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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA BANKING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3537

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - - - x

12/28/83

D E C I S I O N

Petition for relief from judgment filed by petitioner Manila Banking Corporation praying that an order be issued setting aside the decision of this Court dated October 30, 1981 in C.T.A. Case No. 2993, The Manila Banking Corporation vs. The Commissioner of Internal Revenue, denying the claim of petitioner for tax credit of the amount of ₱34,295.45 representing 25% surcharge, interest and compromise penalty for late payment of the 35% transaction tax on commercial papers it had paid pursuant to Presidential Decree No. 1154.

Submitted for decision on the basis of the pleadings, petitioner herein is a domestic corporation engaged in the banking business with head offices at the TMBC Bldg., Ayala Avenue, Makati, Metro Manila. On February 13, 1979, petitioner filed with this Court a petition for review dated February 9, 1979 entitled "The Manila Banking Corporation vs. The Commissioner of Internal

Revenue" docketed as C.T.A. Case No. 2993, which was a claim for tax credit in the amount of ₱34,295.45, representing penalty for late payment of the transaction tax previously imposed on commercial papers pursuant to Presidential Decree No. 1154. In a decision dated October 30, 1981, this Court dismissed petitioner's claim for tax credit. The motion for reconsideration of said decision filed by petitioner was denied by the Court on March 29, 1982.

On April 26, 1982, petitioner filed with the Supreme Court a petition for review, docketed as G.R. No. 60292, appealing from the decision of this Court dated October 30, 1981. After the Supreme Court had required respondent Commissioner of Internal Revenue to comment on petitioner's petition for review on certiorari, respondent Commissioner stated that:

C O M M E N T

> COMES NOW respondent, through undersigned counsel, and in compliance with this Honorable Court's resolution dated July 21, 1982, respectfully states that:
>
> 1. Respondent has, after a careful and thorough study of the case, acceded to petitioner's claim that the transaction tax imposed under Section 210, Title V of the Tax Code, as amended, is a tax on income.
>
> 2. Accordingly, respondent has, in Memorandum No. 137-82, dated September 20, 1982, issued a tax credit in favor of petitioner

Manila Banking Corporation, covering the amount of ₱26,765.22, computed as follows:

Total amount claimed as refundable		₱34,295.45
Deduct:		
5% surcharge (Sec. 51(e)(3)	₱6,757.75	
14% interest (Sec. 51(e)(1)	772.48	7,530.23
Amount of Tax Credit		₱26,765.22

WHEREFORE, it is respectfully prayed that the petition for review be dismissed for being moot and academic.

On November 5, 1982, petitioner filed with the Supreme Court its comment stating, among others, that it agrees with the conclusion of respondent that the petition for review on certiorari has become moot and academic, and endorsing the prayer of respondent for the dismissal of the petition. Consequently, in a resolution dated 15 November 1982, the Supreme Court "Resolved, to DENY the petition for being moot and academic." (p. 29, CTA records.)

For reasons stated in the special and affirmative defenses of his answer, respondent Commissioner of Internal Revenue considers petitioner's petition for relief from judgment without merit and asks that it be dismissed. We agree with this conclusion.

To begin with, under section 3, Rule 33 of the Rules of Court, the petition for relief should be filed within sixty (60) days "after the petitioner learns of the judgment, order or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken". Plainly, this language is broad enough to allow a party to seek relief from the judgment, as soon as he learns of it, without waiting for the finality of the judgment on the merits. (Mercado vs. Domingo, L-19457, December 17, 1966, 18 SCRA 961.) The six-month period is merely a limitation to the sixty-day period after petitioner learns of the judgment, order or proceeding complained of. In other words, the petition must be filed within sixty (60) days after knowledge is acquired of the proceedings, provided it is not beyond six (6) months after judgment or order was entered or the proceeding has actually occurred. (Moran, p. 277, Vol. II, 1979 Edition, citing Ramos, et al., vs. Albano, et al., L-5380, March 25, 1953, Samson vs. Dinglasan, L-15320, October 25, 1960; Abao vs. Vertucio, L-16429, October 25, 1960.)

Here, in the case at bar, copy of the decision of this Court in C.T.A. Case No. 2993, dismissing petitioner's petition for review, was received by petitioner Manila Banking Corporation on December 10, 1981. While petitioner filed a motion for reconsideration on December 23, 1981, copy of this Court's resolution denying the motion for reconsideration was received by petitioner on April 16, 1982. The instant petition for relief from judgment was filed with this Court on October 28, 1982. It is thus beyond controversy that herein petitioner's motion for relief came too late, more than sixty (60) days having elapsed since it learned that its petition for review was dismissed or the motion for reconsideration thereof was denied.

But there is more. The relief is against a judgment rendered where a party has been unjustly deprived of a hearing or has been prevented from taking an appeal by fraud, accident, mistake or excusable negligence; or a judgment or order is entered through fraud, accident, mistake, or excusable negligence. Petitioner has not been unjustly deprived of a hearing in C.T.A. Case No. 2993 since petitioner itself, during the hearing on August 10, 1979, was the one who submitted the said case for judgment on the pleadings without the objection of respondent. (p. 31, records of CTA Case No. 2993.) Neither has petitioner by fraud, accident, mistake, or excusable negligence been unjustly prevented from taking an appeal from the decision of this Court in C.T.A. Case No. 2993 because, as alleged by petitioner in its Petition for Relief from Judgment filed in the instant case (par. 6, p. 2, CTA records) and as shown in the records of C.T.A. Case No. 2993 (pp. 127-219), petitioner filed with this Court a notice of appeal and with the Supreme Court a petition for review which was docketed therein as G.R. No. 60292. Finally, it can never be said that judgment has been entered or proceeding is taken against petitioner through fraud, accident, mistake or excusable negligence, considering that in its COMMENTS filed with the Supreme Court on November 5, 1982, it stated, among others, "We agree with the conclusion of respondent that petitioner's claim for tax credit has become moot and academic because he has already granted it, and we endorse his prayer for the dismissal of our appeal here xxx xxx." Hence, in its resolution of November 15, 1982, the Supreme Court stated:

> "G.R. No. 60292 (Manila Banking Corp. vs. Court of Tax Appeals, et al.).- Acting on the petition for review on certiorari, as well as the comment of the respondents thereon and petitioner's reply thereto, the Court Resolved to DENY the petition for being moot and academic."

And the same has, on November 22, 1982 become final and executory and recorded in the Book of Entries of Judgments of the Supreme Court on February 7, 1983. (p. 218, records of CTA Case No. 2993.)

Against this backdrop, to say that petitioner by fraud, accident, mistake or excusable negligence has been unjustly deprived of a hearing in C.T.A. Case No. 2993, or has been prevented from taking an appeal from the decision of this Court therein; or the judgment in the said case was entered, or any other proceeding was taken, against petitioner through fraud, accident, mistake or excusable negligence, would be to incur in self-contradiction.

WHEREFORE, the petition for relief from judgment is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, December 28, 1983.

Amante Filler
AMANTE FILLER
Presiding Judge

WE CONCUR:

Took no part
CONSTANTE C. ROAQUIN
Associate Judge

Alex Z. Reyes
ALEX Z. REYES
Associate Judge