

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

OFFICE OF THE CITY TREASURER
AND/OR MAKATI CITY,
Petitioner,

CTA EB No. 2077
(CTA AC No. 196)

Present:

- versus -

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, JJ.

SOUTH CHINA RESOURCES, INC.
(NOW KNOWN AS
"SOCRESOURCES, INC."),
Respondent.

Promulgated:

JUL 15 2020

X- - - - - *[Signature]* 3:15 p.m. X

RESOLUTION

In the Resolution¹ dated September 16, 2019, the Court dismissed the Petition for Review filed by petitioner Office of the City Treasurer and/or Makati City on June 6, 2019 on jurisdictional ground, ratiocinating that petitioner failed to lodge² its Appeal with the Court *En Banc* within 15 days from receipt of resolution of the Court in Division denying its motion for reconsideration as mandated under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended.

Unconvinced, petitioner filed the instant *Motion for Reconsideration*³ ascribing error to the Court *En Banc* in dismissing its case on the ground of technicality, specifically,

¹ *Rollo*, pp. 48-51.

² Since the Court in Division's Resolution denying petitioner's Motion for Reconsideration was received by the latter on May 6, 2019, *sans* any extension, petitioner had 15 days or until May 21, 2019 to institute an appeal with the Court *En Banc*. See p. 2, Resolution dated September 16, 2019.

³ Dated October 4, 2019, *rollo*, at pp. 52-67.

having been filed out of time. Invoking a slew of cases,⁴ it claims that controversies in the case should be adjudicated on the merits and not on the ground of procedural niceties in the interest of substantial justice. Admittedly, the Petition was belatedly filed on June 6, 2019 but it was due to the series of inventory and turn-over of documents to the legal office, justifying relaxation of procedural rules regarding perfection of appeals.

In rejecting petitioner's plea for reconsideration, respondent, in its *Opposition with Motion to Expunge*⁵ dated October 18, 2019, retorts that petitioner's Motion did not have a notice of hearing in violation of Section 3, Rule 15 of the Rules of Court, hence, it should be stricken-off the record of the case.

Moreover, petitioner failed to seek review of the Court in Division's adverse ruling⁶ within 15 days from receipt thereof as decreed in Section 3(b), Rule 8 of the RRCTA.

Apart from the foregoing, the Petition for Review did not also have the required verification and the certification against forum shopping, in clear violation of Sections 6 and 7, Rule 43 of the Rules of Court. Since the Petition for Review and Motion for Reconsideration are both tainted with procedural infirmities, the dismissal of the present case must be upheld, concludes respondent.

In its *Comment/Opposition*⁷ (to respondent's Motion to Expunge), petitioner argues that dismissal of a case on technical ground is frowned upon since cases must be adjudicated on the merits, again citing myriad of cases⁸ as authority. Besides, its Petition for Review allegedly has the

⁴ *Aguam vs. Court of Appeals*, G.R. No. 137672, May 31, 2000; *Barrancdo vs. COSLAP*, G.R. No. 168990, June 16, 2006; *Hilario vs. People of the Philippines*, G.R. No. 161070, April 14, 2008; *Torres vs. Specialized Packaging Development Corporation*, G.R. No. 149634, July 6, 2004; *A-One Feeds, Inc. vs. Court of Appeals*, G.R. No. L-35560, October 30, 1980; and *Nerves vs. Civil Service Commission*, G.R. No. 123561, July 31, 1997.

⁵ *Rollo*, pp. 70-87.

⁶ Court in Division's Resolution denying petitioner's Motion for Reconsideration received by the latter on May 6, 2019.

⁷ *Rollo*, pp. 94-105.

⁸ Petitioner invokes the jurisprudence cited in its Motion for Reconsideration dated October 4, 2019. See Note 4.

required verification and certification against forum shopping, only that its messenger inadvertently failed to include them in the pleading.

In its *Reply (to petitioner's Comment/Opposition)*⁹ dated December 13, 2019, respondent insists that the Petition for Review should be dismissed and the instant Motion for Reconsideration, be denied enumerating the following grounds as justification, to wit: 1) belated filing of its Petition for Review; 3) the Petition for Review lacks the required verification and certification against non-forum shopping; and 3) Motion for Reconsideration lacks the required notice of hearing.

THE RULING OF THE COURT

Obviously, petitioner failed to consider a basic principle that appeal is not a matter of right but is mere privilege. Procedural rules setting the period for perfecting an appeal or filing an appellate petition are generally inviolable. It is doctrinally entrenched that appeal is not a constitutional right but a mere statutory privilege.¹⁰ The implication of its statutory character is that the party who intends to appeal must always comply with the procedures and rules governing appeals; or else, the right of appeal may be lost or squandered.¹¹

In its bid to reconsider the order of dismissal of its case by the Court, petitioner offers as reason the series of inventory and document turn overs by their office to justify the belated filing of its petition for review. However, no documents or affidavits in support thereof were provided by petitioner to demonstrate the foregoing averment. *A fortiori*, the purported facts portrayed in its Motion for Reconsideration remained in the domain of allegations, which cannot be used as basis in deciding a case or in granting relief. A judgment has to be based on

⁹ To respondent's Motion to Expunge. *Rollo*, pp. 110-115.

¹⁰ See *Philippine National Bank vs. Commissioner of Internal Revenue*, G.R. No. 172458, December 14, 2011.

¹¹ *Duty Free Philippines vs. Bureau of Internal Revenue*, G.R. No. 197228, October 8, 2014.

facts. Conjectures and surmises cannot substitute for the facts.¹²

Anent the lack of notice of hearing in petitioner's Motion for Reconsideration, Section 5, Rule 15¹³ of the Rules of Court decrees that save for non-litigious motions, a party must include in its motion a notice of hearing, non-compliance thereof renders the said motion fatally defective, equivalent to a useless scrap of paper.¹⁴ Admittedly, petitioner failed to include the required notice of hearing in its Motion for Reconsideration dated October 4, 2019, on this account, the incident deserves outright denial on the strength of the foregoing rule and jurisprudence.

Even if the Court were to look the other way and simply ignore petitioner's inability to include in its Motion for Reconsideration the required notice of hearing, denial thereof would still ensue.

Section 3,¹⁵ Rule 15 of the Rules of Court requires petitioner to attach supporting papers and affidavits to prove the facts alleged in its motion. Petitioner utterly failed in this regard.

Finally, petitioner may not be casually permitted to invoke substantial justice to compensate for various procedural infractions committed in the filing of its Petition for Review, as well as of its Motion for Reconsideration. The use of the words "substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed, simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons, when they may be relaxed to

¹² See *Spouses Guidangen vs. Wooden*, G.R. No. 174445, February 15, 2012.

¹³ **Section 5.** Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

¹⁴ See *Deogracia Valderrama vs. People of the Philippines*, G.R. No. 220054, March 27, 2017.

¹⁵ **Section 3. Contents.** — A motion shall state the relief sought to be obtained and the grounds upon which it is based, and if required by these Rules or necessary to prove facts alleged therein, shall be accompanied by supporting affidavits and other papers.

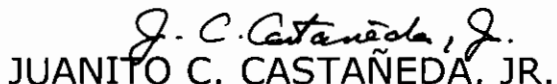
relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.¹⁶ This is certainly not obtaining in the present case.

WHEREFORE, petitioner's Motion for Reconsideration dated October 4, 2019 is **DENIED**, for lack of merit. The assailed Resolution dated September 16, 2019 is **AFFIRMED**.

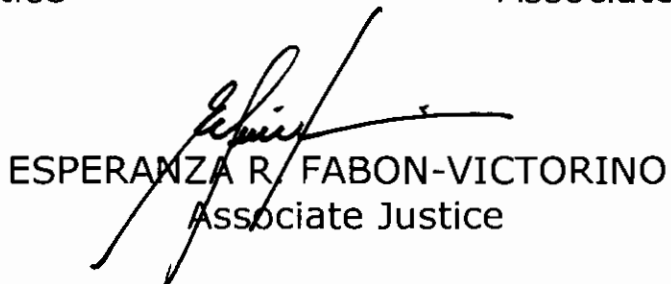
In view of the finding that the Court was deprived of the required competence to entertain petitioner's Petition for Review as ruled in the Resolution dated September 16, 2019, respondent's Motion to Expunge incorporated in its Opposition dated October 18, 2019, is **NOTED** without action.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

¹⁶ See *Ti vs. Diño*, G.R. No. 219260, November 6, 2017.



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice