

## FIRST DIVISION

[ G.R. No. 172458, December 14, 2011 ]

### PHILIPPINE NATIONAL BANK, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

#### DECISION

##### LEONARDO-DE CASTRO, J.:

This **Petition for Review on Certiorari**<sup>[1]</sup> seeks to reverse and set aside the January 27, 2006<sup>[2]</sup> and April 19, 2006<sup>[3]</sup> **Resolutions** of the **Court of Tax Appeals En Banc (CTA En Banc)** in **C.T.A. E.B. NO. 145**, which dismissed outright the Petition for Review filed by the Philippine National Bank (PNB) dated December 27, 2005 for being filed four days beyond the additional 15 days granted to file such petition.

On April 15, 1999, petitioner PNB filed with the Bureau of Internal Revenue (BIR) its Tentative Return for 1998 with the documents enumerated in the "List of Attachments to Annual Income Tax Return Calendar Year Ended December 31, 1998" enclosed. On September 30, 1999, PNB filed its Amended Income Tax Return for 1998, with the corresponding attachments to an amended annual income tax return appended, including copies of the Certificates and Schedule of Creditable Withholding Taxes for 1998. PNB likewise filed its Corporate Quarterly Returns for the calendar year 1998.<sup>[4]</sup>

On February 8, 2001, PNB filed with respondent Commissioner of Internal Revenue (CIR) an administrative claim for refund in the amount of ₱6,028,594.00, which were payments made in excess of its income tax liability for 1998.<sup>[5]</sup>

As BIR did not act upon PNB's claim for refund, PNB, on March 30, 2001, filed with the Second Division of the Court of Tax Appeals (CTA Division) a Petition for Review,<sup>[6]</sup> and prayed that it be refunded or issued a tax credit certificate in the amount of ₱6,028,594.00, representing creditable taxes withheld from PNB's income from the sale of real property, rental income, commissions, and management fees for the taxable year 1998.

In his Answer,<sup>[7]</sup> the CIR alleged that PNB's claim for refund/tax credit is subject first to an investigation and that it failed to establish its right to a refund.

After PNB had rested its case, the CIR manifested that he would not be presenting evidence. The parties were thereafter required to submit their memoranda.<sup>[8]</sup>

On May 19, 2003, the BIR issued in PNB's favor Tax Credit Certificate No. SN 023837 for ₱4,154,353.42, leaving a balance of ₱1,874,240.58 out of PNB's total claim of ₱6,028,594.00. PNB then informed the CTA Division of such tax credit

certificate, and manifested that its acceptance was without prejudice to recovering the balance of its total claim.<sup>[9]</sup>

Consequently, the CIR filed a Motion,<sup>[10]</sup> asking that he be allowed to present evidence on PNB's excluded claim. The CIR argued that the amount of ₱ 1,874,240.58 was disallowed because it was not remitted to the BIR, as verified by its Regional Accounting Division.<sup>[11]</sup>

On August 11, 2005, the CTA Division rendered its Decision,<sup>[12]</sup> the dispositive portion of which reads:

**WHEREFORE**, premises considered, the present Petition For Review is hereby partially **GRANTED**. Respondent is hereby ORDERED to REFUND or ISSUE a Tax Credit Certificate in favor of herein petitioner in the amount of **₱1,428,661.66**, representing the latter's unutilized creditable withholding tax for the year 1998.<sup>[13]</sup>

The CTA Division held that payments of withholding taxes for a certain taxable year were creditable to the payee's income tax liability as determined after it had filed its income tax returns the following year. The CTA Division said that since PNB posted net losses, it was not liable for any income tax and consequently, the taxes withheld during the course of the taxable year, which was 1998, while collected legally under Revenue Regulations No. 02-98, Section 2.57 (B), became untenable and took on the nature of erroneously collected taxes at the end of that year. The CTA Division averred that while the right to a refund is not automatic and must be established by sufficient evidence, there is nothing in the Tax Code that would suggest that the actual remittance of the withholding tax is a condition precedent to claim for a tax refund. Moreover, the CTA Division added, that the CIR failed to present the certification to prove his contention of PNB's non-remittance of the disallowed amount. However, the CTA Division affirmed the disallowance of eight transactions, amounting to ₱445,578.92 as they had already been reported as income for other years, had not been recorded, or were not supported by pertinent documents.<sup>[14]</sup>

On September 14, 2005, PNB filed a Motion for Partial Reconsideration,<sup>[15]</sup> asserting its entitlement to be refunded the amount of ₱445,578.92, by explaining each transaction involved and pinpointed by the CTA Division. This however was still denied by the CTA Division in its Resolution<sup>[16]</sup> dated November 15, 2005, for lack of merit.

Aggrieved, PNB, filed a partial appeal by way of Petition for Review<sup>[17]</sup> under Section 18 of Republic Act No. 9282<sup>[18]</sup> before the CTA *En Banc*, to review and modify the CTA Division's August 11, 2005 Decision. This petition was received by the CTA *En Banc* on December 27, 2005, four days beyond the additional 15 days granted to PNB to file its petition.

Thus, on January 27, 2006, the CTA *En Banc* issued a Resolution<sup>[19]</sup> denying due course and consequently dismissing PNB's petition for the following reasons:

1) The Petition For Review was filed four (4) days late on December 27, 2005, the reglementary deadline for the timely filing of such petition being December 23, 2005.

Appeal is a statutory privilege and must be exercised in the manner provided by law. Therefore, 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 (*Cabellan vs. Court of Appeals*, 304 SCRA 119). Not only that, late appeals deprives the appellate court of jurisdiction to alter the final judgment much less entertain the appeal (*Pedrosa vs. Hill*, 257 SCRA 373).

2) The petition is not accompanied by the duplicate original or certified true copies of the assailed Decision dated August 11, 2005 and Resolution dated November 15, 2005, in violation of *Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals*, in relation to *Section 6, Rule 43 of the Rules of Court*.

3) The Petition does not contain an Affidavit of Service, in violation of *Section 13, Rule 13 of the Rules of Court*.

In the case of *Policarpio vs. Court of Appeals*, 269 SCRA 344, 351, the Supreme Court did not hesitate to dismiss the petition for failure to attach an affidavit of service.

Lastly, *Section 7 of Rule 43 of the Rules of Court* provides that:

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 the petition shall be sufficient ground for the dismissal thereof."

Persistent in its claim, PNB filed a Motion for Reconsideration with Manifestation of Compliance<sup>[20]</sup> on February 23, 2006, and answered each ground propounded by the CTA *En Banc* in its Resolution.

PNB asserted that its petition was filed on December 23, 2005, which was the last day of the additional 15-day period granted by the CTA *En Banc*, via LBC Express, as shown by the copy of LBC Official Receipt No. 12990350<sup>[21]</sup> dated December 23, 2005. PNB explained that its counsel, Atty. Florida P. Zaballa-Banzuela, accompanied by her administrative assistant, tried to personally file the petition with the CTA *En Banc* on December 23, 2005. However, PNB claimed, that due to heavy traffic, Atty. Zaballa-Banzuela arrived at the CTA office in Quezon City at 4:30 p.m., just as the CTA personnel were leaving the CTA premises in their shuttle bus.<sup>[22]</sup>

PNB attached to its Motion the Affidavit<sup>[23]</sup> of Christopher Sarmiento, the Security Guard who was then assigned at the CTA main gate. Sarmiento averred that he did

not allow Atty. Zaballa-Banzuela to enter the CTA compound because there was no one left to receive her document. He also alleged that Atty. Zaballa-Banzuela even tried to ask some of the CTA personnel who were on board the CTA shuttle that passed her by, if they could receive her document, but they declined. This was corroborated by Atty. Zaballa-Banzuela's administrative assistant, Macrina J. Cataniag, in her Affidavit,<sup>[24]</sup> also annexed to PNB's Motion.

PNB argued that while its petition was deposited with LBC Express on December 23, 2005, very well within the reglementary period, CTA *En Banc* received it only on December 27, 2005, as December 24 to 26, 2005 were holidays.<sup>[25]</sup>

Addressing the second ground that the CTA *En Banc* used to dismiss the petition, PNB said that its non-submission of the duplicate original or certified true copy of the CTA Division's decision and resolution was not intended for delay but was "mere inadvertence and unintentional, but an honest mistake, an oversight, an unintentional omission, and a human error occasioned by too much pressure of work."<sup>[26]</sup>

In compliance, PNB attached to its Motion the Affidavit of Service<sup>[27]</sup> and certified true copies of the CTA Division's decision and resolution supposed to be attached to its petition before the CTA *En Banc*.

On April 19, 2006, the CTA *En Banc* denied PNB's motion for lack of merit. The CTA *En Banc* held that "absent any cogent explanation [to not] comply with the rules, the rules must apply to the petitioner as they do to all."<sup>[28]</sup> The CTA *En Banc* ratiocinated in this wise:

It is a jurisprudential rule that the date [of] delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading (*Benguet Electric Corporation, Inc. vs. NLRC, 209 SCRA 60-61*). Clearly, the present Petition For Review was filed four (4) days late.

The instant Petition For Review is an appeal from the decision of the Court in Division. Accordingly, the applicable rule is that the fifteen-day reglementary period to perfect an appeal is mandatory and jurisdictional in nature; that failure to file an appeal within the reglementary period renders the assailed decision final and executory and no longer subject to review (*Armigos vs. Court of Appeals, 179 SCRA 1; Jocson vs. Baguio, 179 SCRA 550*). Petitioner had thus lost its right to appeal from the decision of this Court in Division.<sup>[29]</sup>

The CTA *En Banc* added:

Although petitioner subsequently attached to its present motion, certified true copies of the assailed Decision, dated August 11, 2005, and

Resolution, dated November 15, 2005, and the Affidavit of Service, this did not stop the questioned decision from becoming final and executory. It has been held that strict compliance with procedural requirements in taking an appeal cannot be substituted by "good faith compliance". To rule otherwise would defeat the very purpose of the rules of procedure, i.e., to "facilitate the orderly administration of justice" (*Santos vs. Court of Appeals, 198 SCRA 806, 810; Ortiz vs. Court of Appeals, 299 SCRA 712*).<sup>[30]</sup>

PNB thereafter filed a Petition for Review<sup>[31]</sup> before this Court on June 16, 2006, which was the last day of the additional thirty days it was granted<sup>[32]</sup> to file such petition.

In order to convince this Court to allow its petition, PNB posits the following arguments:

#### I

THE HONORABLE COURT OF TAX APPEALS EN BANC ERRED IN FAILING TO CONSIDER THE EXPLANATION SUBMITTED BY PNB IN ITS MOTION FOR RECONSIDERATION WITH MANIFESTATION OF COMPLIANCE WITH RESPECT TO THE FILING OF THE PETITION ON DECEMBER 23, 2005 (THE DUE DATE FOR FILING THEREOF) VIA LBC SERVICE INSTEAD OF REGISTERED MAIL WITH RETURN CARD.

#### II

THE PROCEDURAL LAPSE OBSERVED BY THE HONORABLE COURT OF TAX APPEALS SHOULD BE LIBERALLY CONSTRUED IN THE INTEREST OF SUBSTANTIAL JUSTICE, AS POSTULATED IN VARIOUS SUPREME COURT DECISIONS.

#### III

THE PETITION FILED BY PNB BEFORE THE CTA EN BANC RAISES A MERITORIOUS LEGAL DEFENSE WARRANTING JUDICIAL RESOLUTION.  
<sup>[33]</sup>

PNB once again narrated the circumstances leading to its counsel's decision to mail its petition for review via LBC Express, a private letter-forwarding company, instead of registered mail. It claims that since this Court has repeatedly pronounced the primacy of substantive justice over technical rules, then its procedural lapses should likewise be excused, especially since no substantial rights of the CIR are affected.

#### ***This Court's Ruling***

The only issue to be resolved here is whether or not this Court should require the CTA *En Banc* to give due course to C.T.A. E.B. No. 145 despite PNB's failure to comply with the formal requirements of the Revised Rules of the Court of Tax