for review.**
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> xxx xxx xxx
>
> SEC. 4. *Where to appeal; mode of appeal.* –
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> xxx xxx xxx
>
> (b) **An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court.** The Court *en banc* shall act on the appeal." *(Emphases supplied)*

Based on the foregoing provisions, in order to successfully file a Petition for Review before the Court *En Banc*, a party litigant must file his Petition for Review, or a motion for extension of time to file the same, within fifteen (15) days from receipt of the questioned decision or resolution. In addition, the petitioner must likewise comply with the requirements set forth in Rule 43 of the 1997 Rules of Civil Procedure.

Unfortunately for petitioner in this case, she failed to comply with the said reglementary period of fifteen (15) days, and the said requirements.

In the said Motion for Extension of Time[3] and the said Petition for Review[4], petitioner states that she received a copy of the assailed Resolution dated January 21, 2015 issued by the Court in Division, denying her motion for reconsideration, on January 23, 2015.

Thus, pursuant to the above-quoted provisions of the Section 3(a), Rule 8 of the RRCTA, she had fifteen (15) days from January 23, 2015, or until February 7, 2015, within which to file her Petition for Review, or a motion for extension of time to file the same. However, since the said last day for filing have fallen on a Saturday, petitioner had until the next working day, *i.e.*, on February 9, 2015, a Monday, within which to file the said pleading or motion.

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[3] Par. 3, Motion for Extension of Time To File Petition for Review, Docket, p. 2.
[4] Petition for Review (under Timeliness of the Petition), Docket, p. 6.

Records show, however, that petitioner filed the said Motion for Extension of Time to File Petition for Review only on February 13, 2015, or four (4) days beyond the prescribed period of fifteen (15) days.

Furthermore, it must be emphasized that in the same Motion, petitioner prays for an extension of fifteen (15) days from February 9, 2015, or until February 24, 2015, within which to file her Petition for Review.[5] However, the records likewise show that she only filed her Petition for Review on February 25, 2015, which is likewise beyond the period allowed by the RRCTA. Thus, even granting that the same Motion for Extension of Time to File Petition for Review was filed on time, the said Petition for Review is still belatedly filed.

Consequently, the assailed Decision and Resolution of the Court in Division in CTA Case No. 8324 has become final and executory, in view of petitioner's fatal mistake of failing to timely file both her Motion for Extension of Time to File Petition for Review, or her Petition for Review.

As held by the Supreme Court in the case of *Apex Mining Co., Inc. vs. Commissioner of Internal Revenue,*[6] the right to file an appeal granted to litigants is merely statutory and strict compliance thereof is not only mandatory, but also jurisdictional, to wit:

> "To stress, the **right to appeal is merely statutory and one who seeks to avail of it must comply with the statute or rules**. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, **the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory**. And, just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party has the correlative right to enjoy the finality of a decision in his favor." *(Emphasis supplied)*

Finally, the Court notes that the Petition for Review likewise suffers from another infirmity, which is petitioner's failure to comply with the requirements set forth under Section 5, Rule 43 of the 1997

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[5] Docket, pp. 2 and 6.
[6] G.R. No. 122472, October 20, 2005.

Rules of Civil Procedure, which is the submission of proof of service of a copy of the Petition for Review on the adverse party. Said Section 5 reads:

> "SEC. 5. *How appeal taken.* – Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, **with proof of service of a copy thereof on the adverse party** and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.
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> xxx xxx xxx."

Under Section 13, Rule 13[7] of the same Rules, if the service is made by registered mail, proof thereof shall consist of: 1) an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 of the 1997 Rules of Civil Procedure; and 2) the registry receipt issued by the mailing office.

A perusal of the subject Petition for Review, however, shows that while petitioner was able to append the registry receipt to her Petition, she failed to submit an Affidavit of Service to prove proper service of the subject Petition for Review to the adverse party, by registered mail.

The failure to comply with the foregoing requirement shall be a sufficient ground for dismissal under Section 7, Rule 43 of the 1997 Rules of Civil Procedure, to wit:

> "SEC. 7. *Effect of failure to comply with requirements.* – **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, the deposit for costs, **proof of service of the petition**, and the contents of and the documents which should accompany

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[7] "SEC. 13. *Proof of service.* – Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or **the affidavit of the party serving, containing a full statement of the date, place and manner of service.** If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. **If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office.** The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof of the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee." *(Emphases supplied)*

the petition **shall be sufficient ground for the dismissal thereof.**" *(Emphases supplied)*

**WHEREFORE**, premises considered, the Motion for Extension of Time is **DENIED**, for being filed out of time, and the Petition for Review is hereby **DISMISSED**, likewise for being filed out of time and for petitioner's failure to comply with the proof of service requirement under Section 5, Rule 43 of the 1997 Rules of Civil Procedure in relation to Section 4(b), Rule 8 of the RRCTA.

**SO ORDERED**.

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

J. C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**(On Wellness Leave)**
**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

Ma. Belen R. L.
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice