REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CHINA BANKING CORPORATION,
Petitioner,

EB CASE NO. 738
(CTA AC NO. 66)

Members:

ACOSTA, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, *and,*
COTANGCO-MANALASTAS, *JJ.*

\- versus -

CITY TREASURER OF MANILA,
Respondent.

Promulgated:

APR 17 2012 Cortapolinario 2:05 p.m.

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DECISION

ACOSTA, *PJ:*

This is an appeal, by way of a Petition for Review[1], filed by Petitioner seeking to annul the Decision[2] and Resolution[3] of the Court of Tax Appeals Third

[1] Docket, pp. 9-78.
[2] Docket, pp. 38-54.
[3] Docket, pp. 68-77.

Division[4] dated October 1, 2010 and February 22, 2011, respectively, in CTA AC No. 66.

The dispositive portion of the assailed Decision reads:

"**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. The Decision dated August 28, 2008 and Order dated March 29, 2010, rendered by the RTC of Manila, Branch 173, are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Petition For Review in RTC Civil Case No. 07-117075 is hereby **DISMISSED** for being filed late.

SO ORDERED.

THE FACTS

The Court Third Division found the pertinent facts[5] to be as follows:

On January 2007, on the basis of the reported income of respondent CBC's Sto. Cristo Branch, Binondo, Manila, amounting to P34,310,777.34 for the year ending December 31, 2006, respondent CBC was assessed the amount of P267,128.70 by petitioner City Treasurer of Manila, consisting of local business tax, business permits, and other fees for taxable year 2007, broken down as follows:

Particulars	Amount of Tax and Fees	Discount	Amount Due
Tax on Coml Bank	P102,932.33	P10,293.23	P92,639.10
Tax on Rentals of Equipt	54.00	5.40	48.60
Business Permit Fee (0801)	3,215.00	-	3,215.00
Business Permit Fee (079926)	1,200.00	-	1,200.00
Business Permit Fee (0802)	3,000.00	-	3,000.00
Sanitary Inspection Fee	400.00	-	400.00
Garbage Svcs Charges	3,500.00	-	3,500.00
Occupational Tax	2,880.00	-	2,880.00
OCC/PC/HC	5,640.00	-	5,640.00
Plumbing Insp Fee	7.50	-	7.50
Electrical Insp Fee	50.00	-	50.00
Bldg Insp Fee	50.00	-	50.00
Signboard Insp Fee	40.00	-	40.00
SEC 21	171,553.89	17,155.39	154,398.50
Business Registration Stick	60.00	-	60.00
TOTAL	P294,582.72	P27,454.02	P267,1 28.70

On January 15, 2007, respondent CBC paid the amount of P267,128.70 and protested, thru a Letter dated January 12, 2007, the imposition of business tax under *Section 21 of the Manila Revenue Code* in the amount of P154,398.50, on the ground that it is not liable of said additional business tax and the same constitutes double taxation.

[4] Court Third Division.
[5] Decision promulgated on October 1, 2010, Docket, pp.40-44.

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On February 8, 2007, petitioner acknowledged receipt of respondent CBC's payment under protest of the assessed amount and further informed respondent that she will await for respondent's formal protest.

On March 27, 2007, respondent CBC wrote a letter-reply to petitioner's Letter dated February 8, 2007, reiterating that respondent already protested the additional assessment under *Section 21 of the Manila Revenue Code* in its Letter dated January 12, 2007. In the same Letter, respondent averred that pursuant to *Section 195 of the Local Government Code ("LGC ")*, petitioner had until March 16, 2007 within which to decide the protest, and considering that respondent received the Letter dated February 8, 2007, four days after the deadline to decide and petitioner did not even resolve the protest, respondent formally demanded the refund of the amount of Pl54,398.50, representing the business tax collected under *Section 21 of the Manila Revenue Code.*

On April 17, 2007, respondent CBC filed a Petition for Review with the RTC of Manila, Branch 173, entitled "China Banking Corporation vs. Hon. Liberty M. Toledo in her capacity as City Treasurer of Manila", docketed as Civil Case No. 07-117075, raising the sole issue of whether or not respondent is subject to the local business tax imposed under *Section 21 of the Manila Revenue Code.*

On October 14, 2008, respondent CBC received the Decision dated August 28, 2008 rendered by the RTC of Manila in the terms earlier set forth.

On October 28, 2008, respondent CBC filed a "Motion for Reconsideration", which was denied in an Order dated March 29, 2010.

Hence, this appeal.

On May 17, 2010 respondent CBC filed its "Comment" alleging the following: on January 15, 2007, respondent filed a written protest of the assessment when it paid under protest the amount assessed; in a Letter-Reply dated March 27, 2007, respondent reiterated that it already protested the local business tax assessment in a Letter dated January 15, 2007 and even expounded its arguments in support of the protest; it was only after petitioner failed to decide respondent's protest within the period mandated by law that respondent instituted an appeal before the RTC; respondent filed a written claim for refund, as required by *Section 196 of the LGC* in the Letter dated March 27, 2007; the action before the RTC is primarily an appeal pursuant to *Section 195 of the LGC*, the prayer for refund is merely incidental in the event that the assessment under *Section 21 of the Manila Revenue Code* is invalidated; and the RTC has jurisdiction to decide the case since respondent's petition was filed pursuant to *Section 195 of the LGC.*

On June 18, 2010, we ordered the parties to file their simultaneous memoranda, within thirty days from notice; afterwhich, the case shall be deemed submitted for decision.

Both parties having filed their respective memorandum, the case was deemed submitted for decision on August 3, 2010.

On October 1, 2010, the Court Third Division rendered the assailed Decision, which granted the Petition for Review and reversed and set aside the Decision dated August 28, 2008 and Order dated March 29, 2010 by the RTC of Manila, Branch 173. Accordingly, the Court Third Division dismissed the Petition for Review in RTC Civil Case No. 07-117075 for being late.

Herein petitioner filed its Motion for Reconsideration of the said Decision on November 8, 2010. Herein respondent filed her Comment and/or Opposition to the Motion for Reconsideration on December 2, 2010. The Court Third Division, in a Resolution dated February 22, 2011, denied herein petitioner's Motion.

Hence, petitioner filed this instant Petition for Review before the Court *En Banc* seeking the reconsideration of the Court Third Division's Decision and Resolution, and praying that the same be reversed and set aside and that the Decision of Branch 173 of the RTC of Manila dated August 28, 2008 and its Order dated March 29, 2010 in Civil Case No. 07-117075 be affirmed.

On March 6, 2011, the Court *En Banc* issued a Resolution directing herein respondent to file a Comment on the instant Petition for Review.

On May 20, 2011, herein respondent filed her Comment. Thus, the Court *En Banc*, in a resolution promulgated on May 27, 2011, submitted the case for decision.

THE ISSUE

Herein petitioner assigns the following error on the part of the Court Third Division with the Court *En Banc*, *to wit*:

> Whether or not this Honorable Court of Tax Appeals can disregard the filing by petitioner of its original appeal before the Trial Court one (1) day beyond the reglementary period, and decide the case on its merits on considerations of justice and equity.

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PETITIONER'S ARGUMENTS

Petitioner argues that the records, factual and legal circumstances surrounding the case will bear out the clear merit of petitioner's cause of action. Further, it avers that the delay was due to an honest mistake which should not be considered so grave as to deprive petitioner of a consideration of the case on its merits. Lastly, petitioner believes that there is sufficient jurisprudence to allow a consideration of the case on the merits despite the delay in the filing of the original appeal.

RESPONDENT'S ARGUMENTS

Respondent, on the other hand, alleges that the assailed Decision and Resolution were fully supported by facts, laws and jurisprudence. She believes that petitioner's allegations were mere rehash.

THE COURT EN BANC's DECISION

The petition is bereft of merit.

On the outset, the Court *En Banc*, after a careful study of the arguments set forth by both parties, agrees with herein respondent that the allegations of petitioner were mere rehash, reinstatements of their previous arguments raised before the Court Third Division which have already been thoroughly discussed and passed upon the issues in the assailed Decision and Resolution, thus We do not find any justifiable reason to disturb the findings of the Court Third Division.

To reiterate, Section 195 of the Local Government Code[6] (LGC) provides, *to wit*:

> "SECTION 195. Protest of Assessment. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice

[6] Republic Act No. 7160.

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> of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable**." (Emphasis supplied)

From the provision, the taxpayer has sixty (60) days from receipt of the notice of assessment to file a written protest with the City Treasurer; while the latter shall decide within sixty (60) days from the time of the filing of protest. If the City Treasurer denies the protest, the taxpayer shall have a period of thirty (30) days from receipt of the denial to appeal the assessment. If the local treasurer fails to act on the protest, the taxpayer shall have a period of thirty (30) days from the lapse of the sixty (60) days within which to appeal the inaction with the court of competent jurisdiction. Otherwise, the assessment becomes conclusive and unappealable.

According to the records of the case, petitioner was assessed on January 11, 2007 by the respondent for deficiency local business tax, business permits, and other fees for taxable year 2007 in the amount of P267,128.70. On January 15, 2007, petitioner paid under protest a portion of said assessment, amounting to P154,398.50. From January 15, 2007, the date when petitioner protested, it has sixty (60)-days or until March 16, 2007 to await the decision of the City Treasurer. No decision was given by the City Treasurer. Counting thirty (30) days from March 16, 2007, petitioner has until April 16, 2007 (April 15, 2007 being a Sunday), within which to appeal with the court of competent jurisdiction, in this

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case the Regional Trial Court[7] (RTC), the inaction of the City Treasurer, pursuant to Section 195 of the LGC. Unfortunately, the petitioner filed its Petition for Review before the RTC of Manila, Branch 173 on April 17, 2007, one day late of the thirty (30) day period prescribed under Section 195 of the LGC. With the belated filing of the petition for review before the RTC of Manila, Branch 173, the petitioner has lost its right to appeal and the assessment dated January 11, 2007 had become conclusive and unappealable, pursuant to Section 195 of the LGC, thereby precluding the petitioner from interposing the defenses of legality or validity of the assessment[8].

With the conclusiveness and unappealable nature of the assessment, the RTC of Manila, Branch 173 has no jurisdiction anymore to rule on the assessment against petitioner. Pertinent to replicate the disquisition of the Court Third Division in the Decision dated October 1, 2010 on the RTC of Manila, Branch 173's lack of jurisdiction to rule on the validity of the assessment against petitioner, *to wit*:

> Accordingly, the RTC of Manila, Branch 173, has no more authority to rule on the validity of the assessment dated January 11, 2007.
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> 3) In the case of *Ker and Company, Ltd. vs. Court of Tax Appeals, 4 SCRA 163,* the Supreme Court ruled that while the right to appeal a decision of the Commissioner to the CTA is merely a statutory remedy, nevertheless, the requirement that it must be brought within 30 days is jurisdictional. Settled is the rule that if a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time. Such requisite is jurisdictional and failure to comply therewith may be raised in a motion to dismiss *(Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, 491 SCRA 221).* Furthermore, it bears stressing that perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional as well and failure to perfect an appeal has the effect of rendering the judgment or resolution final and executory *(Insular Savings and Trust Company vs. Spouses Runes, Jr., et. al., 436SCRA 326).* In fact, failure to perfect an appeal as required by the rule has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction on the case *(Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 19, 2010).*
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> **In the same manner, the period to appeal with the court of competent jurisdiction (RTC), the denial or the inaction of the local**

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[7] As decided in the *Yamane vs. Lepanto Condominium Corporation*, GR No. 154993, October 25, 2005.
[8] *Rizal Commercial Banking Corporation vs. CIR*, GR No. 168498, April 24, 2007.

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> **treasurer within 30 days from the receipt of the denial or the lapse of the period to decide, under *Section 195 of the LGC,* is also mandatory and jurisdictional.** Hence, respondent's filing of the Petition for Review in Civil Case No. 07-117075 beyond the 30-day period to file the petition made the assessment final and executory and non-appealable.
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> Indeed, the general rule remains that a court's lack of jurisdiction may be raised at any stage of the proceedings, even on appeal *(Francel Realty Corporation vs. Sycip, 469 SCRA 431).* Moreover, where prescription, lack of jurisdiction or failure to state a cause of action clearly appear from the complaint filed with the trial court, the action may be dismissed *motu proprio* by the appellate court, even if the case has been elevated for review on different grounds *(Katon vs. Palanca, Jr., 437 SCRA 567).* Verily, the dismissal of such cases appropriately ends useless litigations *(Katon vs. Palanca, Jr., et. al., supra).*
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> The Petition For Review filed with the RTC of Manila, Branch 173, having been filed late, said court has no jurisdiction to entertain the Petition for Review. (Emphasis provided)

It is noteworthy that the Supreme Court, in a litany of cases, has ruled that the right to appeal is not a natural right but purely a statutory right. Not being a natural right or a part of due process, the right to appeal may be exercised only in the manner and in accordance with the rules provided therefor. Failure to bring an appeal within the period prescribed by the rules renders the judgment appealed from final and executory.[9]

Considering that what petitioner is invoking is an exception to the rules on the perfection of an appeal, the petitioner must assert exceptional grounds in order to convince the Court *En Banc* to divert from the general requirement of the law. Even though in a few instances, the Supreme Court has relaxed the application of the rules of procedure, the liberality must be based on a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules[10].

In the present case, the negligence of petitioner's counsel of not filing the appeal on time is to Our mind an unacceptable reason for relaxing the observance

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[9] *Chronicles Securities Corporation, Coyuito, Jr. vs. NLRC*, GR No. 157907, November 25, 2004, *Enriquez vs. CA*, GR No. 140473, January 28, 2003, *CIR vs. Fort Bonifacio Development Corporation*, GR No. 167606, August 11, 2010.
[10] *Sanchez vs. CA*, 452 Phil 665, 674 (2003); *Macasasa vs. Sicad*, G.R. No. 146547, June 20, 2006 citing *Barnes v. Padilla*, 482 Phil. 903, 915 (2004).

of the period set under Section 195 of the LGC. Considering that petitioner has not provided an acceptable explanation for its failure to comply with the rules, particularly the thirty (30) day period to appeal to the court of competent jurisdiction, the Court *En Banc* finds no compelling reason to reverse the Decision and Resolution of the Court Third Division.

Again, the Court *En Banc* emphasizes that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional, and failure to do so renders the questioned decision final and executory, and deprives the appellate court of jurisdiction to alter the final judgment, much less to entertain the appeal

Although it has been said time and again that litigation is not a game of technicalities, that every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved, this does not mean that procedural rules may altogether be disregarded. Rules of procedure must be faithfully followed except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[11]

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated October 1, 2010 and Resolution dated February 22, 2011 of the Court Third Division are hereby **AFFIRMED.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

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[11] *Jan-Dec Construction Corporation vs. CA*, G.R. No. 146818, February 6, 2006 citing *Duremdes vs. Duremdes*, G.R. No. 138256, November 12, 2003.

WE CONCUR:

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Wellness Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice