REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 753
(CTA Case No. 6412)

Present:

-versus-

Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

KEPCO ILIJAN CORPORATION,
Respondent.

PROMULGATED:
JUL 27 2011 mApolinario 9:00 a.m.

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RESOLUTION

CASTAÑEDA, JR., *J.* :

For resolution is Petitioner's "Petition For Annulment of Judgment" filed on April 11, 2011 praying, *inter alia*, that the Decision[1] of this Court in CTA Case No. 6412 entitled, "*Kepco Ilijan Corporation v. Commissioner of Internal Revenue,*" dated September 11, 2009 be annulled and set aside. The dispositive portion of the Decision is quoted hereunder as follows:

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[1] *Rollo, pp. 27-44.* Penned by Associate Justice Caesar A. Casanova, concurred in by Associate Justice Lovell R. Bautista, with Presiding Justice Ernesto D. Acosta, dissenting.

IN VIEW OF THE FOREGOING, this Court finds petitioner entitled to a refund in the amount of P443,447,184.50 representing unutilized input VAT paid on its domestic purchases and importation of capital goods for the first and second quarters of 2000, as computed below:

Amount of Input VAT Claim		P449,569,448.73
Less:	Input VAT Pertaining to Non-Capital Goods Purchases	706,328.22
Input VAT Claim Pertaining to Capital Goods Purchases		P448,863,120.51
Less:	Not Properly Substantiated Input VAT	
	Per ICPA's Findings	45,878.55
	Per this Court's Further Verification	5,370,057.46
Refundable Input VAT on Capital Goods Purchases		**P443,447,184.50**

SO ORDERED.[2]

There being no Motion for Reconsideration filed by the petitioner, the abovementioned Decision became final and executory and a corresponding Entry of Judgment was issued thereto on October 10, 2009. Consequently, a Writ of Execution was issued by this Court on February 16, 2010, a pertinent portion of which reads as follows:

> You are hereby **ORDERED to REFUND** in favor of the petitioner **KEPCO ILIJAN CORPORATION,** the amount of **P443,447,184.50**, representing unutilized input VAT paid on its domestic purchases and importation of capital goods for the first and second quarters of 2000, pursuant to the Decision of this Court, promulgated on September 11, 2009, which has become final and executory on October 10, 2009, by virtue of the Entry of Judgment issued on said date.
>
> xxx xxx xxx[3]

Petitioner alleges that she belatedly learned of the Decision and the subsequent issuance of a writ only on March 7, 2011 on the premise that when the Office of the Deputy Commissioner for Legal and Inspection Group received a Memorandum from the Appellate Division of the National Office recommending issuance of a Tax Credit Certificate in favor of the respondent

[2] *Rollo, p. 40.*
[3] *Rollo, p. 45.*

in the amount of P443,447,184.50. Petitioner faults her legal counsel, Atty. Roel A. Zafra of the Legal Division, BIR-Revenue Region (RR) No. 7, Quezon City, for gross negligence and inefficiency in handling the case which results in an adverse judgment against her. Petitioner anchors her claim on Secs. 1 and 2 of Rule 47 of the Rules of Court in relation to Sec. 3, Rule 1 of the Revised Rules of the Court of Tax Appeals (RRCTA).

Thus, petitioner prays that the Decision and the Writ of Execution in CTA Case No. 6412 be annulled and that the CTA First Division be directed to re-open CTA Case No. 6412 to allow petitioner to submit her memorandum setting forth her substantial legal defenses.

On the other hand, respondent filed its "Motion to Deny Due Course (To the Petition for Annulment of Judgment)" on May 12, 2011. Respondent argues, among others, that petitioner is not lawfully entitled to annulment of judgment on the ground that this Court is bereft of jurisdiction to entertain annulment of judgments on the premise that the Rules of Court, Republic Act No. 9282 (RA 9282) and the RRCTA does not expressly provide a remedy on annulment of judgments.

After a careful perusal of the petition, We noted that this Court has no jurisdiction, thus, We dismiss the same outright.

It is a well-settled rule that jurisdiction is conferred only by the Constitution or by law. It is never derived by implication.[4] Jurisdiction is a matter of substantive law. Thus, jurisdiction cannot be waived, enlarged, or

[4] *Garcia v. Sandiganbayan,* G.R. No. 114135, October 7, 1994, 237 SCRA 552 citing *Garcia v. De Jesus,* 206 SCRA 779, 786-787.

diminished by the stipulation of the parties.[5] It is the duty of the court to consider the question of jurisdiction before it looks at other matters involved in the case. It may, and must, do this on its own motion without waiting for the question of jurisdiction being raised by any of the parties involved in the proceeding.[6] Even if the parties do not challenge the jurisdiction of a court or tribunal, this does not prevent the court from addressing the issue.[7] Jurisdiction can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case *ex mero motu*.[8]

It is also noteworthy to mention that the Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[9]

Pertinent to this case is Sec. 7, RA 9282,[10] which reads as follows:

> Sec. 7. xxx
>
> "Sec. 7. *Jurisdiction.* – The CTA shall exercise:
>
> "(a) Exclusive appellate jurisdiction to review by appeal, as herein provided: Jr

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[5] *Republic v. Estipular,* G.R. No. 136588, July 20, 2000, 336 SCRA 333.
[6] 20 Am. Jur. 2d, Courts, § 92.
[7] *Heirs of Julian Dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz,* G.R. No. 162890, November 22, 2005, 475 SCRA 743, 756.
[8] *Commissioner of Internal Revenue v. Villa,* No. L-23988, January 2, 1968, 22 SCRA 3.
[9] *Allied Banking Corporation v. Commissioner of Internal Revenue,* G.R. 175097, February 5, 2010, 611 SCRA 692, 697 citing *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144, 150; *Ker & Company, Ltd. v. Court of Tax Appeals,* No. L-12396, January 31, 1962, 4 SCRA 160, 163.
[10] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

"(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

"(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties in relation 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 for action, in which case the inaction shall be deemed a denial;

"(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

"(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

"(5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

"(6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

"(7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Sections 301 and 302, respectively, of the Tariff and

Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

"(b) Jurisdiction over cases involving criminal offenses as herein provided:

"(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however,* That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.

"(2) Exclusive appellate jurisdiction in criminal offenses:

"(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respective territorial jurisdiction.

"(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

"(c) Jurisdiction over tax collection cases as herein provided:

> "(1) Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: *Provided, however,* That collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.
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> "(2) Exclusive appellate jurisdiction in tax collection cases:
>
> "(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.
>
> "(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, in their respective jurisdiction."

It is a settled rule in statutory construction that express mention of one thing in the law means the exclusion of others not expressly mentioned. This rule is expressed in the familiar maxim *expressio unius est exclusio alterius*. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been, not to restrict its meaning and to confine its terms to those expressly mentioned.[11] Thus, the jurisdiction of this Court is limited only to cases provided by the statute, which is Sec. 7 of RA 9282. *gr*

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[11] *Dazon v. Yap,* G.R. No. 157095, January 15, 2010, 610 SCRA 79, 86-87.

Moreover, Section 2, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) reads as follows:

> 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 Division in the exercise of its exclusive appellate jurisdiction over:
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
>
> (2) Local tax cases decided by Regional Trial Courts in the exercise of their original jurisdiction; and
>
> (3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;
>
> (b) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their appellate jurisdiction;
>
> (c) Decisions, resolutions or orders of the Regional Trial Courts in tax collection cases decided or resolved by them in the exercise of their appellate jurisdiction;
>
> (d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over tax collection cases;
>
> (e) Decisions of the Central Board of Assessment Appeals (CBAA) in the exercise of its

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appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

(f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs;

(g) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over criminal offenses mentioned in the preceding subparagraph; and

(h) Decisions, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over criminal offenses mentioned in subparagraph (f).

Based on the foregoing provisions, annulment of judgment is not among those mentioned in the enumeration provided in Sec. 7, RA 9282, much less in Sec. 2, Rule 4 of the RRCTA.

In this case, the petitioner filed a petition for annulment of judgment before this Court. Sec. 9(2) of Batas Pambansa Blg. 129,[12] as amended by Republic Act No. 7902 provides:

Sec. 9. *Jurisdiction.* – The Court of Appeals shall exercise:

1. x x x

2. **Exclusive original jurisdiction over actions for annulment of judgment of Regional Trial Courts;** x x x

3. x x x

[12] Otherwise known as the "Judiciary Reorganization Act of 1980."

Moreover, Sec. 1, Rule 47 of the Rules of Court, provides that:

RULE 47

ANNULMENT OF JUDGMENTS, FINAL ORDERS AND RESOLUTIONS

> SECTION 1. *Coverage.* – ***This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts*** for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

A cursory reading of the statute and rule reveals that only the Court of Appeals has jurisdiction over judgments, final orders and resolutions of the Regional Trial Courts.[13]

It is also worthy to mention that under Sec. 10 of the same Rules provide that Regional Trial Courts has jurisdiction on an action to annul the judgment and final orders of the Municipal Courts.

In the case of *Macalalag v. Ombudsman,*[14] Justice Jose C. Vitug, speaking for the Supreme Court pointed out the rationale behind the limited application of Rule 47 in this wise:

> **The right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. There must then be a law expressly granting such right. This legal axiom is also applicable** and even more true **in actions for annulment of judgments** which is an exception to the rule on finality of judgments. (Emphasis supplied; citations omitted)

Finally, the petitioner cannot anchor his claim on the premise that the Rules of Court suppletorily applies to the RRCTA. In the case of *Government*

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[13] *Valdez v. China Banking Corporation,* G.R. No. 155009, April 12, 2005, 455 SCRA 687, 694.
[14] G.R. 147995, March 4, 2004, 424 SCRA 741, 746.

Service Insurance System v. Villaviza,[15] the word "suppletory" is defined as supplying deficiencies, which means that the provisions of the Rules of Court will be made to apply only where there is an insufficiency in the applicable rule. However, the law conferring jurisdiction to this Court does not provide jurisdiction as to annulment of judgments which could have been the applicable rule. Therefore, on the basis of the foregoing, the Petition for Annulment of Judgment should be dismissed outright.

Having reached the foregoing conclusion, discussions on the other issues raised would no longer be necessary.

WHEREFORE, for lack of jurisdiction, the "Petition for Annulment of Judgment" is hereby DISMISSED.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[15] G.R. No. 180291, July 27, 2010, 625 SCRA 669, 678.

(Concurs with the Concurring and Dissenting Opinion of Presiding Justice Acosta)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro - Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA E.B. No. 753** (C.T.A. Case No. 6412)
	Present:
-versus-	**ACOSTA, *P.J.*** **CASTAÑEDA, Jr.,** **BAUTISTA,** **UY,** **CASANOVA,** **PALANCA-ENRIQUEZ,** **FABON-VICTORINO,** **MINDARO-GRULLA, and** **COTANGCO- MANALASTAS, *JJ.***
KEPCO ILIJAN CORPORATION, *Respondent.*	**Promulgated:** JUL 27 2011 RDApolinario 9:00 a.m.

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CONCURRING AND DISSENTING OPINION

Acosta, PJ:

As much as I agree with the majority that the Petition for Annulment of Judgment filed by petitioner Commissioner of Internal Revenue should be dismissed, with all due respect, I have to disagree however with the pronouncement that this Court has no jurisdiction to entertain such a petition

In the Supreme Court case of ***So vs. Obliosca*** (GR No. 147082, 28 January 2008), it was lucidly explained that—

> [T]he higher interests of justice and equity demand that we brush aside the procedural norms. After all, rules of procedure are

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> intended to promote rather than defeat substantial justice, and should not be applied in a very rigid and technical sense. Rules of procedure are merely tools designed to facilitate the attainment of justice; they are promulgated to aid the court in the effective dispensation of justice. The Court has the inherent power and discretion to amend, modify or reconsider a final judgment when it is necessary to accomplish the ends of justice.
>
> If the rigid application of the Rules would frustrate rather than promote justice, it is always within the Court's power to suspend the Rules or except a particular case from its operation. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final. (Underscoring supplied.)

Although noted as a special court with limited jurisdiction, the Court of Tax Appeals is nevertheless still a regular court of justice, part of the judiciary, with the inherent power to *amend, modify or reconsider a final judgment* when substantial justice calls for it. These inherent powers exist by virtue of the court's nature and not by mere implication or an extension by interpretation of its jurisdiction.

Included necessarily in these powers of the courts is the authority to annul judgments that have become final based on grounds under Rule 47 of the Rules of Court. Section1 of the said rule state that—

> Section 1. Coverage.
>
> This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

This inherent power of the Court to annul judgments or final orders and resolutions, albeit not provided in Republic Act No. 1125, as amended by

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Republic Act No. 9282, or by the Revised Rules of the Court of Tax Appeals ("Rules"), may be exercised by virtue of the Rules' Section 3 Rule 1 that allows a suppletory application of the Rules of Court. Rule 47 is similar to a Relief from Judgment under Rule 38, which parties may avail of after the judgment has attained finality.

The majority, citing *Government Service Insurance System vs. Villaviza* (GR No. 180291, 27 July 2010), declares that the word "suppletory" is defined as supplying deficiencies. I concur as well as add that this Court's organic law, as amended, and the Rules are deficient with respect to the rules on the inherent powers of courts and thus should be suppletorily advanced by the Rules of Court. I reiterate, there is no need to expressly include in the enumeration of this Court's jurisdiction the inherent or fundamental powers of the Court, these exist even without any statute of rule expressly granting them.

Notwithstanding the foregoing, I concur with the majority's dismissal of the Petition for Annulment of Judgment on the ground though that the petition is devoid of merit.

The arguments of petitioner, particularly on the negligence of her handling counsel, cannot be deemed meritorious as this Court cannot consider such negligence to be equivalent to extrinsic fraud.

A judgment can be annulled only on two grounds: (1) lack of jurisdiction and (2) extrinsic fraud. Fraud is regarded as extrinsic or collateral where it has prevented a party from having a trial or from presenting all of his case to the court. It is the kind of fraud which denied the party the opportunity to fully litigate upon the trial all the rights or defenses he was entitled to assert.[1]

In ***Apex Mining Inc. vs. Court of Appeals***, *supra*, the Supreme Court explains that:

> It is settled that the negligence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client [Salonga, *et al.* vs. Court of Appeals, *et al.*, 269 SCRA 534, (1997)]. However, the application of the general rule to a given case should be looked into and adopted according to the surrounding circumstances obtaining. Thus, exceptions to the foregoing have been recognized by the court in cases where reckless or gross negligence of counsel deprives the client of due process of law [Salonga vs. Court of Appeals, *supra,* citing Legarda vs. Court of Appeals, 195 SCRA 418, 426 (1991)], or when its application will result in outright deprivation of the client's liberty or property or where the interests of justice so require, and accord relief to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence [Aguilar vs. Court of Appeals, 250 SCRA 371 (1995); Alabanzas vs.Intermediate Appellate Court, 204 SCRA 304 (1991); Escudero vs. Dulay, 158 SCRA 69, 78 (1988)].

Further, in that same ***Apex*** case, the Supreme Court elaborates—

> If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the

[1] Apex Mining Inc. vs. Court of Appeals, GR No. 133750 29 November 1999, citing the cases of Ruiz v. Court of Appeals, 201 SCRA 577 [1991] and Crouch vs. Mc. Gaw, 138 S.W. 2d 94, 134 Tex. 633.

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> client another chance to present his case [U.S. vs. Umali, 15 Phil. 33 (1910); People vs. Manzanilla, 43 Phil. 167 (1922); Tesorio vs. Court of Appeals, 54 SCRA 26 (1973); Macavinta, Jr. vs. People, 54 SCRA 420 (1973)]. Similarly, when an unsuccessful party has been prevented from fully and fairly presenting his case as a result of his lawyer's professional delinquency or infidelity the litigation may be reopened to allow the party to present his side [Laxamana v. Court of Appeals, 11 SCRA 58 (1978)]. Where counsel is guilty of gross ignorance, negligence and dereliction of duty, which resulted in the client's being held liable for damages in a damage suit, the client is deprived of his day in court and the judgment may be set aside on such ground [Lao v. Court of Appeals, 119 SCRA 58 (1991)].

Although there are exceptions to the general rule that clients are bound by the acts of their counsel, and an unsuccessful litigant may be allowed another chance in court due to gross incompetence and inefficiency of its counsel that may be considered as extrinsic fraud, the same is not obtaining in the instant case.

As pointed out by respondent Keppel Ilijan Corporation (Keppel), petitioner CIR cannot detach herself from the Bureau of Internal Revenue (BIR) Region No. 7, where her previous handling counsel holds office. She is the head of one big agency, of which BIR Region No. 7 is a part of. Thus, she cannot now raise the argument of her counsel's inefficiency which is tantamount to fraud since she always had in her control the securing of the necessary information in relation to the case, which eliminates the alleged situation that her handling counsel deliberately kept her in the dark. Extrinsic fraud to be a ground for an annulment of judgment must exist without the fault of the aggrieved party. In petitioner CIR's case, her handling counsel could not have exhibited such great incompetence, ignorance or inexperience to her prejudice without any fault on her part, through the acts or omissions of her subordinates.

Likewise, an enumeration of circumstances of extrinsic fraud was put forth by the Supreme Court in the case of ***Strait Times, Inc. vs. Court of Appeals*** (GR No. 126673, 28 August 1998), *viz*:

> ...Where the unsuccessful party had been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives to his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side.

From such authority, petitioner's basis for her petition is totally unpersuasive as her claim of extrinsic fraud does not fall under any of the circumstances in the above-mentioned case.

Moreover, the Petition for Review covers four administrative claims for refund of input value added tax. Three of the four administrative claims have already prescribed by the time Keppel filed its petition with this Court. Consequently this Court had no jurisdiction to hear the case with respect to the three prescribed claims, in line with Section 112, as amended, of the National Internal Revenue Code. However, given that petitioner CIR raised this issue only at this point, nine years after the filing of the petition, laches may be considered to have set in.

For reasons stated above and the authorities cited, in view of the En Banc's power to take cognizance of this petition to annul a judgment of the Court in Division, I vote for the **DISMISSAL** of the same on the ground that the arguments raised therein are devoid of merit.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
AMELIA COTANGCO- MANALASTAS
Associate Justice