REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

RIZAL COMMERCIAL BANKING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 50
(C.T.A. Case No. 6475)

Present:

Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ:*

Promulgated:
JUN 07 2005 GrApolinario

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D E C I S I O N

CASTAÑEDA, JR., ***J.:***

This Petition for Review seeks the reversal of the Resolutions dated May3, 2004 and November 5, 2004 in C.T.A. Case No. 6475, Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue. Said resolutions denied petitioner's Petition for Relief from Judgment with an Application for a Writ of Preliminary Injunction and/or Writ of Prohibition. In view of said denial, the Court upheld with finality the dismissal of the case contained in a

Resolution dated September 10, 2003 with Entry of Judgment dated December 1, 2003.

The antecedent facts of the case are as follows:

On July 5, 2001, Petitioner received a formal Letter of Demand dated May 25, 2001 covering Assessment Notice No. OT-97-000007 and Assessment Notice No. DST297-000006 for Gross Onshore Tax and Documentary Stamp Tax, respectively amounting to P100,716,381.05.

On July 20, 2001, petitioner filed with the Respondent its protest letter/request for reconsideration/reinvestigation dated July 6, 2001.

Due to the inaction of the respondent on the protest, petitioner, on April 30, 2002 filed a petition for review with this Court for the cancellation of the assessment. On July 6, 2002, respondent filed his Answer to the Petition.

On July 15, 2003, respondent filed a Motion to Resolve First the Issue of this Court's jurisdiction. Consequently, the Court issued a Resolution, dated September 10, 2003, granting respondent's Motion and Dismissing the Petition for Review filed by the petitioner on the ground that the Petition for Review was filed beyond the thirty (30) day period following the lapse of the 180-day period from petitioner's submission of documents in support of its protest (Section 228 of the 1997 NIRC). The dispositive part of the resolution reads as follows:

> WHEREFORE, the court hereby RESOLVES to GRANT the instant Motion. Accordingly, the Petition for Review is DISMISSED for lack of merit.
>
> SO ORDERED.

The Resolution pointed out that petitioner "had until April 16, 2002 within which to elevate the case to this court. Thus, when petitioner filed its Petition for Review on April 30, 2002, the same is outside the thirty (30) day period". That the thirty-day period prescribed by Section 11 of RA 1125 within which a taxpayer adversely affected by a decision of the Commissioner of Internal Revenue should file his appeal with the Tax Court is jurisdictional (Anita N. Ty vs. Commissioner of Internal Revenue, CTA Case No. 4965, July 8, 1996).

Meanwhile, petitioner alleged that "on September 16, 2003, a copy of the above-mentioned Resolution was received by their casual temporary secretary, Ms. Mariella de los Santos, who, however, misfiled, misrouted and lost the same. Not having been properly notified of the existence of the aforesaid Resolution, petitioner failed to file either a Motion for Reconsideration, or a Petition for Review of the same, within fifteen (15) days. Thus, without petitioner's knowledge, the September 10, 2003 Resolution became final and executory, and was registered in the Entry of Judgment on December 1, 2003".

"On February 3, 2004, petitioner received a Demand Letter for the payment of the alleged deficiency assessments. It was only after an investigation was conducted following the receipt of such demand letter, did petitioner come to know of the existence of the Honorable Court's Resolution dated September 10, 2003 and its entry of Judgment on December 1, 2003."(CTA records, p. 6)

On February 20, 2004, petitioner filed a Petition for Relief from Judgment (With Application for a Writ of Preliminary Injunction and /or Writ of Prohibition) with the Court for the restoration of its right to file for a motion for reconsideration and/or petition for review, which right was lost due to accident and excusable negligence on its part. On the scheduled hearing date, April 2, 2004, petitioner's counsel orally argued its petition. Thereafter, the Court submitted the Petition for Resolution.

On July 6, 2004, the petitioner received a copy of the Resolution dated May 3, 2004 denying its Petition for Relief from Judgment on the ground that the lack of attentiveness and focus on her job by the office clerk of petitioner's counsel resulting to petitioner's failure to file a Motion for Reconsideration is neither credible nor constitutive of excusable negligence and that this inexcusable negligence of the clerk is imputable to the aforesaid counsel.

Petitioner filed a Motion for Reconsideration. Respondent filed his Comment on the Motion for Reconsideration. Both parties were required by the Court to submit their respective memorandum.

On November 17, 2004, petitioner received a copy of the Court's Resolution dated November 5, 2004 denying petitioner's Motion for Reconsideration. Hence, petitioner filed the instant Petition for Review before this Court *en banc*, pursuant to RA 9282 assigning errors of this Court's original composition, to wit:

I.

"WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN DENYING PETITIONER'S PETITION FOR RELIEF WITHOUT FIRST AFFORDING PETITIONER THE OPPORTUNITY TO ADDUCE EVIDENCE TO ESTABLISH THE FACTUAL ALLEGATIONS CONSTITUTING ITS ALLEGED EXCUSABLE NEGLIGENCE, THEREBY VIOLATING PETITIONER'S BASIC RIGHT TO DUE PROCESS"

II.

"CONSIDERING THAT THE SUBJECT ASSESSMENT, INSOFAR AS IT INVOLVES ALLEGED DEFICIENCY DOCUMENTARY STAMP TAXES ON SPECIAL SAVINGS ACCOUNTS, IS AN INDUSTRY ISSUE, PETITIONER, LIKE ALL OTHER MEMBERS OF THE BANKING INDUSTRY, SHOULD BE AFFORDED AN OPPORTUNITY TO FULLY LITIGATE THE SAME"

Petitioner argues that the petition for relief is replete with factual allegations all intended to show that petitioner's failure to file a Motion for Reconsideration or an appeal from the Court's Resolution dated September 10, 2003 was due to excusable negligence – the failure of the petitioner's casual employee to forward the copy of the said Resolution to its then legal counsel. It also cites Section 6, Rule 38 of the 1997 Rules of Civil Procedure that hearings must necessarily be called by this court after an Answer has been filed by the adverse party. The unequivocal terms of the aforecited provisions of the Rules thus mandate this court to conduct two (2) hearings: (1) a hearing to determine whether or not the judgment or order has been rendered through fraud, accident, mistake or excusable negligence, and should therefore be set aside; and (2) in the affirmative, a hearing on the merits of the case. Further, petitioner avers that this court's resolution is apparently based on facts which do not appear to be indubitable. Rather, the Court's ultimate resolution of the Petition for Relief appears to have proceeded from a presumption, rather than evidence.

We find the instant petition devoid of merit.

Petitioner's contentions are mere reprise of his arguments in the CTA Case No. 6475 which have been ruled upon in the Court's two (2) resolutions.

Excusable negligence as a ground for new trial (Rule 37 of the 1997 Rules of Civil Procedure) and for relief from judgment (Rule 38) must be of such nature which ordinary prudence could not have guarded against and by reason of which the aggrieved party has probably been impaired in his rights (Sec. 1(a), Rule 38, 1997 Rules of Civil Procedure). The records of the case, however, unerringly show that secretary's negligence can hardly be considered as excusable. The flimsy excuse that the said secretary was remiss in the performance of her duties because she learned that her contract was not renewed and therefore lost her enthusiasm to work does not hold water to warrant the reversal of this Court's judgment.

Furthermore, petitioner's counsel failed to establish that it was indeed the secretary in the person of Ms. Mariella Santos who received the subject resolution of the court. As stated in the Court's resolution dated May 3, 2004,

> " x x x this court is inclined to believe the respondent's counsels in their opposition that it was not Mariella de los Santos who received the subject Notice of Resolution on September 11, 2003. The initials or signature of Mariella appeared for instance in the following receipt by RCBC of

> orders/notices from this court: Order of September 3, 2002; Notice of September 5th , 2002 Resolution; Notice of hearing on June 3, 2003. However, the notice of hearing dated July 24, 2003 and particularly Notice of Resolution of September 11, 2003 were received by other person. The initials/signatures are patently different."

If indeed there was negligence, this is obviously on the part of petitioner's own counsel whose prudence in handling the case fell short of that required under the circumstances. He was well aware of the motion filed by the respondent for the Court to resolve first the Issue of this Court's Jurisdiction on July 15, 2003, that a hearing was conducted thereon on August 15, 2003 where both counsels were present and at said hearing the motion was submitted for resolution. Petitioner's counsel apparently did not show enthusiasm in the case he was handling as he should have been vigilant of the outcome of said motion and be prepared for the necessary action to take whatever the outcome may have been. Such kind of negligence cannot support petitioner's claim for relief from judgment.

In **Republic vs. Jose P. Arro,**[1] the High court held that, "The rule in this jurisdiction is that the client is bound by the negligence or failings of counsel. It is the duty of an attorney to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from his address of record. The attorney must so arrange matters that communications sent by mail, addressed to his office or residence, may reach him promptly. The negligence of a counsel's secretary in failing to note down the trial date on his desk calendar is negligence and

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[1] **G.R. No. L-48241, June 11, 1987.**

failings of counsel in having a negligent secretary — said circumstances not constituting excusable negligence".

As pointed out by the Supreme Court in **Sea Power Shipping Enterprises, Inc. vs. Court of Appeals,**[2] "excusable negligence" and "oversight" have become an all too familiar and ready excuse on the part of counsels remiss in their bounden duty to comply with established rules. The significance of procedural rules in the adjudication of the respective rights and liabilities of litigants can neither be overemphasized nor underestimated. Having failed to observe very elementary rules of procedure which are mandatory, petitioner caused its own predicament. To exculpate it from the compulsory coverage of such rules is to undermine the stability of the judicial process, as the bench and the bar will be confounded by such irritating uncertainties as when to obey and when to ignore the Rules.

This Court failed to see a persuasive reason to grant the relief prayed for by petitioner. A petition for relief will not be granted to a party, like the petitioner herein, when the loss of remedy at law (like the instant appeal) was due to its own negligence, otherwise, the petition for relief will be tantamount to reviving the right to appeal which had already been lost **(Manila Electric Co., vs. Court of Appeals, G.R. No. 88396, July 4, 1990).**

In view of the foregoing, We find it unnecessary to delve into the merits of the case at bar.

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[2] **G.R. No. 1382701, June 28, 2001 (360 SCRA 173, 182)**.

WHEREFORE, the instant petition for review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

We Concur:

(on leave)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(on leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.,
Senior Associate Justice