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, and*
BACORRO-VILLENA, *JJ.*

Promulgated:

SEP 30 2021 11:40 AM

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is respondent's **Petition for Relief from Judgment** filed on March 8, 2021, with petitioner's **Comment to Respondent's Petition for Relief from Judgment**, filed on July 13, 2021.

To have a clear view of the facts surrounding the subject Petition for Relief from Judgment, a brief backgrounder is in order.

On April 8, 2016, petitioner filed a Petition for Review with the Court of Tax Appeals, praying for the refund or issuance of a tax credit certificate in the total amount of ₱24,130,218.00, representing its alleged unutilized/excess creditable withholding taxes for calendar year ending December 31, 2013.

The above-cited Petition for Review was partially granted by the Court in its Decision promulgated on October 25, 2019, to wit:

> "**WHEREFORE**, premises considered, petitioner's Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **Ten Million Nine Hundred Ninety-Two Thousand Seven Hundred Eighty-Six and 35/100 Pesos (₱10,992,786.35)**, representing petitioner's excess and unutilized CWT for CY 2013.
>
> **SO ORDERED**."

Thus, petitioner filed a Motion for Reconsideration on November 11, 2019, while respondent filed his Motion for Partial Reconsideration through registered mail on November 8, 2019 and received by the Court on November 19, 2019. Both parties failed to file their respective comments thereon, as per Records Verification dated December 19, 2019. The Court, however, denied both parties' Motions in its Resolution dated March 2, 2020.

Then, on July 22, 2020, a Records Verification Report was issued by the Judicial Records Division of this Court stating that there was no CTA *En Banc*/SC appeal filed by any of the parties herein on the March 2, 2019 Resolution. As such, a Resolution was issued on July 29, 2020, ordering the issuance of Entry of Judgment in the instant case, thus:

> "ACCORDINGLY, let of Entry of Judgment be issued in this case, and the Clerk of Court shall forthwith enter the Decision dated October 25, 2019 in the Book of Entries of Judgments (Section 6, Rule 14, Revised Rules of CTA).
>
> **SO ORDERED**."

Undeterred, respondent filed a Motion for Reconsideration (on the Resolution promulgated on July 29, 2020) on September 30, 2020 through registered mail and the same was received by the Court on October 12, 2020.

In the Resolution dated January 27, 2021, the Court denied respondent's Motion for Reconsideration (on the Resolution promulgated on July 29, 2020) on the ground that respondent filed another Motion for Reconsideration, instead of filing the appropriate Petition for Review, or at least a Motion for Extension of Time to File the Petition for Review, with the CTA *En Banc* within fifteen (15) days from receipt of the March 2, 2020 Resolution on March 4, 2020, thereby rendering the Resolution dated March 2, 2020 final and executory.

On March 8, 2021, respondent filed the present Petition for Relief from Judgment, praying that the same be granted and that the Resolutions promulgated on July 29, 2020 and January 27, 2021 be set aside and permit the appeal to take its course.

In justifying the alleged timely filing of the Petition for Relief from Judgment, respondent claims that he received the Resolutions dated July 29, 2020 (ordering the issuance of the Entry of Judgment) and January 27, 2021 (denying respondent's Motion for Reconsideration (on the Resolution promulgated on July 29, 2020) only on February 9, 2021. Thus, it is respondent's position that the instant Petition for Relief from Judgment was timely filed within sixty (60) days from the actual receipt of the denial of the motion for reconsideration.

Further, respondent's special counsel, Atty. Carl Fitri A. Hussin, avers that when he received the Court's Resolution promulgated on July 29, 2020, which stated 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 filed on November 8, 2019 was not received by the Court. Consequently, he immediately caused the issuance of a Letter dated September 25, 2020, issued by Atty. Philip A. Mayo, then OIC-Chief of Revenue Region No. 8A in Makati City, requesting for certification on update or status of the subject mail (Motion for Partial Reconsideration filed on November 8, 2019). Then, a Certification dated September 28, 2020 was issued by Glenn V. Granados, Postmaster VII, stating that the registered letter no. RE 132484824 ZZ, posted on November 8, 2019 by the Bureau of Internal Revenue, Makati City, addressed to the Court of Tax Appeals 2nd Division, was dispatched to Quezon City Post Office, under bill no. 95 page no. 1, column no. 1, line no. 31 dated November 11 2019.

Atty. Hussin likewise claims that his apprehension "why this Court issued an entry of judgment in this case was also brought about by the fact that his Answer to the Petition for Review" was not received by the Court, as shown in its Resolution dated February 20,

2017. Thus, he pointed out in his Manifestation filed on February 3, 2017, that he already filed the required Answer as early as July 13, 2016, through registered mail.

Atty. Hussin also stated that it was only when the Court resolved respondent's Motion for Reconsideration (on the Resolution promulgated on July 29, 2020) that he realized his shortcomings, as it was in the Resolution promulgated on January 27, 2021 that the Court mentioned of a Resolution dated March 2, 2020 (denying respondent's Motion for Partial Reconsideration), which was respectively received by the parties on March 4, 2020. Atty. Hussin continues that he learned of the January 27, 2021 Resolution only on February 10, 2021, the date when the said Resolution was referred to him by Mr. Dennis R. Agacino, their staff at the Legal Division of Revenue Region No. 8A Makati City. As such, Atty. Hussin requested the said staff to immediately verify if, indeed, the Resolution dated March 2, 2020 was received by their office on March 4, 2021. True enough, their office records reflected such fact, as shown in the Affidavit executed by Mr. Agacino.

In view of the foregoing, Atty. Hussin respectfully asks for clemency for his short comings and failure to be vigilant in maintaining the highest degree of respect due to the Court. According to him, the misapprehension of the facts and proceedings that transpired, and the defiance and inconvenience caused to the Court are solely attributable to him.

More so, Atty. Hussin claims that during the said period, specifically, 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 issued Administrative Circular No. 31-2020 on March 16, 2020, extending 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. Said deadline was accordingly further extended by other circulars issued by the High Court. Then, on May 14, 2020, the Supreme Court issued Administrative Circular No. 39-2020, giving additional thirty (30) days counted from June 1, 2020 within which to file the previously stated pleadings.

In addition, Atty. Hussin narrates that in June 2020, all employees of the BIR Revenue Region No. 8A Makati City were subjected to Rapid Testing. Said test showed that he had IgG antibodies in his blood. As such, he was directed to go home and to undergo Real-Time Reverse Transcription Polymerase Chain Reaction (RT-PCR) test. However, due to alleged high cases of Covid-19, he only had his RT-PCR test on July 14, 2020. Apart from it, he was required to work from home on various days from June 2020 to November 2020 which, accordingly, had critically affected his performance and work in the office, particularly, his recollection on the existence of the Resolution dated March 2, 2020. To prove the foregoing facts, he attached to the instant Petition for Relief the respective Affidavits executed by Attys. Abrillius Raffy C. Laguesma, Dyrene Mara S. Rosario-Ungsod and Avelino G. Alfelor Jr.

More so, while admitting that he has been incurring court procedural lapses in the handling of the appeals of the present case, he nonetheless insists that the lockdowns and the work-from-home arrangement caused by Covid-19 can be likened to an insuperable cause that greatly contributed to his failure to file the appropriate Petition for Review with the CTA *En Banc*. Thus, he requests that the leniency and mercy extended by the Court in Division in *Global Packaging Systems and Materials Corporation vs. Commissioner of Internal Revenue,* docketed as CTA Case No. 9744, be likewise extended to respondent, as justice would be better achieved if the case would be decided upon the merits and not on technical nicety.

Lastly, Atty. Hussin insists that a fortuitous event has prevented him from exercising the proper remedy, and such failure should be considered excusable.

On the other hand, petitioner manifests its objection to respondent's Petition for Relief of Judgment on two grounds: (a) that the Petition for Relief of Judgment was filed out of time; and (b) that respondent has not raised any issue in his Motion for Reconsideration that has not been sufficiently addressed by the Court in the assailed Decision.

Anent the first ground, petitioner avers that, if respondent seeks relief of the Honorable Court's Judgment, his Petition should have been reckoned from the Resolution promulgated on March 2, 2020 (Resolution denying the parties respective motions for reconsideration) or, at the latest, from the Resolution promulgated on July 29, 2020 (Resolution ordering the issuance of Entry of Judgment), and not from the receipt of the Resolution dated July 29, 2020, as the latter was a mere result of the denial of respondent's second Motion for Reconsideration.

Petitioner further claims that, assuming that the filing of the subject petition is still possible, respondent's right to appeal the October 25, 2019 Decision had already lapsed, and vacating the Resolutions dated July 29, 2020 and January 27, 2021 will not give respondent a new fifteen (15) day period within which to file an appeal against the March 2, 2020 Resolution.

Moreover, petitioner claims the Court need not give due course to the subject Petition for Relief of Judgment since all issues raised by respondent had already been addressed in the assailed October 25, 2019 Decision and March 2, 2020 Resolution.

The Court denies the instant Petition for Relief from Judgment.

Section 3, Rule 38 of the Revised Rules of Court provides:

> "Rule 38
> Relief from Judgments, Orders, or Other Proceedings.
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> Section 1. *Petition for Relief from judgment, order or other proceedings.* — When a judgment or final order is entered or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that a judgment, order or proceeding be set aside.
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> x x x x x x x x x
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> Section 3. *Time for Filing Petition; Contents and Verification.* — A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six months after such judgment or final order was entered, or such proceeding was taken, and must be accompanied with affidavits showing the fraud, accident, mistake or excusable negligence relied upon and the facts constituting the petitioner's good and substantial cause of action or defense."

Jurisprudence provides that a petition for relief from judgment, order, or other proceedings is an equitable remedy which is allowed only in exceptional circumstances, among which are whenever a party was unjustly deprived of a hearing, was prevented from taking an appeal, or a judgment or final order entered because of fraud, accident, mistake or excusable negligence.[1]

Being an equitable remedy, the party filing a petition for relief from judgment must strictly comply with two (2) reglementary periods provided under Section 3, Rule 38 of the 1997 Rules of Court: *first*, the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and *second*, within a fixed period of six (6) months from entry of such judgment, order or other proceeding.[2]

Strict compliance with the above-stated reglementary periods is required as the same is considered as a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order to put an end to litigation.[3] As such, failure to avail of the said grace period fixed by the Rules is fatal[4] and, in fact, may result in the outright dismissal of the petition.[5]

As borne out by the records, respondent received a copy of the October 25, 2019 Decision on October 28, 2019. Thus, respondent filed a Motion for Partial Reconsideration through registered mail on November 8, 2019 and the same was received by the Court on November 19, 2020. On March 4, 2020, he received a copy of the March 2, 2020 Resolution, denying the parties' respective motions for reconsideration of the said Decision. There being no *En Banc*/SC appeal filed by any of the parties herein on the March 2, 2020 Resolution, the Court ordered the issuance of Entry of Judgment in its Resolution dated July 29, 2020. As such, the 60-day period to file a petition for relief from judgment should be reckoned from the actual receipt of the denial of his Motion for Partial Reconsideration on March 4, 2020, pursuant to the Supreme Court's ruling in the *City of Dagupan vs. Maramba*,[6] or at the latest from the receipt of the July 29, 2020 Resolution, ordering the issuance of Entry of Judgment

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[1] *Lasam vs. Philippine National Bank*, G.R. No. 207433, December 5, 2018, citing the cases of *Tuason vs. Court of Appeals*, G.R. No. 116607, April 10, 1996 and *Ampo vs. Court of Appeals*, 517 Phil. 750, 754 (2006).
[2] *Philippine Amanah Bank vs. Contreras*, G.R. No. 173168, September 29, 2014.
[3] *Thomasites Center for International Studies vs. Rodriguez*, G.R. No. 203642, January 18, 2016.
[4] *Philippine Amanah Bank vs. Contreras*, *Ibid.*
[5] *Philippine Rabbit Bus Lines, Inc. vs. Judge Arciaga*, G.R. No. L-29701, March 16, 1987.
[6] G.R. No. 174411, July 2, 2014.

in the instant case, on September 23, 2020. Thus, the filing of the instant petition for relief on March 8, 2021 was already more than 60 days from the knowledge of either the March 2, 2020 Resolution or July 29, 2020 Resolution.

In view thereof, there is no basis for respondent to claim that the 60-day period to file a petition for relief should be counted from February 9, 2021, the date he received the January 27, 2021 Resolution of the Court, denying his second Motion for Reconsideration, as the same is not the final order contemplated under Section 3, Rule 38 of the 1997 Rules of Civil Procedure.

Moreover, the Court observes that there was no excusable negligence in the instant case that could have prevented respondent from filing an appeal on time before the CTA *En Banc* from the March 2, 2020 Resolution, denying both parties' respective Motions for Reconsideration. In this petition for relief, respondent, through its counsel, attributed the latter's failure to timely file respondent's appeal on the following: (1) misapprehension of the facts and proceedings that transpired; (2) failure of their staff to immediately call his attention when their office got hold of the Resolution dated March 2, 2020 on March 4, 2020; and (3) existence of fortuitous events (*i.e,* the sudden need for respondent'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). However, all these circumstances could have been avoided, if ordinary diligence and prudence had been exercised, such as developing a system not only for keeping track of all his deadlines for filing necessary pleadings, and monitoring the cases he is handling and the proceedings that transpired therein, but also ensuring the continuity of work processes during the said periods. This position of the Court is in conformity with the pronouncement of the High Court in *Rizal Banking Corporation vs. Commissioner of Internal Revenue*[7] *viz:*

> "Relief cannot be granted on the flimsy excuse that the failure to appeal was due to the neglect of petitioner's counsel. Otherwise, all that a losing party would do to salvage his case would be to invoke neglect or mistake of his counsel as a ground for reversing or setting aside the adverse judgment, thereby putting no end to litigation.

[7] G.R. No. 168498, June 16, 2006.

> Negligence to be 'excusable' must be one which ordinary diligence and prudence could not have guarded against and by reason of which the rights of an aggrieved party have probably been impaired. Petitioner's former counsel's omission could hardly be characterized as excusable, much less unavoidable.
>
> The Court has repeatedly admonished lawyers to adopt a system whereby they can always receive promptly judicial notices and pleadings intended for them." Apparently, petitioner's counsel was not only remiss in complying with this admonition but he also failed to check periodically, as an act of prudence and diligence, the status of the pending case before the CTA Second Division. x x x" *(Emphasis supplied)*

Likewise, Petition for Relief from Judgment will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence; otherwise, the petition for relief can be used to revive the right to appeal which had been lost thru inexcusable negligence,[8] as in the instant case.

Finally, the Court reiterates that procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows a relaxation in the application of the rules, it never intend to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of the rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules; these rules illumine the path of the law and place the pursuit of justice in reasonable and orderly basis.[9]

WHEREFORE, premises considered, respondent's **Petition for Relief from Judgment** is **DENIED**, for lack of merit.

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[8] *Tuason vs. Court of Appeals, Ibid.*

[9] *Anderson vs. Ho*, G.R. No. 172590, January 7, 2013.

SO ORDERED.

JUANITO C. CASTANEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice