REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SCRIPT2010, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9415

Members:

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

Promulgated:

SEP 2 8 2020 3:05 pm

x - x

RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court is respondent's **Motion for Reconsideration**, filed on June 23, 2020, with petitioner's **Comment/Opposition (Re: Motion for Reconsideration dated June 23, 2020)**, filed on July 16, 2020.

On February 17, 2020, the Court promulgated an Amended Decision, cancelling respondent's deficiency tax assessments against petitioner for violating the latter's right to due process of law, the dispositive portion of which is quoted hereafter as follows:

> "**WHEREFORE**, premises considered, respondent's Motion for Partial Reconsideration (Decision dated 04 October 2019), is **DENIED** for lack of merit. While, on the other hand, petitioner's Motion for Partial Reconsideration (Re: Decision dated October 4 2019), is hereby **GRANTED**. Accordingly, the dispositive portion of this Court's Decision promulgated on October 4, 2019, is amended to read as follows:

> '**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the assessments issued by respondent against petitioner for deficiency income tax, VAT and EWT in the aggregate amount of ₱45,447,506.55, inclusive of interest for the taxable year ended December 31, 2011, are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**.'
>
> **SO ORDERED.**"

Meanwhile, on March 4, 2020, respondent filed a *Motion for Extension of Time to File Petition for Review (For the Plaintiff)*, praying for an extension of thirty (30) days within which to file a Petition for Review of the above Decision. It was denied by the Court in the Resolution dated March 10, 2020.

In the instant Motion, petitioner seeks to reverse the findings in the above Decision raising the following grounds as its arguments, *viz.*:

I. The Honorable Court erred in denying the Motion for extension of time to file a Petition for Review.

II. The Honorable Court erred in cancelling the assessment issued against petitioner due to respondent's failure to strictly comply with the notice requirements laid down in Section 228 of the NIRC of 1997, as amended, and Revenue Regulation No. 12-99 amounting to denial of petitioner's right to due process.

As to the first ground, respondent's counsel claims that he received the Amended Decision dated February 17, 2020, on February 20, 2020. Counting fifteen (15) days therefrom, he was intending to file a motion for reconsideration prior to the due date on March 6, 2020, but for some oversight, he filed a *Motion for Extension of Time to File Petition for Review (For the Plaintiff)* instead on March 4, 2020.

Respondent further claims that the Resolution dated March 10, 2020, which denied his motion for extension of time, was only received by the Legal Division of Bureau of Internal Revenue (BIR) Revenue Region 7A – Quezon City on June 8, 2020. As such, respondent asserts that he has fifteen (15) days from June 8, 2020 or until June 23, 2020 to file the instant motion, because of the implementation of nationwide community quarantine due to the COVID-19 pandemic. Respondent argues that in the interest of justice and in adherence to the decision of the Supreme Court in a long line of cases that controversies be decided on the merits and not on mere technicalities, a litigant must be given his day in court.

Nonetheless, respondent's counsel also contends that the Court could treat his *Motion for Extension of Time to File Petition for Review (For the Plaintiff)* as a Petition for Relief from Judgment under Rule 38 of the Rules of Court. As provided under Section 1, Rule 38 of the Rules of Court, excusable negligence, which is defined as "one which ordinary diligence and prudence could not have guarded against", is one of the grounds allowed for filing the said Petition.

With regard to the second ground, respondent avers that the Court erred in cancelling the assessment issued against petitioner due to respondent's failure to strictly comply with the notice requirements laid down in Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations (RR) No. 12-99. Respondent insists that he observed both substantial and procedural due process in issuing the assessment subject of this case. He further states that the purported violation of RR No. 12-99 does not in any manner affect the validity of the assessment and that petitioner was sufficiently informed of the actual and legal basis of the assessment. In any case, respondent argues that there is an equivalent of 23 days interval between petitioner's receipt of Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN) on December 29, 2014 and January 23, 2015, respectively, which is more than 15 days as mandated under RR No. 12-99.

Lastly, respondent emphasizes that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise, the presumption of correctness of tax assessment stands.

On the other hand, petitioner contends that respondent can no longer seek reconsideration of the Amended Decision dated February 17, 2020. Petitioner maintains that respondent should have filed his motion for reconsideration within fifteen (15) days from receipt of the Amended Decision and not from his receipt of the Resolution dated

March 10, 2020, pursuant to Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA). Hence, petitioner claims that the Amended Decision should be deemed final and executory due to respondent's failure to file such a motion on or before March 6, 2020.

More so, petitioner claims that jurisprudence firmly requires the filing of a motion for reconsideration when the Court renders an Amended Decision. As such, respondent's motion for extension of time cannot be treated as a Petition for Relief from Judgment, especially since the motion failed to comply with the requirements under Section 3, Rule 38 of the Rules of Court. Petitioner further asserts that respondent failed to show the existence of excusable negligence that would merit relief from judgments under Rule 38.

Nevertheless, petitioner holds that respondent failed to overcome the Court's finding that petitioner's right to due process was violated.

Accordingly, respondent's Motion for Reconsideration is bereft of merit.

Verily, an Amended Decision is an entirely new decision which supersedes the original decision, for which a new motion for reconsideration may be filed again.[1] Section 1, Rule 15 of A.M. No. 05-11-07-CTA otherwise known as the "Revised Rules of the Court of Tax Appeals" (RRCTA), provides for the period for filing a motion for reconsideration, as follows:

> "SECTION 1. *Who may and when to file motion.–* Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial for **fifteen days from the date of receipt of notice of the decision**, resolution or order of the Court in question." *(Emphasis supplied)*

Perforce, restating the rule in *Rolloque v. CA,* the Court emphasized that the 15-day period for filing a motion for new trial or reconsideration is non-extendible. Hence, the filing of a motion for

[1] *Angelito L. Cristobal v. Philippine Airlines, Inc., et al.,* G.R. No. 201622, October 4, 2017.

extension of time to file a motion for reconsideration did not toll the 15-day period before a judgment becomes final and executory.[2]

More so, in *Habaluyas Inc. v. Japson*, [1986], the Supreme Court ruled that: "Beginning one month after the promulgation of this resolution, the rule shall be strictly enforced that no motion of extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court (now Court of Appeals)."[3]

Based on the aforequoted ruling of the *Habaluyas* case, motions for extensions of time to file motion for new trial or reconsideration may no longer be filed before all courts, lower than the Supreme Court. The rule in *Habaluyas* applies even if the motion is filed before the expiration of the period sought to be extended, because the fifteen (15) day period for filing a motion for new trial or reconsideration with said courts, is non-extendible.[4]

In the present case, respondent's counsel received the Court's Amended Decision on February 20, 2020. Based on the foregoing disquisitions, respondent had a non-extendible period of fifteen (15) days from February 20, 2020 or until March 6, 2020 within which to file the present motion. However, respondent committed the fatal error of filing instead a Motion for Extension of Time to File Petition for Review which – as expressed in *Rolloque* and *Habaluyas* – did not toll the running of the period for the finality of the Amended Decision. Needless to say, a party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses the right to do so as the decision, as to him, becomes final and binding.

Moreover, even assuming that respondent's counsel intended to file a Petition for Review before the Court of Tax Appeals (CTA) *En Banc*, respondent still failed to comply with the mandatory provisions of Section 1, Rule 8 of the RRCTA which requires that a Petition for Review filed with the CTA *En Banc* must be preceded by the filing of a timely motion for reconsideration or new trial of the decision or

---

[2] *Rivelisa Realty, Inc. v. First Sta. Clara Builders Corporation, et al.*, G.R. No. 189618, January 15, 2014; citing *Solomon Rolloque, et al. v. The Honorable Court of Appeals*, et al., G.R. Nos. 78109 & 78179, January 18, 1991.

[3] *Solomon Rolloque, et al. v. The Honorable Court of Appeals*, et al., G.R. Nos. 78109 & 78179, January 18, 1991; citing *Habaluyas Enterprises, Inc., et al. v. Judge Maximo M. Japson, et al.*, G.R. No. 70895, May 30, 1986.

[4] Ibid.

resolution of the Division. Notably, the word "must" therein clearly indicates the mandatory – not merely directory– nature of a requirement, thus:

> "RULE 8
> PROCEDURE IN CIVIL CASES
>
> SECTION 1. *Review of Cases in the Court en banc.*– In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division **must** be preceded by the filing of a timely motion for reconsideration or new trial with the Division." *(Emphasis supplied)*

The above provision was supported by the Supreme Court in the case of *City of Manila, et al v. Cosmos Bottling Corporation*[5], holding that the filing of a motion for reconsideration or new trial before the CTA Division is an indispensable requirement for filing an appeal before the CTA *En Banc, viz.:*

> "The CTA En Banc was correct in interpreting Section 18 of RA No. 1125, as amended by RA No. 9282 and RA No. 9503, which states –
>
> > Section 18. *Appeal to the Court of Tax Appeals En Banc.*– x x x.
> >
> > A party adversely affected by a resolution of a Division of the CTA on <u>motion for reconsideration or new trial</u>, may file a petition for review with the CTA en banc. (underlining supplied)
>
> as requiring a prior motion for reconsideration or new trial before the same division of the CTA that rendered the assailed decision before filing a petition for review with the CTA En Banc. Failure to file such motion for reconsideration or new trial is cause for dismissal of the appeal before the CTA En Banc.

[5] G.R. No. 196681, June 27, 2018.

Corollarily, Section 1, Rule 8 of the CTA Rules provides:

> Section 1. *Review of cases in the Court en banc.*– In cases falling under the exclusive appellate jurisdiction of the Court en bane, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (emphasis supplied)

Clear it is from the cited rule that the filing of a motion for reconsideration or new trial is mandatory - not merely directory - as indicated by the word 'must.'

Thus, in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue (Asiatrust)*, we declared that a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution in order for the CTA En Banc to take cognizance of an appeal via a petition for review. Failure to do so is a ground for the dismissal of the appeal as the word 'must' indicates that the filing of a prior motion is mandatory, and not merely directory. In *Commissioner of Customs v. Marina Sales, Inc. (Marina Sales)*, which was cited in *Asiatrust*, we held:

> The rules are clear. Before the CTA En Banc could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division. Procedural rules are not to be trifled with or be excused simply because their noncompliance may have resulted in prejudicing a party's substantive rights. Rules are meant to be followed. They may be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules. (citations omitted)"

Another elementary rule of procedure is that perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional. In this jurisdiction, an appeal is not a matter of right, but is one of sound judicial discretion. It may only be availed of in the manner provided by the law and the rules. A party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses the right to do so as the decision, as to him, becomes final and binding.[6] It is well-settled that judgments or orders become final and executory by operation of law and not by judicial declaration. x x x The court need not even pronounce the finality of the order as the same becomes final by operation of law. In fact, it could not even validly entertain a motion for reconsideration after the lapse of the period for taking an appeal x x x **The subsequent filing of a motion for reconsideration cannot disturb the finality of the judgment or order.**[7]

As to respondent's counsel's theory that his *Motion for Extension of Time to File Petition for Review (For the Plaintiff)* could be treated as a Petition for Relief from Judgment since it falls under "excusable negligence", the same is similarly without merit.

A Petition for Relief from Judgment under Rule 38 of the Rules of Civil Procedure is an equitable remedy that is allowed only in exceptional cases when there is no other available or adequate remedy. It may be availed of only after a judgment, final order, or other proceeding was taken against petitioner in any court through fraud, accident, mistake, or **excusable negligence**.[8] In the case of *Spouses Que, et al. v. Court of Appeals, et al.*,[9] the Supreme Court held that:

> "Admittedly, this Court has relaxed the rule on the binding effect of counsel's negligence and allowed a litigant another chance to present his case '(1) where [the] reckless or gross negligence of counsel deprives the client of due process of law; (2) when [the rule's] application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require.'
>
> None of these exceptions obtains here.

---

[6] *Heirs of Gamaliel Albano, et al. v. Sps. Mena C. Ravanes and Roberto Ravanes*, G.R. No. 183645. July 20, 2016.

[7] *Barrio Fiesta Restaurant, et al. v. Helen C. Beronia*, G.R. No. 206690, July 11, 2016.

[8] *Julio B. Purcon, Jr. v. MRM Philippines, Inc., et al.*, G.R. No. 182718, September 26, 2008.

[9] G.R. No. 150739, August 18, 2005.

> For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown. Here, what petitioners' first, second, and third counsels did was fail to file the Answer, file a belated and defective motion for reconsideration or new trial, and belatedly and erroneously file a petition for relief from judgment, respectively. **While these acts and omissions can plausibly qualify as simple negligence, they do not amount to gross negligence to justify the annulment of the proceedings below.**" *(Emphasis supplied)*

The relief afforded by Rule 38 will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy of law was due to his own negligence, or a mistaken mode of procedure for that matter; 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 a mistake of procedure by counsel. The Rules allow a petition for relief only when there is no other available remedy, and not when litigants, like the petitioner, lose a remedy by negligence.[10]

In the present case, respondent is not entitled to relief under Rule 38, Section 2 of the Rules of Court. He was not prevented from filing his motion for reconsideration by fraud, accident, mistake or excusable negligence, as in fact he filed one – belatedly that is. Negligence, to be excusable, must be one which ordinary diligence and prudence could have not guarded against.

While it is true that the Court have applied a liberal application of the rules of procedure in a number of cases, it must however be stressed that this can be invoked only in proper cases and under justifiable causes and circumstances. The bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel us to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction.[11]

---

[10] *Trancedo Redeña v. Hon. Court of Appeals, et al.*, G.R. No. 146611, February 6, 2007.

[11] *Landbank Philippines, of the v. The Court of Appeals, et al.*, G.R. No. 221636, July 11, 2016.

Henceforth, by failing to timely file a motion for reconsideration, the Amended Decision has become final and respondent lost any right which he may had under the rules to seek reconsideration of the same. Respondent's subsequent filing of the motion for reconsideration after the prescribed period did not and could no longer disturb the finality of the Amended Decision nor restore jurisdiction which had already been lost.

WHEREFORE, considering that the Amended Decision dated February 17, 2020 has already attained finality, respondent's Motion for Reconsideration is **DENIED** for lack of jurisdiction.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice