REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LENNIE DE SAGUN, ET AL., Petitioners,	**CTA EB NO. 2434** (CTA CASE NO. 9084)
	Present:
-versus-	DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, *and* CUI-DAVID, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 26 2022 2:15 p.m.

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RESOLUTION

On January 14, 2021, the Court of Tax Appeals (CTA) Third Division issued a Resolution which denied petitioners' Motion for Reconsideration for lack of merit.[1]

On January 25, 2021, petitioners received the Resolution.[2] Under Rule 8, Section 3(b) of the Revised Rules of the CTA (RRCTA), the petitioners had fifteen (15) days from receipt of the Resolution to file their petition with the CTA *En Banc*. Accordingly, they only had until February 9, 2021 to file said petition.

However, on February 9, 2021, the counsel for petitioners requested for an extension of thirty (30) days from February 9, 2021 or until March 11, 2021 within which to file the petition, citing heavy caseload as reason.[3]

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[1] Annex B, Petition for Review, *Rollo*, pp. 81-94.
[2] Motion for Extension of Time, *Rollo*, p. 2; Case history at http://cta.judiciary.gov.ph/history2#, last accessed on June 9, 2021.
[3] Motion for Extension of Time, *Rollo*, pp. 2-3.

On February 11, 2021, the CTA *En Banc* resolved to grant *a final and non-extendible fifteen-day extension* and gave petitioner only until *February 24, 2021* to file the petition.[4]

On March 10, 2021, counsels for petitioners received the February 11, 2021 Minute Resolution granting the extension.[5]

On March 11, 2021, the Petition for Review was finally filed.[6]

On June 28, 2021, the CTA *En Banc* issued a Resolution which dismissed the petition for being filed out of time.[7]

On July 15, 2021, counsels for petitioners received a copy of the June 28, 2021 Resolution.[8]

On July 30, 2021, counsels for petitioners filed a Motion for Extension of Time which prayed for fifteen days from July 30, 2021, or until August 14, 2021 to file a Motion for Reconsideration.[9]

On September 13, 2021, petitioners filed a Motion for Reconsideration stating that they filed the petition one (1) day after receipt of the February 11, 2021 Resolution and, accordingly, "it would not have been possible for petitioners to file said petition within the time given in the February 11, 2021 Resolution given the fact that they received it only on March 10, 2021."[10]

On November 24, 2021, the *divided* Court *En Banc* issued a Resolution which noted the Motion for Reconsideration and directed the respondent to comment on the motion.[11]

On February 2, 2022, respondent filed by registered mail a Comment / Opposition to Motion for Reconsideration dated 13 September 2021.[12]

Petitioner's Motion for Reconsideration is *denied.*

Counsels for petitioners do *not* dispute that the petition was filed out of time. However, they attempt to justify the *late* filing by stating that they could not have filed the petition earlier than March 11, 2021, the last day of the 30-day extension prayed for, because they only received the notice granting the extension the day before, on March 10, 2021.

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[4] February 11, 2021 Minute Resolution, *Rollo*, p. 6.
[5] *See* registry return card attached to the February 11, 2021 Minute Resolution, *Rollo*, p. 6; *See also* Motion for Reconsideration, *Rollo*, p. 105.
[6] *Rollo*, pp. 7-22.
[7] *Rollo*, pp. 97-99.
[8] Notice of Resolution, *Rollo*, p. 96.
[9] *Rollo*, pp. 100-102.
[10] Motion for Reconsideration, *Rollo*, pp. 105-106.
[11] *Rollo*, pp. 111-112.
[12] Rollo, pp. 118-130.

Counsels for petitioners fail to state, however, that the Court has, in fact, granted them *only* a 15-day extension *in accordance with the rules*. The reason for the late filing, however, is that the Court granted them a shorter extension instead of the 30 days they asked for. Expecting that the Court would grant a full 30-day extension, they alleged that they only had a day to file the petition when they learned that *only* a 15-day extension was granted.

The Court is *unconvinced.*

First, the counsels are placed on notice that in the Revised Rules of the CTA (RRCTA), an appeal from the decision or resolution of the Court in Division on a motion for reconsideration shall be taken to the CTA *En Banc* by a petition for review as provided for in Rule 43 of the Rules of Court.[13] Rule 43 allows an *initial* extension of *only* 15 days for the aggrieved party to file the petition. It states that *no further extension shall be granted except for the most compelling reason* and in no case to exceed 15 days.[14] Other than citing a heavy workload, counsels mentioned no compelling reason to justify another 15-day extension.

Second, having failed to provide a compelling reason for another 15-day extension, counsels for petitioners should *not* have expected the Court to grant them the full 30-day extension to begin with. At best, they should have expected only fifteen days reprieve based on the rules. As borne out by the facts, that is what the Court gave them: *a final and non-extendible fifteen-day extension* which gave them only until *February 24, 2021* to file the petition. *However, the petition was filed on March 11, 2021, fifteen days past the deadline.*

Third, respondent correctly points out that the grant of a motion for extension of time is addressed to the sound discretion of the court.[15] More importantly, counsels should *never* presume *and expect* that their motions for extension would be granted.

In *Videogram Regulatory Board v. Court of Appeals, et al.*,[16] the issue brought to the Supreme Court's attention was whether the Court of Appeals

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[13] Rule 8, Section 4(b) of the Revised Rules of the Court of Tax Appeals.

[14] Rule 43, Section 4 of the Rules of Court states:

"Section 4. *Period of appeal.* — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (n)"

[15] Comment / Opposition to Motion for Reconsideration dated 13 September 2021, *Rollo*, pp. 119-120.

[16] G.R. No. 106564, November 28, 1996.

can be faulted with grave abuse of discretion for denying the admission of such petition for review which was filed within the 30-day period requested in petitioner's motion for extension but beyond the 15-day period actually granted by said Court. The Supreme Court ruled that there was no grave abuse of discretion and that the Court of Appeals correctly denied the appeal of the petitioner:

> "We are unpersuaded. There are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review, for it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of that right must comply with the statute or rules. The rules, particularly 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 and for orderly discharge of judicial business. Furthermore, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also *jurisdictional* and the failure to perfect the appeal renders the judgment of the court final and executory. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his/her case.
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> These periods are carefully guarded and lawyers are well-advised to keep track of their applications. After all, a denial of a petition for being time-barred is a decision on the merits.
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> xxx xxx xxx
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> Of these two guides, the Solicitor General could not feign ignorance. He knew or ought to have known that, pursuant to the above rule, his motion for extension of time of thirty (30) days could be granted for only fifteen (15) days. There simply was no basis for assuming that the requested 30-day extension would be granted.
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> Thus, respondent Court cannot be faulted for granting petitioner only fifteen days' extension, even if it prayed for thirty. Certainly, we cannot attribute grave abuse of discretion to said Court for merely following its own internal rules which have been granted imprimatur by this Court.
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> *Lack of Notice?*
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> We have consistently held that allowance or denial of a motion for extension of time is addressed to the sound discretion of the court, and such discretion vested in the courts must be exercised wisely and prudently, and never capriciously, with a view to substantial justice.
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> But, once granted, the extension of time starts from the end of the original reglementary period. It begins to run whether or not the movant/grantee has knowledge of such action of the granting court. Notice in this instance is unimportant as, in the first place, lawyers should never presume that their motions for extension or postponement would be granted. It behooves them to follow up on their motions, for the mere filing of the

> same is not enough. They must check with the division clerks of court for the action on their motions, considering that time may run out on them — as it did in this case." (*Underscoring supplied and citations omitted*)

Fourth, similar to the facts in *Videogram,* petitioners in this case failed to *timely* file the petition, thus, they had unmistakably lost their right to appeal. It bears emphasis that the counsels' expectation *cannot* be used as a ground to excuse the lapse of the reglementary period to appeal. Expectation cannot exempt the parties from the application of the rules.

Finally, it will be recalled that the Court deemed it prudent to give petitioners' counsels the opportunity to explain the reason for the late filing of the *petition*, in the interest of justice and because, at that time, the National Capital Region was placed under General Community Quarantine due to the pandemic.

However, at this stage, the observation of the Presiding Justice bears repeating.[17] The counsels for petitioners received the assailed June 28, 2021 Resolution on July 15, 2021.[18] Thus, under the RRCTA they had until July 30, 2021 to file the Motion for Reconsideration. Instead, they requested a 15-day extension from July 30, 2021 or until August 14, 2021, *again* citing heavy workload as reason.

However, it was actually only on September 13, 2021 when the Motion for Reconsideration was filed by registered mail. Evidently, the counsels have allowed the reglementary periods to lapse *twice*. Once, in the filing of the petition, and second, in the filing of the motion for reconsideration. Lawyers are well-advised to keep track of their deadlines because a denial of a petition for being time-barred is a decision on the merits.[19]

It is settled jurisprudence that the timely perfection of an appeal is jurisdictional, the Court has no more authority to act on the appeal filed by petitioners. Therefore, inasmuch as the appealed decision had lapsed into finality, the same may no longer be modified in any respect:

> "Nothing is more settled than the rule that *certiorari* is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence. While it is true that we have applied a liberal application of the rules of procedure in a number of cases, we have always stressed that this can be invoked only in proper cases and under justifiable causes and circumstances. 'To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantial justice.' It should be emphasized that in this case, Yap did not proffer any reasonable cause to

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[17] Dissenting Opinion, *Rollo*, pp. 115-117.
[18] Notice of Resolution, *Rollo*, p. 96.
[19] *Videogram Regulatory Board v. Court of Appeals, et al.*, G.R. No. 106564, November 28, 1996.

justify its failure to avail of the proper remedy before the CA except for his defensive argument of laying the blame to his counsel's mistake or negligence and his invocation of this Court's exercise of liberality in order to accord him his day in court. Indeed, Yap has not been forthright about his procedural blunder. Time and again, we have ruled that utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction.

At any rate, the perfection of an appeal within the period and in the manner prescribed by law is not a mere technicality, but is jurisdictional in that, non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory. Considering, therefore, that Yap failed to file a timely appeal from the RTC Orders, and consequently, resorted to a wrong mode of appeal before the CA, said RTC Orders already became final and executory."[20] (*Underscoring supplied*)

WHEREFORE, in view of the foregoing, the case is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[20] *Francisco B. Yap, et al. v. Heirs of Pantalan, et al.*, G.R. No. 199783, April 10, 2019.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice