

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MONTALBAN METHANE POWER
CORPORATION,

Petitioner,

CTA EB NO. 2611

(CTA Case No. 10678)

-versus-

Present:

Del Rosario, P.J.,

Ringpis-Liban,

Manahan,

Bacorro-Villena,

Modesto-San Pedro,

Reyes-Fajardo,

Cui-David, *and*

Ferrer-Flores, JJ.


COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JUL 06 2023

x-----

 1:36 p.m.

DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* is a Petition for Review¹ seeking nullification of the Resolutions dated February 14, 2022² and April 4, 2022,³ both promulgated by the First Division of this Court (Court in Division) in CTA Case No. 10678 entitled “*Montalban Methane Power Corporation vs. Commissioner of Internal Revenue*” which expunged petitioner’s Petition for Review and denied for lack of merit the petitioner’s Motion for Reconsideration.

The dispositive portions of the assailed Resolutions read as follows:

Resolution dated February 14, 2022:



¹ Rollo, CTA EB No. 2611, pp. 1-18, with annexes.

² *Ibid.*, pp. 23-26.

³ *Ibid.* pp. 80-85.

“**WHEREFORE**, the Court resolves as follows:

1. **NOTE** petitioner’s *Manifestation with Motion for Additional Time to File Judicial Affidavit of Witness*, filed on December 3, 2021; and
2. **DENY** the *Motion for Additional Time to File Petition for Review and to Assign Docket Number*, filed on November 16, 2021.

Accordingly, the Petition for Review is hereby **EXPUNGED** from the records of this case.

SO ORDERED.”

Resolution dated April 4, 2022:

“**WHEREFORE**, in light of the foregoing considerations, the *Motion for Reconsideration (Re: Resolution dated 14 February 2022)* filed by petitioner on March 11, 2022 is **DENIED** for lack of merit.

SO ORDERED.”

THE PARTIES

Petitioner is a corporation organized and existing under Philippine laws, with office address at Unit 8A, Inoza Tower, 40th Street, Bonifacio Global City, 1634 Taguig City.⁴

Respondent is the Head of the Bureau of Internal Revenue (“BIR”), which is the government agency with the power and duty to assess and collect national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties and fines.⁵

THE FACTS

On October 19, 2021, petitioner received a copy of respondent’s Final Decision on Disputed Assessment (FDDA) dated June 30, 2021, finding

⁴ Petition for Review, p. 2.

⁵ Ibid.

petitioner liable for deficiency taxes (*i.e.* Income Tax, Value Added Tax, and Expanded Withholding Tax) in the amount of Php11,405,147.42.

On November 16, 2021, petitioner filed a “Motion for Additional Time to File Petition for Review and To Assign Docket Number,”⁶ stating that under Section 3.1.4 of Revenue Regulation (RR) No. 12-1999, as amended by RR No. 18-2013, the taxpayer may appeal the decision of the Commissioner of Internal Revenue (CIR) to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; that under Rule 7, Section 1 of the Revised Rules of the Court of Tax Appeals (RRCCTA), the procedure in the Court *En Banc* or in Divisions in original or appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in the said Rules; that drafts of the Petition for Review and Judicial Affidavits are being prepared by petitioner’s counsel, however, he needs more time to finalize and file the petition, in view of the further need to: a) review the allegations and arguments therein against relevant records, b) confer with petitioner’s representatives, c) reproduce and prepare the annexes, and d) comply with other formal requirements. Hence, petitioner prayed that it be given an additional period of fifteen (15) days from November 18 2021, or until December 3, 2021 to file the Petition for Review, together with the Judicial Affidavits of witnesses and that a case number be assigned to the case.

On December 3, 2021, the Court in Division received the Petition for Review.⁷ Petitioner prayed that the Court in Division reverse and set aside, for being contrary to law and evidence, the CIR’s FDDA dated June 30, 2021.

On December 20, 2021, petitioner filed a “Motion for Additional Time to File Judicial Affidavit of Witness.”⁸

In the first assailed Resolution⁹ dated February 14, 2022, the Court in Division denied the “Motion for Additional Time to File Petition for Review and To Assign Docket Number.” The Court in Division held that it has no jurisdiction over final and executory decisions of the CIR. The Petition for Review should have been filed within the thirty (30) day period from receipt of the FDDA instead of filing a motion for extension of time.

On March 11, 2022, petitioner filed a “Motion for Reconsideration (Re: Resolution dated 14 February 2022).”¹⁰

⁶ Docket, CTA Case No. 10678, pp. 7-10, with Annexes.

⁷ *Ibid.*, pp. 21-48, with Annexes.

⁸ *Ibid.*, pp. 219-220.

⁹ *Ibid.*, pp. 254-257.

¹⁰ *Ibid.*, pp. 258-265.

On March 16, 2022, the Court issued a Resolution¹¹ denying petitioner's "Motion for Additional Time to File Judicial Affidavit of Witness."

On April 4, 2022, the Court issued the second assailed Resolution¹² denying for lack of merit the "Motion for Reconsideration (Re: Resolution dated 14 February 2022)."

On April 8, 2022, petitioner filed a "Motion for Reconsideration (Re: *Resolution* dated 16 March 2022)"¹³ which the Court denied in the Resolution dated May 4, 2022.

Aggrieved, petitioner filed the present Petition for Review¹⁴ via registered mail on May 4, 2022.

In the Resolution¹⁵ dated June 20, 2022, the Court *En Banc* ordered respondent to file his Comment on the present Petition for Review within ten (10) days from notice.

On July 11, 2022, respondent filed his Comment.¹⁶

On August 9, 2022, the Court issued a Resolution¹⁷ noting respondent's Comment. In the same Resolution, the Court *En Banc* likewise deemed the present Petition for Review as submitted for decision.

THE ISSUE

The main issue in this case is "***Whether the Court in Division erred in denying the Motion for Additional Time to File Petition for Review and to Assign Docket Number, and in ordering the Petition for Review be expunged from the records of the case.***"

THE ARGUMENTS OF THE PARTIES

Petitioner asserts that the Court in Division erred in finding that it has no jurisdiction over the Petition for Review for being filed out of time; that Section 228 of the Tax Code should be read in conjunction with Section 11 of RA No. 1125 and Rule 7 Section 1 and Rule 8 Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA); that the right to appeal to the court a quo is not

¹¹ Ibid., pp. 267-268.

¹² Ibid., pp. 270-273.

¹³ Ibid., pp. 274-277.

¹⁴ Rollo, CTA EB No. 2611, pp. 1-18.

¹⁵ Ibid., pp. 403-404.

¹⁶ Ibid., pp. 405-413.

¹⁷ Ibid., pp. 415-416.

based solely on Section 228 of the Tax Code; that an extension to file a petition for review before the Court in Division is sanctioned under Rule 42 of the Rules of Court; that the filing of petitioner's Motion for Additional Time is within the original reglementary period and thereafter the filing of the petition a quo within the extended reglementary period does not render the FDDA final and executory as it was sanctioned by the rules; that the circumstances and the amount of the disputed assessment warrant the liberal construction of the rules and the application of equity jurisdiction; that petitioner had no intention to delay the proceedings when it filed its Motion for Additional Time, and respondent was never prejudiced by the filing thereof; and that it was necessary for petitioner to file its Motion for Additional Time because petitioner's counsel has to examine and prepare the pleadings and annexes to be filed.

On the other hand, respondent counter-argues that petitioner failed to timely file its petition for review; that based on Section 7 of RA No. 9282 and Section 228 of the NIRC of 1997, as implemented by RR No. 18-2013, the taxpayer has thirty (30) days from receipt of the FDDA, or after the lapse of one hundred eighty (180) days in case of inaction, within which to file a case before the Court, otherwise, respondent's Decision shall be final, executory and demandable; that since the assessments for taxable year 2018 were untimely appealed, the assessments became final, executory and demandable.

THE RULING OF THE COURT *EN BANC*

Petitioner maintains that the filing of the "Motion for Additional Time to File Petition for Review and to Assign Docket Number" is within the original reglementary period and the filing of the Petition for Review before the Court in Division is within the extended reglementary period. Thus, when it filed the Petition for Review before the Court in Division, the FDDA is not yet final and executory.

Records show that petitioner received a copy of respondent's FDDA on October 19, 2021. Within thirty (30) days from October 19, 2021 or until November 18, 2021, petitioner must appeal the Petition for Review before this Court, otherwise the assessment will become final, executory and demandable. On November 16, 2021, petitioner paid the appeal fee and filed the "Motion for Additional Time to File Petition for Review and to Assign Docket Number," praying for an additional period of fifteen (15) days from November 18, 2021, or until December 3, 2021, to file the petition. Then, on December 3, 2021, petitioner filed the Petition for Review before the Court in Division.

After consideration, the Court *En Banc* finds petitioner's averments without merit.

Petitioner assumed that the original period may be extended and that their Motion was granted by the Court.



A perusal of the pleadings filed and the assailed Resolutions of the Court shows that no such extension was granted by the Court in Division. The period to file the Petition for Review is not extendible because of the mandatory and jurisdictional nature of the 30-day period under Section 228 of the NIRC of 1997, as amended.

Section 228 of the NIRC of 1997 as amended provides:

“SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

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The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.”



Thus, the Court in Division's denial of the "Motion for Additional Time to File Petition for Review and to Assign Docket Number" is justified.

As correctly ruled by the Court in Division in the assailed Second Resolution:

"The jurisprudence cited by petitioner refers to appeals filed against a decision of the RTC which may be extended in accordance with the applicable provisions of the Rules of Court (also cited by petitioner). This Court finds however, that reliance on said cases is misplaced as the basis for the dismissal of the out-of-time filing of the Petition for Review is grounded on substantive law and not procedural law. The case on hand involves an appeal from a Final Decision on a Disputed Assessment (FDDA) that has a definite and distinct prescriptive period under the law. Section 228 of the National Internal Revenue Code, as amended, provides quite clearly that an appeal to the CTA must be made within thirty (30) days from receipt of said decision, and that failure to appeal within the said period renders the assessment final, executory and demandable. xxx

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The afore-quoted Section 228 is implemented by Revenue Regulations (RR) No. 12-99 as amended by RR No. 18-2013 issued on November 28, 2013. Relevant portions of Section 3.1.4 of RR No. 18-2013 are quoted hereinbelow as follows:

Section 3.1.4 *Disputed Assessment* –

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
If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: **(i) appeal to the Court of Tax Appeals (CTA within thirty (30) days from date of receipt of the said decision;** or **(ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. xxx**

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If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from



date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30) day period to appeal to the CTA.

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
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It is well settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause. We again quote for emphasis the ruling of the Supreme Court in the case of *Misnet, Inc., vs. CIR*, to wit:

'It bears to stress that the perfection of an appeal within the statutory period is a jurisdictional requirement and failure to do so renders the questioned decision or decree final and executory and no longer subject to review.' (*Emphasis supplied*)

The 30-day period under Section 11 of RA No. 1125, as amended, must not be confused with the 30-day period under Section 228 of the NIRC of 1997, as amended, because they are not exactly the same. Although they have similar number of days and reckoning point, *i.e.* from receipt of the adverse decision, they differ however in terms of the scope of application.

The 30-day period under Section 11 of RA No. 1125, as amended, applies to the following cases:

1. Appeals of decisions (or inaction) of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, as well as other matters arising under the 1997 NIRC or other laws administered by the Bureau of Internal Revenue.
 2. Appeals of decisions of Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs.
 3. Appeals of decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals.
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4. Appeals of the decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code.
5. Appeals of the decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Sections 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

On the other hand, the 30-day period under Section 228 of the NIRC of 1997, as amended solely applies to the filing of appeals before this Court in cases involving the denial of (or inaction on) protests on assessments by the CIR.

Based on the foregoing, Section 11 of RA No. 1125, as amended, must be deemed as the general law governing the time, mode, and manner of appeals before the Court of Tax Appeals (CTA). While Section 228 of the NIRC of 1997, as amended serves as a special law specifically prescribing the applicable reglementary period for filing appeals to the CTA of the CIR's adverse decisions exclusively in protests on assessments by the CIR. Hence, in so far as the period for filing appeals on protests on assessments before this Court is concerned, Section 228 of the NIRC of 1997, as amended and not Section 11 of RA No. 1125, as amended, shall apply.

Moreover, Rule 42 of the Rules of Court cannot be used as basis for extending the mandatory 30-day period set by Section 228 of the NIRC of 1997, as amended. A mere procedural rule such as Rule 42 of the Rules of Court cannot prevail over a substantive law such as Section 228 of the NIRC of 1997, as amended. In *Treyes vs. Larlar*,¹⁸ the Supreme Court *En Banc* states that:

“[R]ules of procedure must always yield to substantive law. The rules are not meant to subvert or override substantive law. On the contrary, procedural rules are meant to operationalize and effectuate substantive law.”

In *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*,¹⁹ the Supreme Court ruled the 30-day period to file an appeal of the adverse decision or inaction of the CIR is mandatory and jurisdictional, viz.:

“The CTA Second Division held:

¹⁸ G.R. No. 232579, September 8, 2020.

¹⁹ G.R. No. 168498, June 16, 2006.

Following the periods provided for in the aforementioned laws, from July 20, 2001, that is, the date of petitioner's filing of protest, it had until September 18, 2001 to submit relevant documents and from September 18, 2001, the Commissioner had until March 17, 2002 to issue his decision. As admitted by petitioner, the protest remained unacted by the Commissioner of Internal Revenue. Therefore, it had until April 16, 2002 within which to elevate the case to this court. Thus, when petitioner filed its Petition for Review on April 30, 2002, the same is outside the thirty (30) period.

As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment.

In *Ker & Company, Ltd. v. Court of Tax Appeals*, the Court held that **while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.**

In fine, the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment.” (*Emphasis supplied*)

The right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise.²⁰ Petitioner lost its right to appeal the CIR's decision on its protest on the assessment due to its own failure to observe the prescriptive period. Resort to a liberal application, or suspension of the application of procedural rules may not be simply be invoked to disregard the jurisdictional and mandatory period of appeal.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The assailed Resolutions dated February 14, 2022 and April 4, 2022 are **AFFIRMED**.

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²⁰ *Hedcor, Inc. Vs. Commissioner of Internal Revenue*, G.R. No. 207575, July 15, 2015.

SO ORDERED.



MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

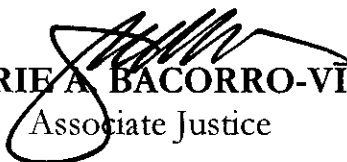


ROMAN G. DEL ROSARIO
Presiding Justice

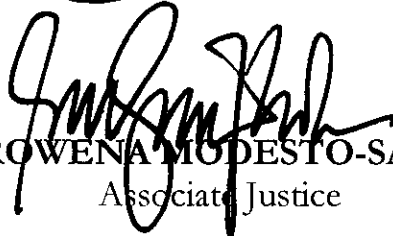


CATHERINE T. MANAHAN
Associate Justice

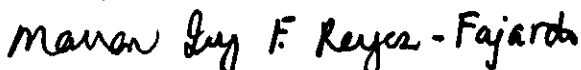
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JEAN MARIE A. BACORRO-VILLENA
Associate Justice



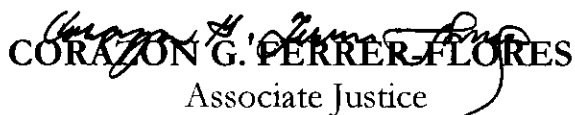
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice




LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO
Presiding Justice