

EN BANC

Present:

DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Respondent. Promulgated:

JUL 12 2019

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Records show that on June 4, 2019, petitioner filed its Petition for Review seeking the reversal and setting aside of the Resolutions dated April 1, 2019 and May 7, 2019, both promulgated by the Second Division of this Court (hereinafter referred to as the Court in Division"), in CTA Criminal Case No. O-699, entitled "*People of the Philippines, Plaintiff, versus Ulysses Palconet Consebido, Accused*".

In assailing the said Resolutions 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, 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.

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 9(b), Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provide as follows, to wit:

"RULE 9
PROCEDURE IN CRIMINAL CASES

XXX XXX XXX

SEC. 9. *Appeal; period to appeal.* –

XXX XXX XXX

(b) An appeal to the Court En Banc in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court **within fifteen days from receipt of a copy of the decision or resolution appealed from.** The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days.

XXX XXX XXX" (Emphasis 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 a 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 party litigant must likewise comply with the requirements set forth in Rule 43 of the 1997 Rules of Civil Procedure.

In the Petition for Review, petitioner's counsel, Assistant Prosecutor Christine T. Perolino states that she received a copy of the assailed Resolution dated May 7, 2019 issued by the Court in Division, denying petitioner's motion for reconsideration, on May 21, 2019. Assistant Prosecutor Perolino attached a copy of the Notice of Resolution for Resolution dated May 7, 2019¹ with stamps indicating that the Department of Justice OSJ Prosecution Staff NPS Docket Section received the assailed Resolution dated May 7, 2019 on May

¹ Annex C of the Petition for Review.

17, 2019, and that she received the same on May 21, 2019. Thus, pursuant to the above-quoted provisions, petitioner alleges that its Petition for Review was timely filed on June 4, 2019, considering it had fifteen (15) days from May 21, 2019, or until June 6, 2019, within which to file its Petition for Review, since June 5, 2019, the last day for filing fell on a holiday.

Records of the Court, however, show that the Department of Justice received a copy of the assailed Resolution dated May 7, 2019 on May 17, 2019. Receipt by the Department of Justice constitutes complete service of the Resolution upon the plaintiff.

Under the Rules of Court, service of resolutions should be made either personally or by registered mail.² **Personal service is “made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof”.**³ While petitioner's counsel personally received the assailed Resolution on May 21, 2019, the same is of no moment, considering that her office, the Department of Justice OSJ Prosecution Staff NPS Docket Section, received the assailed Resolution on May 17, 2019.

Petitioner had only until June 3, 2019 (since June 1, 2019 was a Saturday) within which to file its Petition for Review. Sorely, the Petition for Review was filed only on June 4, 2019, or one (1) day late.

Consequently, the assailed Resolutions of the Court in Division have become final and executory, in view of petitioner's failure to timely file its Petition for Review.

As held by the Supreme Court in the case of *Apex Mining Co., Inc. vs. Commissioner of Internal Revenue*,⁴ 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.

² Sec.5, Rule 13, Revised Rules of Court

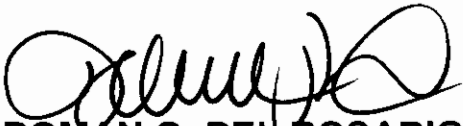
³ Sec. 6, Rule 13, Revised Rules of Court

⁴ G.R. No. 122472, October 20, 2005.

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*)

WHEREFORE, the Petition for Review filed on June 4, 2019 is hereby **DISMISSED** for having been filed out of time.

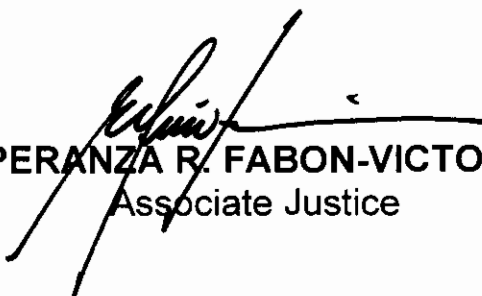
SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)

JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice