

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

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

**CTA EB No. 1127
(CTA Case No. 8677)**

Present:

- versus -

**DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.**

**PHILIPPINE AIRLINES, INC.,
Respondent.**

Promulgated:

APR 07 2015

 1:08 p.m.

X ----- X

DECISION

UY, J.:

This Petition for Review¹ filed on March 17, 2014 seeks to reverse and set aside the Resolutions dated December 19, 2013² and February 12, 2014,³ both promulgated by the former Second Division of this Court in CTA Case No. 8677, entitled, "*Philippine Airlines, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent,*" the dispositive portions of which respectively read:

¹ Docket, pp. 6 to 15.

² Resolution of the former Second Division of the Court of Tax Appeals rendered by Associate Justice Juanito C. Castañeda, Jr., Associate Justice Caesar A. Casanova, and Associate Justice Amelia R. Cotangco-Manalastas, Docket, pp. 16 to 30.

³ Resolution of the former Second Division of the CTA rendered by Associate Justice Juanito C. Castañeda, Jr., Associate Justice Caesar A. Casanova, and Associate Justice Amelia R. Cotangco-Manalastas, Docket, pp. 31 to 35.

Resolution dated December 19, 2013:

“In fine, in view of the absence of genuine issue of fact which calls for the presentation of evidence and the fact that the movant is entitled to a judgment as a matter of law, petitioner’s Motion for Summary Judgment is hereby **GRANTED**.

xxx xxx xxx

Considering that petitioner has shown compliance with the requirements of the law for the revival of judgment, the Petition for Revival is hereby **GRANTED**. Accordingly, the Supreme Court’s judgment in G.R. No. 160528, entitled, “*Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*,” is hereby **REVIVED**.

SO ORDERED.”

Resolution dated February 12, 2014:

“**WHEREFORE**, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.”

THE PARTIES

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of her office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Philippine Airlines, Inc. (PAL) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with registered address at PNB Financial Center, President Diosdado P. Macapagal Avenue, CCP Complex 1307, Pasay City.

THE FACTS

The instant case is an appeal from a Decision of the Court in Division with respect to the Petition for Revival of Judgment filed by 

Philippine Airlines, Inc., petitioner, against the Commissioner of Internal Revenue, respondent, in CTA Case No. 8677.

The Judgment sought to be revived pertains to the claim for refund of Philippine Airlines, Inc. in CTA Case No. 5824, the factual antecedents of which are as follows:

CTA Case No. 5824

On June 13, 2001, the former Court of Tax Appeals ⁴ rendered a Decision⁵ in the case of "*Philippine Airlines, Inc. (PAL), petitioner, vs. Commissioner of Internal Revenue, respondent,*" docketed as **CTA Case No. 5824**, denying PAL's claim for refund in the amount of Php731,190.45 representing allegedly erroneously withheld and/or collected 20% final withholding tax on interest income from bank deposits for the period from January 1997 to November 1997. Likewise, PAL's Motion for Reconsideration of the said Decision, was denied for lack of merit in the Resolution⁶ dated November 13, 2001.

On appeal, a Decision dated September 30, 2003 was rendered by the Sixth Division of the Court of Appeals in "*Philippine Airlines, Inc., petitioner, vs. Honorable Court of Tax Appeals and the Commissioner of Internal Revenue, respondents,*" docketed as **CA-G.R. SP No. 67970**, reversing the Decision dated June 13, 2001 and Resolution dated November 13, 2001 of the Court of Tax Appeals. The dispositive portion of the said Decision reads:

"WHEREFORE, the petition is GRANTED, and respondent Commissioner of Internal Revenue is hereby directed to refund to the petitioner the amount of Php731,190.45 representing the 20% final withholding tax collected and deducted by depository banks on the petitioner's interest income or, in the alternative, to allow the petitioner a tax credit for the same amount.

SO ORDERED."

The CIR elevated the case to the Supreme Court via a Petition 

⁴ During the pendency of CTA Case No. 5824, R.A. No. 1125 was still the law in effect, and at that time, the Court of Tax Appeals (CTA) had only three (3) Judges which, at present, is equivalent to one (1) Division. The decisions of the Court of Tax Appeals were appealable to the Court of Appeals, following the procedure stated in Rule 43 of the 1997 Rules of Civil Procedure.

⁵Division Docket, (CTA Case No. 8677), pp. 18 to 25; Ponencia of then Presiding Judge Ernesto D. Acosta, and concurred by Associate Judge Amancio Q. Saga.

⁶Division Docket, (CTA Case No. 8677), p. 27; Resolution issued by Presiding Judge Ernesto D. Acosta, and Associate Judges Juanito C. Castañeda, Jr. and Amancio Q. Saga.

for Review in "*Commissioner of Internal Revenue, petitioner, vs. Philippine Airlines, Inc., respondent,*" docketed as **G.R. No. 160528**, which was denied in the Decision dated October 9, 2006.⁷

On November 22, 2006, an Entry of Judgment⁸ was made by the Supreme Court with respect to the Decision dated October 9, 2006 and declared the same to have become final and executory.

CTA Case No. 8677

On July 26, 2013, with the intent to enforce judgment in the above-stated case (*Commissioner of Internal Revenue, petitioner, vs. Philippine Airlines, Inc., respondent*, G.R. No. 160528, October 9, 2006), PAL filed a "Petition for Revival of Judgment"⁹ entitled "*Philippine Airlines, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent,*" docketed as CTA Case No. 8677. The CIR filed her "Answer"¹⁰ on September 20, 2013 in said case.

On October 18, 2013, PAL filed a "Motion for Summary Judgment"¹¹, and in support thereof, argued that the case is in relation to the judgment rendered in the case of "*Philippine Airlines, Inc., vs. Commissioner of Internal Revenue* (C.T.A. Case No. 5824; CA-G.R. SP No. 67970; G.R. No. 160528), wherein it was granted a refund in the amount of Php731,190.45, and that the said judgment attained finality pursuant to the Entry of Judgment dated November 22, 2006.

According to PAL, a summary judgment was justified considering that the paragraphs (paragraphs 3, 4, 5, 6, 7 and 8 of PAL's Petition for Revival of Judgment) which were specifically denied by the Commissioner in her Answer (in CTA Case No. 8677) refer to the issuance of the Decisions and Resolutions of the Court of Tax Appeals, Court of Appeals and Supreme Court, which constitute official acts of the judicial department. As such, they are allegedly matters of judicial notice, which need not be proved.

In her "Comment (Re: petitioner's Motion for Summary Judgment)"¹² filed on November 12, 2013 in CTA Case No. 8677, the CIR counter-argued that PAL glossed over the rule that courts are not authorized to take judicial notice of the contents of the records of

⁷Division Docket, (CTA Case No. 8677), pp. 40 to 57.

⁸Division Docket, (CTA Case No. 8677), p. 58.

⁹Division Docket, (CTA Case No. 8677), pp. 6 to 13.

¹⁰Division Docket, (CTA Case No. 8677), pp. 66 to 73.

¹¹Division Docket, (CTA Case No. 8677), pp. 124 to 129.

¹²Division Docket, (CTA Case No. 8677), pp. 152 to 156.

other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been heard or are actually pending before the same judge.

The CIR further contended that she specifically denied the material allegations of the petition and that the facts and documents mentioned in the instant Motion and Petition cannot be considered as records of public knowledge capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. Allegedly, it is incumbent upon PAL to prove its compliance with the requirements provided in Section 7 of the Revised Rules of the Court of Tax Appeals (RRCTA) relative to the execution of judgments.

Thereafter, PAL filed its "Reply"¹³ on November 25, 2013, stating that the rule against taking judicial notice of the records of another case is not applicable to the instant case, considering that the prohibition pertains to pieces of evidence which have been previously offered in another case and not to the decision itself.

PAL further asserted that in this case, the documents which are subject of the Petition for Revival are not pieces of evidence offered and admitted in another case. Instead, the documents referred to, are Decisions and Resolutions issued by the courts and they constitute the final determination of the courts in that particular case, and not evidence presented in a previous case. Thus, the factual allegations in the Petition for Revival are matters of judicial notice and there is no genuine issue as to any material fact in the petition.

Consequently, on December 19, 2013, a Resolution dated December 19, 2013¹⁴ was rendered by the Second Division of this Court in CTA Case No. 8677, granting the said "Motion for Summary Judgment" and "Petition for Revival of Judgment." Accordingly, the Supreme Court's judgment in G.R. No. 160528, entitled, "*Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*," was revived.

On January 7, 2014, the CIR filed a "Motion for Reconsideration,"¹⁵ with PAL's "Comment"¹⁶ filed on January 28, 2014. In a Resolution¹⁷ dated February 12, 2014, the Motion for

¹³Division Docket, (CTA Case No. 8677), pp. 157 to 162.

¹⁴Division Docket, (CTA Case No. 8677), pp. 164 to 178.

¹⁵Division Docket, (CTA Case No. 8677), pp. 179 to 184.

¹⁶Division Docket, (CTA Case No. 8677), pp. 187 to 191.

¹⁷Division Docket, (CTA Case No. 8677), pp. 193 to 197.

Reconsideration was denied for lack of merit.

CTA EB NO. 1127

On February 26, 2014, petitioner filed before the Court *En Banc*, a "Motion for Extension of Time (to File Petition for Review)"¹⁸. The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from February 28, 2014, or until March 15, 2014, within which to file her Petition for Review.¹⁹

Petitioner filed the instant "Petition for Review"²⁰ on March 17, 2014, praying to set aside of the Resolutions dated December 19, 2013 and February 12, 2014.

Without necessarily giving due course to the Petition for Review, the respondent was directed by the Court *En Banc* to file its Comment thereon.²¹ Respondent, for its part, filed its "Comment"²² on May 14, 2014. Considering the issues raised by both parties in their respective pleadings, the Court *En Banc* resolved to give due course to the Petition for Review, and required the parties to submit their respective Memoranda.²³

Pursuant thereto, respondent PAL filed its "Memorandum"²⁴ on July 3, 2014, while petitioner manifested that she is adopting the arguments raised in her Petition for Review as her Memorandum.²⁵ Thereafter, petitioner's "Manifestation" was noted,²⁶ and the case was submitted for decision on September 10, 2014.²⁷

Hence, this Decision.

THE ISSUE

Petitioner raises the sole issue for resolution, to wit:

"WHETHER OR NOT THE REVIVAL OF
JUDGMENT IN 'COMMISSIONER OF INTERNAL



¹⁸Docket, pp. 1 to 4.

¹⁹Docket, p. 5.

²⁰Docket, pp. 6 to 15.

²¹Docket, pp. 40 to 41.

²²Docket, pp. 42 to 47.

²³Docket, pp. 49 to 50.

²⁴Docket, pp. 51 to 58.

²⁵Docket, pp. 59 to 61.

²⁶Docket, p. 62.

²⁷Docket, pp. 64 to 65.

REVENUE VERSUS PHILIPPINE AIRLINES, INC.' IN
G.R. NO. 160528, IS PROPER."

Petitioner's Arguments

Petitioner contends that when a judgment is rendered in favor to a taxpayer, the latter must assert that right to the judgment within a reasonable period of time. The failure or neglect for unreasonable and unexplained length of time to execute the judgment must necessarily give rise to a presumption that the taxpayer has either abandoned or declined to assert it. In this particular case, laches has set in.

Petitioner likewise argues that Section 6, Rule 39 of the Rules of Court, in relation to Article 1144 of the Civil Code, is not applicable to the case at bar.

Executions of judgment in tax cases do not involve enforcement by independent action after the lapse of the period to execute the same. What is explicitly provided under "*Section 7 of Republic Act No. 9282 of the RRCTA*"²⁸ is execution of judgment within the five (5) year period.

Since an independent action to enforce judgment was not specifically incorporated in the RRCTA, it is safe to allegedly theorize that it was intentionally left out to limit the period within which to enforce a judgment against the government.

Thus, considering that the Petition for Revival of Judgment was filed six (6) years from the date of Entry of Judgment on November 22, 2006, the judgment award is already deemed a stale claim and an independent action to revive the same is not warranted under the RRCTA.

Respondent's Counter-arguments

Respondent PAL asserts that contrary to the CIR's assertion, Section 7, Rule 14 of the Revised Rules of the Court of Tax Appeals makes no mention of limiting the period for execution of judgment to a mere five years. Instead, as laid down in Section 3, Rule 1 of the Revised Rules of the CTA, the Rules of Court shall apply suppletorily to the rules of the CTA. Hence, pursuant to Section 6, Rule 39 of the

²⁸Petitioner cites "Section 7 of Republic Act No. 9282, the Revised Rules of the Court of Tax Appeals," but actually refers to **Rule 14, Section 7 of the Revised Rules of the Court of Tax Appeals**, which is entirely different from Republic Act No. 9282.

Rules of Court, after the lapse of five years from the date of its entry, a judgment may be enforced by action before it is barred by the statute of limitations.

THE COURT EN BANC'S RULING

The instant Petition for Review lacks merit.

While the Court in Division has exhaustively discussed the points raised by petitioner, We find it prudent to address the same in order to reinforce the ruling of this Court.

The provisions of the 1997 Revised Rules of Civil Procedure, as amended, apply suppletorily to the Revised Rules of the Court of Tax Appeals.

The pertinent provision with regard to the execution of judgments of this Court can be found in Section 7, Rule 14 of the RRCTA, which provides:

“SEC. 7. Execution of judgment. – Upon the expiration of the period to appeal from a judgment or order that disposes of the action or proceeding and no appeal has been duly perfected, execution shall issue as a matter of right, on motion.

If an appeal has been duly perfected and finally resolved, execution may be forthwith applied for in the court of origin, on motion of the judgment obligee, submitting therewith a certified true copy of the judgment or final order sought to be enforced and of its entry, with notice to the adverse party.”

Considering that the foregoing provision is silent as to when the motion for execution of the judgment should be filed, We resort to the provisions of the 1997 Rules of Civil Procedure, as amended, which is specifically allowed under Section 3, Rule 1 of the RRCTA, to wit:

“SEC. 3. Applicability of the Rules of Court. – The Rules of Court in the Philippines shall apply suppletorily to these Rules.”

Clearly from the foregoing provision, in cases where there is a procedural gap in the RRCTA such as that prevailing in the instant

case, the Rules of Court shall apply suppletorily to enable the winning party to enforce its rights arising from a favorable decision within the allowable period granted by law.

Section 6, Rule 39 of the Revised Rules of Civil Procedure, as amended is applied suppletorily in the instant case.

Section 6 of Rule 39 of the 1997 Rules of Civil Procedure, as amended, provides as follows:

“SEC. 6. *Execution by motion or by independent action.* – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.”

Based on the foregoing legal provision, once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, by mere motion within five (5) years from date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five (5) years, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court within ten years from the time the judgment becomes final.²⁹

With regard to the execution of a judgment through an independent action, Sec. 6, Rule 39 of the Rules of Court states that an action to revive judgment only requires proof of a final judgment which has not prescribed and has remained unexecuted after the lapse of five (5) years but not more than ten (10) years from its finality.³⁰ After all, an action to revive judgment is not meant to retry the case all over again. Its cause of action is the judgment itself and not the merits of the original action.³¹

In the case at bench, respondent was able to provide certified true copies of the following documents to support its Petition, to wit: 

²⁹*Villeza vs. German Management and Services, Inc., et al.*, G.R. No. 182937, August 8, 2010.

³⁰*Enriquez, et al. vs. Court of Appeals*, G.R. No. 137391, December 14, 2001.

³¹*Laperal vs. Ocampo*, G.R. No. 140652, September 3, 2003.

- (1) Decision³² dated June 13, 2001 in CTA Case No. 5824;
- (2) Resolution³³ dated November 13, 2001 in CTA Case No. 5824;
- (3) Decision³⁴ dated September 30, 2003 in CA-G.R. SP No. 67970;
- (4) Decision³⁵ dated October 9, 2006 in G.R. No. 160528; and
- (5) Entry of Judgment³⁶ dated November 22, 2006.

The foregoing submissions sufficiently provided the necessary evidence to prove compliance with legal requirements in an action to revive judgment. Therefore, PAL is entitled to the relief prayed for in CTA Case No. 8677, which is the revival of the favorable judgment rendered by the Supreme Court in G.R. No. 160528 in relation to CTA Case No. 5824.

Laches did not set in because respondent PAL filed its Petition for Revival of Judgment within the period provided by law.

Laches is the failure or negligence to assert a right within a reasonable time, giving rise to a presumption that a party has abandoned it or declined to assert it. It is not a mere question of lapse or passage of time but is principally a question of the inequity or unfairness of permitting a right or claim to be asserted.³⁷

Moreover, the doctrine of laches is based upon grounds of public policy and equity. It is invoked to discourage stale claims but is entirely addressed to the sound discretion of the court. Since it is an equitable doctrine, its application is likewise controlled by reasonable considerations. Thus, the better rule is that courts, under the principle of equity, should not be bound by the doctrine of laches if wrong or injustice will result.³⁸

In this case, less than seven (7) years has lapsed between the time that the "Entry of Judgment"³⁹ was made on November 22, 2006,

³²Division Docket, (CTA Case No. 8677), pp. 18 to 25.

³³Division Docket, (CTA Case No. 8677), p. 27.

³⁴Division Docket, (CTA Case No. 8677), pp. 30 to 38.

³⁵Division Docket, (CTA Case No. 8677), pp. 40 to 57.

³⁶Division Docket, (CTA Case No. 8677), p. 58.

³⁷*Republic of the Philippines vs. Unimex Micro-Electronics GmBH*, G.R. Nos. 166309-10, March 9, 2007.

³⁸*Republic of the Philippines vs. Unimex Micro-Electronics GmBH*, *supra*.

³⁹Division Docket, (CTA Case No. 8677), p. 58.

to July 26, 2013, when PAL filed its "Petition for Revival of Judgment"⁴⁰ before this Court. Hence, laches cannot be said to have set in, as respondent was able to exercise its right to execute the judgment by way of an independent action, within the prescriptive period set by law.

WHEREFORE, in light of the foregoing consideration, the instant Petition for Review is hereby **DENIED** for lack of merit. The Resolutions dated December 19, 2013 and February 12, 2014, issued by the Second Division of this Court in CTA Case No. 8677 are hereby **AFFIRMED**.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

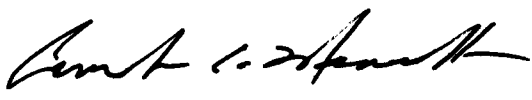

JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

⁴⁰Division Docket, (CTA Case No. 8677), pp. 6 to 13.

C E R T I F I C A T I O N

Pursuant to Section 13, 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 *En Banc*.



ROMAN G. DEL ROSARIO
Presiding Justice