REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AG COUNSELORS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9329

Members:

CASTAÑEDA, JR., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

MAR 29 2022 2:30 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For this Court's resolution is respondent's **Motion for Reconsideration**, filed through registered mail on November 2, 2021 and received by the Court on November 19, 2021, without petitioner's comment as per Records Verification dated March 4, 2022.

In the subject Motion for Reconsideration, respondent requests the Court to reverse and set aside the Resolution dated September 30, 2021, denying his Petition for Relief from Judgment for lack of merit, and to grant its Petition for Relief of Judgment on the following grounds/arguments:

1. FEBRUARY 9, 2021, THE DATE WHEN THE CIR OBTAINED KNOWLEDGE OF THE JUDGMENT TO BE SET ASIDE, SHOULD BE THE RECKONING OF THE 60-DAY

PERIOD PROVIDED UNDER SECTION 3, RULE 38 OF THE 1997 RULES OF COURT; AND

2. THE COURT FAILED TO CONSIDER THE EXISTENCE OF A FORTUITOUS EVENT THAT IS PRESENT AND OBTAINING IN THIS CASE.

Anent the first ground, respondent's counsel, Atty. Carl Fitri A. Hussin, avers that when he received the Court's Resolution dated July 29, 2020, stating that "no appeal has been taken by any of the parties in this case within the prescribed period", he was of the impression that respondent's Motion for Partial Reconsideration dated November 7, 2019, filed on November 8, 2019, was not received by the Court. Thus, he caused the immediate issuance of a letter dated September 25, 2020, requesting for a certification on the status of the mail containing the said Motion for Partial Reconsideration. And, in response, Postmaster VII Glenn V. Granados of the Makati Central Post Office issued a Certification dated September 28, 2020, stating that the subject mail was dispatched to Quezon City Post Office on November 11, 2019. Atty. Hussin continues that it was only on February 9, 2021 when he got hold of the January 27, 2021 Resolution of the Court, denying his Motion for Reconsideration on the Resolution promulgated on July 29, 2020, that he obtained knowledge of the March 2, 2020 Resolution. Thus, the Court should have accordingly reckoned the 60-day period under Section 3, Rule 38 of the 1997 Rules of Court from February 9, 2021, and not from the actual receipt of the March 2, 2020 Resolution on March 4, 2020.

Moreover, Atty. Hussin insists that the 60-day period cannot likewise be reckoned from the date of the receipt of the July 29, 2020 Resolution on September 23, 2020, as the said motion was merely filed to inform the Court that there was actually a Motion for Reconsideration filed by respondent assailing the October 25, 2019 Decision.

As regards respondent's second argument, Atty. Hussin claims that the pronouncement of the High Court in *Rizal Banking Corporation vs. Commissioner of Internal Revenue* is not applicable as there was no pandemic in 2006. According to him, the Court failed to appreciate the over-all effect of the pandemic in the instant case and the circumstances that led to the misapprehension of the facts and the proceedings that transpired, to wit:

" x x x, this court merely limited its evaluation to *sudden need for CIR's counsel to take the RT-PCR Test and to quarantine himself while waiting for the result thereof, lockdowns and the work-from-home arrangement*. It failed to appreciate the over-all effect of the Pandemic on the case and the circumstances that led to the misapprehension of the facts and the proceedings that transpired.

It is reiterated that on March 8, 2020, President Rodrigo R. Duterte, declared a State of Public Health Emergency through Proclamation No. 922 due to Corona Virus Disease 2019 (Covid-19) Pandemic. As a result, the Supreme Court, on March 16, 2020, issued Administrative Circular No. 31-2020 which extended the deadline of the filing of petitions, appeals, complaints, motions, pleadings and other submissions that fell due during the period March 15, 2020 to April 15, 2020. In view of the several extensions of the ECQ, the Supreme Court, on various dates, also issued several circulars that further extended the deadlines of the filing of petitions, appeals, complaints, motions, pleadings and other submissions. On May 14, 2020, the Supreme Court issued Administrative Circular No. 39-2020. Under the said Circular, the deadline of the filing of petitions, appeals, complaints, motions, pleadings and other submissions that fell due during the quarantine period was finally extended for 30 days counted from June 1, 2020.

When employees of the BIR Revenue Region No. 8A returned to work in June 2020, they were all required to undergo Rapid Testing. The Rapid Test on the undersigned counsel revealed that he was an IgG positive, which meant that antibodies were detected in his blood. Consequently, the undersigned counsel was directed to go home and undergo Real-Time Reverse Transcription Polymerase Chain Reaction (RT-PCR) test. A negative result was required to be presented before he could report back to work. At that time, the infection of the virus was so rampant and extensive, and patients in Hospitals or Molecular Diagnostic Clinics requiring RT-PCR tests were holed in the Emergency Room were all Covid 19 positives were also kept. It was only on July 14, 2020 or after prodding from his better half, that the undersigned counsel

> decided to take the test at the Fe Del Mundo Medical Center. In addition to the aforesaid fortuitous event, the Lawyers (including the undersigned counsel) and staff of the Legal Division of Revenue Region No 8A-Makati City were also, on various days from June 2020 to November 2020, required to work from home in view of the spread and infection of the virus amongst the employees. Verily, the number of days that the undersigned counsel was prevented from going to the Office, from March 2020 to June 2020 (and some days in July, August, September, October and November 2020), had critically affected the undersigned counsel's performance and work in the office, particularly, his recollection on the existence of the Resolution dated March 2, 2020."

For Atty. Hussin, the foregoing circumstances constitute fortuitous event that has prevented him from exercising the proper remedy. Thus, his failure to file the appropriate Petition for Review is accordingly explicable and excusable.

Further, Atty. Hussin claims that the "peculiarity" by which he handled the case from the receipt of the Resolution dated July 29, 2020 would "lead a reasonable mind to conclude" that he was "acting in good faith, and in all honesty, handled the case with the due diligence required of him. It would also show that knowledge of the existence of the judgment sought to be set aside was obtained only on February 9, 2021."

Lastly, Atty. Hussin submits that justice would be better achieved if the case would be decided upon the merits and not on technical niceties following the ruling of the Supreme Court in *Eladio Alonso vs. Tomas Villamor, et al.,*[1] and *Marlon Curammeng y Pablo vs. People of the Philippines.*[2]

After due consideration of the arguments raised by respondent's counsel, this Court finds no cogent reason to deviate from its ruling. The arguments raised herein were mere rehashes of the same facts and issues, which have already been thoroughly weighed and discussed in the September 30, 2021 Resolution.

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1 G.R. No. L-2352, July 26, 1910.
2 G.R. No. 219510, November 14, 2016.

At this juncture, this Court reiterates that the sixty (60)-day period to file a petition for relief from judgment under Section 3, Rule 38 of the Revised Rules of Court should be reckoned from actual receipt of the denial of the motion for reconsideration when one is filed.[3] Such Petition must be specifically filed within: (a) sixty (60) days from knowledge of judgment, order, or other proceedings to be set aside; and (b) six (6) months from entry of such judgment, order, or other proceedings.[4] Further, jurisprudence provides that this relief can be availed of only after a judgment, final order, or other proceeding was taken against a party in any court through fraud, accident, mistake, or **excusable negligence**. Otherwise, the petition for relief will be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence or due to the mistake in the mode of procedure by counsel.[5]

In this case, Atty. Hussin ascribes his failure to file the appropriate Petition for Review with the Court of Tax Appeals *En Banc* not only on the alleged misapprehension of the facts and and failure of their staff to immediately call his attention when their office received a copy of the Resolution dated March 2, 2020 on March 4, 2020, but also due to the following circumstances which, accordingly, may be likened to an insuperable cause or fortuitous event, namely: (i) sudden need for him to take the RT-PCR Test and to quarantine himself while waiting for the result thereof; (ii) lockdowns or quarantine measures imposed by the government to avert the spread of COVID 19 virus, and (iii) the adoption of a work-from-home arrangement at their office during the said period.

The Court is not swayed by Atty. Hussin's plea for a deviation from the application of the reglementary period for filing a Petition for Relief from Judgment.

It has been held time and again that negligence to be excusable must be one that ordinary diligence and prudence could not have guarded against.[6] In this case, Atty. Hussin's negligence

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[3] *City of Dagupan vs. Maramba*, G.R. No. 174411, July 2, 2014, citing *Sarraga, Sr. vs. Banco Filipino Savings and Mortgage Bank,* 442 Phil. 55, 65 (2002).

[4] *Heirs of De Luzuriaga vs. Republic*, G.R. Nos. 168848 & 169019, June 30, 2009, citing *Reyes vs. Court of Appeals,* G.R. No. 150722, August 17, 2007, 530 SCRA 468, 474; citing *Quelnan vs. VHF Philippines*, G.R. No. 138500, September 16, 2005, 470 SCRA 73.

[5] *Thomacites Center for International Studies vs. Rodriguez*, G.R. No. 203642, January 27, 2016, citing the cases of *Philippine Amanah Bank (now Al-Amanah Islamic Investment Bank of the Philippines, also known as Islamic Bank) vs. Contreras*, G.R. No. 173168, September 29, 2014, 736 SCRA 567, and *Espinosa vs. Yatco, etc., et al.,* 117 Phil. 78, 82 (1963).

[6] *Cagayan Economic Zone Authority vs. Meridien Vista Gaming Corp.* G.R. No. 194962, January 27, 2016, citing *Gold Line Transit, Inc. vs. Ramos*, 415 Phil. 492, 503 (2001).

can hardly be characterized as excusable, much less unavoidable. As pointed out in the assailed Resolution dated September 30, 2021, all the aforementioned circumstances could have been avoided if only Atty. Hussin had adopted a system not only for keeping track of all his deadlines for filing necessary pleadings, but also the monitoring of the cases he is handling and the proceedings that transpired therein. This responsibility is imposed on all lawyers notwithstanding the presence or absence of pandemic. Moreover, it is incumbent upon him to ensure the continuity of work processes in his office during the implementation of community lockdowns and work-from-home arrangement. Consequently, his carelessness in ensuring the prompt receipt of the Court's resolutions and orders to allow for the timely filing of the necessary pleadings is an unacceptable reason for the Court to set aside its Resolution.

Thus, Atty. Hussin's failure to advance meritorious reasons to support his plea of relaxation of the subject rule will not suffice to override a stringent implementation of the rules. At this juncture, we stress that "[p]rocedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed."[7]

Henceforth, by failing to timely file a Petition for Review or at least a Motion for Extension of Time to File the Petition for Review with the Court *En Banc*, and by resorting to an improper remedy in filing another Motion for Reconsideration, the Resolution dated March 2, 2020 has already attained finality. Thus, by virtue of the doctrine of immutability and inalterability of a final judgment, the said Resolution can no longer be reviewed nor modified, in any respect, even if it is meant to correct an erroneous conclusion of law and facts.[8]

In view of the foregoing, there is no need to resolve the other issues raised by respondent in the subject motion.

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[7] *People vs. Sergio,* G.R. No. 240053, October 9, 2019, citing the cases of *Philippine Savings Bank vs. Papa,* G.R. No. 200469, January 15, 2018, citing *Lazaro vs. Court of Appeals*, 386 Phil. 412, 417 (2000).

[8] *People vs. Mallari,* G.R. No. 197164, December 4, 2019.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration**, filed through registered mail on November 2, 2021, is **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice