REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

FILMINERA RESOURCES CORPORATION, *Petitioner,*	**CTA CASE NO. 8938**
- *versus* -	Members: ***Bautista,*** *Chairperson* ***Fabon-Victorino,*** *and* ***Ringpis-Liban, JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 20 2017 4:06 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is respondent's Omnibus Motion (1. To Admit; 2. For Partial Reconsideration) (the "Omnibus Motion") filed on March 29, 2017; with petitioner's Comment/Opposition (Re: Omnibus Motion dated March 27, 2017) (the "Comment") filed by registered mail on May 12, 2017.

On January 31, 2017, the Court promulgated a Decision[1] (the "Assailed Decision"), the dispositive portion of which states:[2]

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Filminera Resources Corporation in the reduced amount of **SIXTY SEVEN MILLION SEVEN HUNDRED NINETY SEVEN THOUSAND NINE**

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[1] *Records, Vol. 4, CTA Case No. 8938,* pp. 2214-2234.

[2] *Id.,* pp. 1357-1358.

HUNDRED TWENTY-TWO AND 51/100 PESOS (PHP67,797,922.51).

SO ORDERED.

In its Omnibus Motion, respondent avers that he received a copy of the Assailed Decision on February 3, 2017, thus, he had until February 18, 2017 to file a Motion for Reconsideration, however he failed to do so. Respondent's counsel maintains that he has always been diligent in his four and a half (4.5) years of practice before the Court of Tax Appeals ("CTA"); that the unfortunate event that led to the belated filing of the Motion for Reconsideration was due to inadvertent mistake of the interns who were assisting him in the preparation of his turn-over inventory; that the Decision was filed in its case folder without the knowledge of respondent's counsel; and that he only found out about the decision when he was informed by the Litigation Division that he failed to file a motion for reconsideration. Respondent's counsel also avers that the Litigation Division has been severely undermanned as early as September 2016; that aside from handling his own magnanimous load of cases, he is a Section Chief and is still expected to review the pleadings to be filed by the action lawyers, a function that became increasingly demanding given the adjustment to litigation work by the newly reassigned division chiefs. Respondent's counsel asserts that when he was re-assigned to Revenue Region 9-B LaQueMar as an OIC-Assistant Chief of the Regional Investigation Division he juggled his responsibilities as a Section Chief and action attorney as well as complying with the turn-over requirements under the Revenue Transfer Assignment Order ("RTAO"). Respondent submits that the Rules of Court should be liberally construed in order to promote their object of securing a just, speedy and inexpensive disposition of every action or proceeding; that it should be viewed as mere tools designed to facilitate the attainment of justice.

Respondent argues that petitioner is not entitled to its claim for refund considering that its failure to satisfy the statutory and administrative requirement provided for by the *1997 NIRC;* and that petitioner failed to submit the complete documents in support of its administrative claim for refund pursuant to *Revenue Memorandum Order ("RMO") No. 53-98* dated June 1, 1998. Respondent insists that it is wrong for the Court to assume that petitioner has submitted the requisite supporting documents relative to its administrative claim for refund; that such fact must be averred and proven by petitioner before the Court may decide upon the merits of the case because it is a condition precedent before an administrative claim can be acted upon by respondent and subsequently by the Court; and that without the submission of documents to support the application, it is invalid and a mere scrap of paper.

On the other hand, petitioner counter-argues that respondent's failure to file a Motion for Reconsideration renders the Assailed Decision final and executory pursuant to *Sections 6* and *7 of the Revised Rules of the CTA ("RRCTA")*, thus, the Court no longer has jurisdiction to entertain respondent's Omnibus Motion. Petitioner avers that anyone seeking exemption from the application of the rules has the burden of proving that exceptionally meritorious instances exist which warrant such departure; that the explanation of respondent's counsel with respect to his heavy work load which contributed to the belated filing of the Motion for Partial Reconsideration can hardly be considered compelling or meritorious; and that the client is bound by the acts, even mistakes of his counsel.

Petitioner avers that, contrary to respondent's claim, it submitted complete documents in support of its administrative claim for refund; that it is the taxpayer who determines if the documents submitted in support of the claim for refund is sufficient to establish its claim; that the Bureau of Internal Revenue ("BIR") can always inform or request the taxpayer to submit additional documents; that in the absence of any request for additional documents, petitioner had reasonable ground to believe that the supporting documents it submitted were already sufficient for the full and complete evaluation of its administrative claim for refund; and that respondent did not act on its application for refund from the time it was filed to the filing of the Petition for Review before the CTA.

Petitioner also maintains that *RMO No. 53-98* does not impose a requirement on taxpayers to submit the documents listed therein, but rather, it is an issuance addressed to BIR examiners and not a directive addressed to taxpayers; and that respondent's bare allegation that it failed to comply with the invoicing and accounting requirements laid down by law must necessarily fail. Petitioner thus prays that for the Court to declare that it has no jurisdiction to act on respondent's Motion for Partial Reconsideration and to deny respondent's Omnibus Motion for lack of merit.

The Court resolves.

Respondent is asking for benevolence of the Court to relax the application of the rules of procedure for the Court to admit and to grant his Motion for Partial Reconsideration.

After considering the arguments raised by both parties, the Court finds respondent's Omnibus Motion devoid of merit.

While it is true that an appeal is an essential part of our judicial process, the right thereto is not a natural right or a part of due process but is merely a statutory privilege; thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory.[3]

Time and again, it has been held that the relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it.[4] To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules. The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse.[5] It should be emphasized that the resort to a liberal application, or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice.[6]

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[3] *Landbank of the Philippines vs. Court of Appeals, et al.*, G.R. No. 221636, July 11, 2016, citing *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 190660, April 11, 2011, 647 SCRA 561, citing *Zamboanga Forest Managers Corp* v. *New Pacific Timber and Supply Co.*, G.R. No. 173342, October 13, 2010, 633 SCRA 82.

[4] *Daikoku Electronics Phils., Inc. v. Raza*, G.R. No. 181688, June 5, 2009, 588 SCRA 788.

[5] *Id.*

[6] *Gregorio de Leon vs. Hercules Agro Industrial Corporation, et al*, G.R. No. 183239, June 2, 2014, 724 SCRA 309, citing *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, G.R. No. 198357, December 10, 2012, 687 SCRA 643.

The Supreme Court, in the case of *Gregorio de Leon vs. Hercules Agro Industrial Corporation, et al.*[7], citing *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*[8] is instructive, to wit:

> That while procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.
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> xxx xxx xxx
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> We must stress that the bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel this Court 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.
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> Petitioner's plea that the rules be not strictly applied so that the ends of justice will be served is not meritorious. We found that petitioner had not shown any satisfactory reason which would merit the relaxation of the rules. Petitioner moved for motion of time to file his motion for partial reconsideration alleging heavy volume of work and the need to attend to other urgent matters in other equally urgent cases, which we cannot consider as exceptional circumstances to justify the non-observance of the rules of procedure.

While the Court feels the frustration of the respondent for being undermanned and overworked, the Court is not convinced that such

[7] G.R. No. 183239, June 2, 2014, 724 SCRA 309.
[8] G.R. No. 198357, December 10, 2012, 687 SCRA 643.

is a justifiable reason to relax the application of the rules of procedure. Be that as it may, even if the Motion for Reconsideration was timely filed it would still fail.

It is worthy to note that during the trial, respondent did not present any testimonial or documentary evidence to support his special and affirmative defenses, neither did he file a Memorandum, opting to adopt his Answer[9] as his Memorandum. In his Answer, respondent did not raise petitioner's alleged failure to file the documents in support of its application for refund/TCC, rather, respondent stated that "petitioner was not able to prove that it has strictly complied with the submission of all supporting and relevant documents provided under [*RMO] No. 53-98* and other existing rules and regulations to warrant the grant of the application for refund."[10] This is the first time that respondent raised the issue that petitioner did not submit documents in support of its application for tax refund/TCC.

Moreover, respondent did not conduct a cross-examination of petitioner's witness Ms. Joy P. Dompor ("Ms. Dompor") when she was presented as witness and her testimony in the form of judicial affidavit was offered during the August 11, 2015 trial[11]. Ms. Dompor testified that petitioner filed its application for tax refund/TCC on June 30, 2014; that after the filing of its administrative claim, there was no specific action taken by the Bureau of Internal Revenue ("BIR"); and that since the BIR did not have any action on their administrative claim and before the expiration of the two (2) year prescriptive period, it was constrained to file its Petition for Review before the CTA. The purpose of cross-examination is to test the truth or falsity of the statements of a witness during direct examination.[12]

Having failed to controvert the claims of petitioner's witness that he did not act on petitioner's administrative claim for refund, respondent cannot now claim that no documents were filed in support of petitioner's application for administrative refund. It is too late in the day for respondent to raise this as an issue.

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[9] *Records, Vol. 3, Answer,* pp. 1554-1572.
[10] *Id., Answer,* paragraph 7, p. 1557.
[11] *Id., Minutes of Hearing dated August 11, 2015,* p. 1962
[12] People vs. Rosario, et al., G.R. No. 146689, September 27, 2002, 390 SCRA 160.

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At this point, the Court finds it important to clarify that there is no need to submit complete documents required under *RMO No. 53-98* in relation to *Section 112(C) of the 1997 NIRC.* In the Supreme Court case of *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*[13], it was held that:

> The CIR's reliance on *RMO 53-98* is misplaced. <u>There is nothing in *Section 112 of the [1997] NIRC, RR [No.] 3-88* or *RMO [No.] 53-98* itself that requires submission of the complete documents enumerated in *RMO [No.] 53-98* for a grant of a refund or credit of input VAT.</u> The subject of *RMO [No.] 53-98* states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities x x x." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. <u>Even assuming that *RMO [No.] 53-98* applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."</u>
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> <u>Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with *[RMC No.] 42-03.* However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition.</u> The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA *EB*'s finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time.
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> Under *Section 112(C) of the 1997 NIRC,* in case of failure on the part of the CIR to act on the application, the taxpayer affected may, within 30 days after the expiration of the 120-day period, appeal the unacted claim with the CTA. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "a specific period" required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit. In *Commissioner of Internal Revenue v. San Roque Power Corporation,* we emphasized that compliance with the 120-day waiting period

[13] G.R. No. 205055, July 18, 2014, 730 SCRA 242.

> is mandatory and jurisdictional. In this case, when TSC filed its administrative claim on 21 December 2005, the CIR had a period of 120 days, or until 20 April 2006, to act on the claim. However, the CIR failed to act on TSC's claim within this 120-day period. Thus, TSC filed its petition for review with the CTA on 24 April 2006 or within 30 days after the expiration of the 120-day period. Accordingly, we do not find merit in the CIR's argument that the judicial claim was prematurely filed.[14]

In claims for VAT refund, the non-submission of complete supporting documents in the administrative level is not fatal to the taxpayer's judicial claim.[15] The CTA is not barred from receiving, evaluating and appreciating evidence submitted before it.[16] Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the *Rules of Court*.[17] The question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.[18]

Party litigants are reminded that among the ends to which a motion for reconsideration is addressed, is to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence.[19] Thus, having failed to convince the court, respondent's Omnibus Motion must necessarily fail.

WHEREFORE, premises considered, the Omnibus Motion (1. To Admit; 2. For Partial Reconsideration) is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated January 31, 2017 is **AFFIRMED** and **UPHELD.**

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[14] Underscoring and italics ours.

[15] *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc.,* CTA *EB* No. 474, September 1, 2009; *Commissioner of Internal Revenue v. Toledo Power Company,* CTA *EB* No. 589, September 15, 2010; *Commissioner of Internal Revenue v. San Roque Power Corporation,* CTA *EB* No. 657, April 4, 2012.

[16] *Id.*

[17] *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc., CTA EB No. 474, September 1, 2009; Commissioner of Internal Revenue v. Toledo Power Company, CTA EB No. 589, September 15, 2010; Commissioner of Internal Revenue v. San Roque Power Corporation, CTA EB No. 657, April 4, 2012.*

[18] *Id.*

[19] *Guerra Enterprises Company, Inc. vs. Court of First Instance of Lanao del Sur,* G.R. No. L-28310, April 17, 1970, 32 SCRA 314.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice