



Republic of the Philippines
 Supreme Court
 Baguio City

SECOND DIVISION

**BUREAU OF INTERNAL
 REVENUE, represented by the
 COMMISSIONER OF INTERNAL
 REVENUE,**

G.R. No. 195320

Present:

Petitioner,

**CARPIO, Acting Chief Justice,*
 Chairperson,**

**PERALTA,
 PERLAS-BERNABE,
 CAGUIOA, and
 REYES, JR., JJ.**

- versus -

**HON. ERNESTO D. ACOSTA, ET
 AL. OF THE SPECIAL FIRST
 DIVISION OF THE COURT OF
 TAX APPEALS and CHEVRON
 PHILIPPINES, INC. (formerly
 Caltex Philippines, Inc.),**

Promulgated:

Respondents.

23 APR 2018

Handwritten signature: H.M. Cabalag

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DECISION

REYES, JR., J.:

Before this Court is a Petition for *Certiorari*¹ under Rule 65 of the Rules of Court assailing the Resolutions dated September 24, 2010² and December 3, 2010³ promulgated by the Court of Tax Appeals-Special First Division (CTA-Special First Division), which considered the motion for reconsideration filed by the Bureau of Internal Revenue (BIR) as a mere scrap of paper and deemed the CTA-Special First Division's Decision⁴ dated July 12, 2010 as final and executory.

* Designated as Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

¹ *Rollo*, pp. 2-47.

² Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Lovell R. Bautista and Caesar A. Casanova, concurring; *id.* at 102-104.

³ *Id.* at 105-108.

⁴ *Id.* at 115-127.

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The Antecedent Facts

On October 7, 2004, Chevron Philippines, Inc. (Chevron) filed an administrative claim for refund or credit with the BIR under Claim No. 2004-XP-11/03. The claim in the aggregate amount of ₱131,175,480.18 represented alleged overpayment of excise taxes on imported finished unleaded premium gasoline and diesel fuel withdrawn from its refinery in San Pascual, Batangas for the month of November 2003.⁵

The BIR, however, did not act on Chevron's claim. Thus, on the basis of Section 7 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282,⁶ Chevron elevated the case to the CTA-Special First Division on October 28, 2005 via a petition for review.⁷

On July 12, 2010, the CTA-Special First Division rendered its Decision⁸ partly granting the petition. The dispositive portion of the decision reads:

WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to refund to petitioner the reduced amount of ONE HUNDRED EIGHT MILLION FIVE HUNDRED EIGHTY-FIVE THOUSAND ONE HUNDRED SIXTY-TWO PESOS and 95/100 (P108,585,162.95).

SO ORDERED.⁹

The BIR moved for the reconsideration of this Decision on August 3, 2010.¹⁰

On August 17, 2010, Chevron filed its Comment/Opposition¹¹ to the Motion for Reconsideration. Chevron asserted that the BIR's motion for reconsideration was a *pro forma* motion because the BIR failed to set the motion for hearing pursuant to Sections 3 and 6 of Rule 15 of the Revised Rules of the CTA.¹² Chevron further maintained that non-compliance with the notice of hearing requirement was a fatal defect that rendered its motion a mere scrap of paper. As such, it is not entitled to judicial cognizance and

⁵ Id. at 28.

⁶ Section 7 A(2) of R.A. No. 9282.

Jurisdiction. - *The CTA shall exercise exclusive appellate jurisdiction to review by appeal: x x x Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial.*

⁷ Rollo, p. 28.

⁸ Id. at 27-40.

⁹ Id. at 39.

¹⁰ Id. at 6.

¹¹ Id. at 63-73.

¹² Id. at 63.

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the filing of such defective motion did not toll the reglementary period to appeal.

The CTA-Special First Division, in the assailed Resolution¹³ dated September 24, 2010, agreed with Chevron and denied the BIR's motion for reconsideration:

WHEREFORE, in view of the foregoing, respondent's Motion for Reconsideration, filed on August 3, 2010, is considered a mere scrap of paper. Accordingly, the said Motion is *pro forma*. Thus, the same will not merit the attention of this Court and will not toll the running of the period to appeal.

SO ORDERED.¹⁴

Unperturbed, the BIR once again moved for a reconsideration of the resolution, which the CTA-Special First Division denied with finality in its Resolution¹⁵ dated December 3, 2010, *viz.*:

WHEREFORE, the instant Motion for Reconsideration is denied for lack of merit. The failure of respondent to file a correct motion for reconsideration did not toll the running of the reglementary period to appeal under the rules. The Decision promulgated on June 12, 2010 is hereby declared final and executory.

SO ORDERED.¹⁶

On December 8, 2010, the BIR received its copy of the Resolution dated December 3, 2010. The CTA-Special First Division, after having confirmed that the BIR did not elevate the issue before the CTA *En Banc* within the 15-day reglementary period to appeal, issued an Entry of Judgment.¹⁷ On January 10, 2011, the BIR received a copy of the Entry of Judgment,¹⁸ the pertinent portion of which reads:

This is to certify that on July 12, 2010, a decision rendered in this case was filed in this Office, the dispositive part of which reads as follows:

WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to refund to petitioner the reduced amount of ONE HUNDRED EIGHT MILLION FIVE HUNDRED EIGHTY-FIVE THOUSAND ONE HUNDRED SIXTY-TWO PESOS and 95/100 (P108,585,162.95).

¹³ Id. at 41-47.

¹⁴ Id. at 103.

¹⁵ Id. at 105.

¹⁶ Id. at 47.

¹⁷ Id. at 109.

¹⁸ Id. at 7.



SO ORDERED.

And that the same has, on December 23, 2010, become final and executory and is hereby recorded in the Book of Entries of Judgment, x x x.¹⁹

On January 11, 2011, Chevron moved for the issuance of a Writ of Execution²⁰ of the CTA-Special First Division's Decision dated July 12, 2010.

In response, the BIR filed a Motion to Lift Entry of Judgment before the CTA-Special First Division on the ground that it intended to exhaust the remedy of filing a Petition for *Certiorari* before the Supreme Court under Rule 65 of the Revised Rules of Court.²¹

Hence, this petition for *certiorari*²² filed by the BIR on February 7, 2011. The BIR alleged that the CTA-Special First Division committed grave abuse of discretion in rendering its Resolutions dated September 24, 2010²³ and December 3, 2010.²⁴ It argues that the CTA-Special First Division in accordance with jurisprudence should disregard technicalities and allowed the motion despite the lack of notice of hearing in order to resolve the case meritoriously.²⁵

Issues

Thus, the instant petition calls this Court to resolve two (2) issues:

1. Whether a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court is available as a remedy to the BIR; and
2. Whether the CTA-Special First Division gravely abused its discretion in declaring the motion for reconsideration filed by the BIR on October 14, 2010 to be a *pro forma* motion, and in rendering the Decision promulgated on July 12, 2010 final and executory.²⁶

¹⁹ Id. at 109.

²⁰ Id. at 110-112.

²¹ Id. at 138.

²² Id. at 2-19.

²³ Id. at 102-104.

²⁴ Id. at 105-108.

²⁵ Id. at 10.

²⁶ Id. at 8.

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Ruling of the Court

The petition is dismissed.

Time and again, this Court emphasized that the special civil action for *certiorari* is a limited form of review and a remedy of last recourse.²⁷ Section 1, Rule 65 of the Rules of Court provides that the special civil action of *certiorari* may only be invoked when there is no appeal, nor any plain, speedy and adequate remedy in the course of law.

A writ of *certiorari* is not a substitute for a lost appeal.²⁸ When an appeal is available, *certiorari* will not prosper especially if the appeal was lost because of one's own negligence or error in the choice of remedy, even if the ground is grave abuse of discretion.²⁹

Under the Rules of Court, the remedy against a final judgment or order is an appeal. In *Pahila-Garrido v. Tortogo, et al.*,³⁰ the Court has held that a final judgment disposes of the subject matter in its entirety or terminates a particular proceeding or action. A final judgment or order leaves nothing more to be done except to enforce by execution what the court has determined.³¹

For cases before the CTA, a decision rendered by a division of the CTA is appealable to the CTA *En Banc* as provided by Section 18 of R.A. No. 1125, as amended by R.A. No. 9282. It reads as follows:

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*.

Section 2 of Rule 4 of the Revised Rules of the CTA also states that the CTA *En Banc* has exclusive appellate jurisdiction relative to the review of the court divisions' decisions or resolutions on motion for reconsideration or new trial, in cases arising from administrative agencies such as the BIR.

²⁷ *Gabutan v. Nacalaban*, G.R. Nos. 185857-58, June 29, 2016, 795 SCRA 115, 130.

²⁸ *Cua, Jr., et al. v. Tan, et al.*, 622 Phil. 661, 711-712 (2009).

²⁹ *Chingkoe, et al. v. Republic of the Philippines*, 715 Phil. 651, 659 (2013), citing *Hicoblino M. Catly (deceased) v. Navarro, et al.*, 634 Phil. 273 (2010); *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al.*, 716 Phil. 500, 513 (2013).

³⁰ 671 Phil. 320 (2011).

³¹ *Id.* at 334.

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SEC. 2. *Cases within the jurisdiction of the Court En Banc.* – The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies –
Bureau of Internal Revenue, Bureau of Customs, x x x.

It must be stressed that the Resolution dated December 3, 2010 of the CTA-Special First Division which declared its Decision dated July 12, 2010 final and executory is a final judgment. It disposed of the case on the merits.

The main issue resolved by the CTA-Special First Division in the Decision dated July 12, 2010 was Chevron's entitlement to refund or credit because of its overpayment of excise taxes on imported finished unleaded premium gasoline and diesel fuel. In its decision, the CTA-Special First Division found sufficient basis for Chevron's claim and partially granted the petition. The BIR was ordered to refund One Hundred Eight Million Five Hundred Eighty-Five Thousand One Hundred Sixty-Two and Ninety-Five Centavos (₱108,585,162.95), representing the excess excise tax paid for November 2003.

After the BIR's Motion for Reconsideration on the Decision dated July 12, 2010 was denied in the Resolution dated September 24, 2010 of the CTA-Special First Division, the BIR again filed a motion for the reconsideration of this resolution. Significantly, in its Resolution dated December 3, 2010, the CTA-Special First Division ruled on the merits of the motion and denied the BIR's argument as to the liberal application of the rules.

Clearly, the CTA-Special First Division disposed of the case in its entirety and no other issues were left to further rule upon. Therefore, the appropriate remedy to challenge the Resolution dated December 3, 2010 is an ordinary appeal, not a petition for *certiorari*.

BIR had every opportunity to elevate the matter to the CTA *En Banc* but chose not to avail itself of this remedy. Even on this ground alone, the Court may already dismiss the present petition.

Anent the second issue, the Court finds that the CTA-Special First Division did not gravely abuse its discretion.

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A petition for *certiorari* under Rule 65 of the Rules of Court covers errors of jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Errors of jurisdiction refer to acts done by the court without or in excess of its jurisdiction, and which error is correctible only by the extraordinary writ of *certiorari*.³² The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.³³ The petitioner, or the BIR in this case, bears the burden to prove not merely reversible error, but grave abuse of discretion on the part of the public respondent,³⁴ absent which in the exercise of judicial power a petition for *certiorari* cannot prosper.

In this case, the BIR was unable to show that the resolutions of the CTA-Special First Division were patent and gross to warrant striking them down through a petition for *certiorari*. No argument was advanced to establish that the CTA-Special First Division exercised its judgment capriciously, whimsically, arbitrarily, or despotically by reason of passion and hostility.

It is not disputed that the BIR's Motion for Reconsideration dated August 3, 2010 failed to comply with the provisions provided for by the Revised Rules of the CTA. Specifically, the motion filed by the BIR did not include a notice for hearing and necessarily, the BIR likewise failed to set the motion for hearing. In denying the motion, the CTA-Special First Division cited Sections 3³⁵ and 6³⁶ of the Revised Rules of the CTA³⁷ as its basis. It is clear therefore that the CTA-Special First Division simply applied the applicable rules which the BIR concededly failed to observe. Accordingly, CTA-Special First Division's dismissal of the motion for reconsideration was discretion duly exercised, not misused or abused.

³² *San Fernando Rural Bank Inc. v. Pampanga Omnibus Development Corp.*, 549 Phil. 349, 374 (2007).

³³ *Unilever Philippines, Inc. v. Tan*, 725 Phil. 486, 493-494 (2014).

³⁴ *Tan v. Sps. Antazo*, 659 Phil. 400, 404 (2011).

³⁵ **SEC. 3. Hearing of the Motion.** – The motion for reconsideration or new trial, as well as the opposition thereto, shall embody all supporting arguments and the movant shall set the same for hearing on the next available motion day. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which the case the Court shall issue the proper order.

³⁶ **SEC. 6. Contents of motion for reconsideration or new trial and notice.** – The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed pro forma, which shall not toll the reglementary period for appeal.


³⁷ A.M. No. 05-11-07-CTA.

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On the basis of the foregoing, the Court finds no grave abuse of discretion on the part of the CTA-Special First Division in issuing the assailed resolutions. Neither can the BIR, having chosen not to avail itself of the remedy of appeal, now substitute *certiorari* for an appeal as both remedies are mutually exclusive, and not alternative or successive.³⁸


WHEREFORE, premises considered, the petition for *certiorari* is hereby **DISMISSED**. The Resolutions dated September 24, 2010 and December 3, 2010 of the Court of Tax Appeals-Special First Division in CTA Case No. 7358 are **AFFIRMED in toto**.


SO ORDERED.

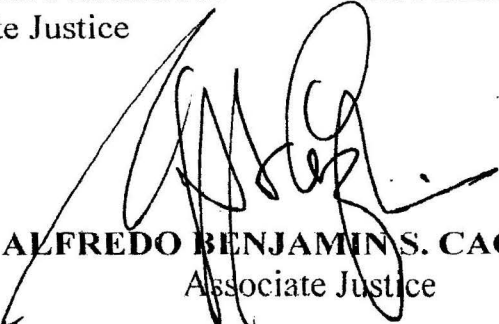

ANDRES D. REYES, JR.
 Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
 Acting Chief Justice
 Chairperson

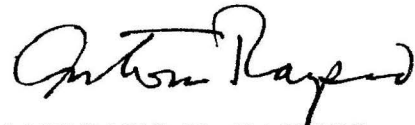

DIOSDADO M. PERALTA
 Associate Justice


ESTELA M. PERLAS-BERNABE
 Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice


CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY:



MA. LOURDES C. PERFECTO
Division Clerk of Court
Second Division