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

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
*Petitioner,*

-*versus*-

**THE COURT OF TAX APPEALS – SPECIAL FIRST DIVISION and GOODYEAR PHILIPPINES, INC.,**
*Respondent.*

**CTA *EB* NO. 1993**
(CTA Case No. 9023)

Present:

**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**UY,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:
DEC 15 2020 3:05pm

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# R E S O L U T I O N

**MANAHAN, J.:**

For resolution is the *Motion for Reconsideration (Re: Decision promulgated 19 June 2020)* posted by petitioner Commissioner of Internal Revenue (CIR) on July 8, 2020, with private respondent Goodyear Philippines, Inc.'s *Comment/ Opposition (To Petitioner's Motion for Reconsideration)* filed on September 21, 2020.

Petitioner CIR assails the Court's Decision dated June 19, 2020, which dismissed the case, as follows:

> **WHEREFORE**, the Petition for Certiorari filed by the Commissioner of Internal Revenue is **DISMISSED** for lack of merit. The assailed Resolutions in CTA Case No. 9023, dated July 10, 2018 and November 6, 2018 are **AFFIRMED**.
>
> **SO ORDERED**.[1]

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[1] *Rollo*, p. 192.

In his *Motion*, petitioner argues that the Petition for Relief from Judgment filed on April 30, 2018 was timely filed within the 60-day period reckoned from the discovery of the Decision appealed from. Petitioner states that the CIR's handling counsel only learned of the Decision dated December 7, 2017 upon receiving private respondent Goodyear's Motion for Issuance of a Writ of Execution on February 27, 2018. Petitioner argues that the circumstances surrounding the reorganization of the Bureau of Internal Revenue (BIR)-Litigation Division and the overwhelming number of cases assigned to the handling lawyers led to the misfiling of the assailed Decision dated December 7, 2017 and failure of his handling counsel to timely appeal the same. Petitioner states that the extraordinary chaos brought about by the changes in the BIR-Litigation Division were circumstances that ordinary diligence and prudence could not have guarded against.

Petitioner further states that he has a good and substantial cause of action or defense against the Decision dated December 7, 2017, and reiterates that private respondent Goodyear is not entitled to the refund of Php18,784,742.85 representing erroneously withheld and remitted final withholding tax (FWT) in relation to the redemption of 2,597,133 preferred shares.

Private respondent, in its *Comment/Opposition*, states that petitioner's filing of the Petition for Certiorari is erroneous and procedurally flawed; that the Court *En Banc* correctly ruled that the CTA-1st Division did not commit grave abuse of discretion when it dismissed petitioner's Petition for Relief from Judgment; and, that petitioner's *Motion for Reconsideration* contains mere reiterations of its arguments which have been found devoid of merit by the Court.

The *Motion for Reconsideration* is denied.

Petitioner does not deny that the Decision dated December 7, 2017 was received on December 11, 2017 and that no motion for reconsideration was filed with respect to said decision, for the alleged reason that petitioner's counsels misplaced or misfiled the copy of Decision dated December 7, 2017, and only learned of such Decision when private respondent's Motion for Issuance of a Writ of Execution was received by petitioner on February 27, 2018.

The Court is not convinced that the failure to timely file an appeal was due to excusable negligence.

The chronology of events which included changes in the composition of the Litigation Division and the overwhelming number of cases handled by petitioner's counsels are not circumstances which would have prevented the timely filing of a motion for reconsideration of the Decision dated December 7, 2017, if ordinary diligence and prudence had been exercised.

> The Court notes that the Revenue Travel Assignment Orders (RTAOs) submitted by respondent [CIR, now petitioner] were issued in January 19, 2017 and February 8, 2017. Moreover, as alleged in the petition for relief by the former handling lawyer of this case, Atty. Josephine Doria, this was reassigned to her when she transferred to the Litigation Division on March 13, 2017. It should be noted that the Decision dated December 7, 2017 was received by the BIR-Litigation Division on December 11, 2017. Thus, the Court finds that the former handling counsel has ample time to take charge of the cases assigned/reassigned to her. The transfer of Atty. Romel Curiba, Chief of Litigation Division, to the Government Service Insurance System (GSIS) in December 2017, which is also the month when the Decision dated December 7, 2017 was received by respondent [CIR] cannot be made as an excuse considering that she was already the assigned lawyer for this case since March 2017. Accordingly, such negligence is not excusable, much less unavoidable, that could merit relief under Rule 38 of the Rules of Court.[2]

The foregoing circumstances do not convince the Court that the alleged misfiling of the Decision dated December 7, 2017 in the handling counsel's other files is excusable.

We reiterate that the CIR does not deny receiving the December 7, 2017 Decision on December 11, 2017; that he failed to file a motion for reconsideration of said Decision; and, that he posted his Petition for Relief from Judgment on April 30, 2018, which is more than sixty (60) days from the date he received, or learned of, the Decision dated December 7, 2017.

Thus, the Court in Division committed no grave abuse of discretion amounting to lack or excess of jurisdiction in denying the petition for relief for having been filed out of time.

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[2] Rollo, Decision dated June 19, 2020, p. 190.

**WHEREFORE**, the *Motion for Reconsideration (Re: Decision promulgated 19 June 2020)* is **DENIED** for lack of merit.

**SO ORDERED.**

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**ON LEAVE**
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

(I maintain my Concurring and Dissenting Opinion)
**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice