REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Third Division

KILUSANG MAGKAIBIGAN MULTI-PURPOSE COOPERATIVE, Petitioner,	**CTA CASE NO. 8751**
	Members:
- versus -	**FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 07 2019 3:00 p.m.

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RESOLUTION

For resolution of the Court are the following:

1. respondent's **Motion for Reconsideration (Re: Resolution promulgated on 22 August 2018)**, filed on September 13, 2018;

2. petitioner's **Motion for Partial Reconsideration (Of the Resolution dated August 22, 2018) with Comment/ Opposition (Re: Motion for Reconsideration dated September 12, 2018)**, filed through registered mail on October 17, 2018 and received by the Court on October 24, 2018; and

3. respondent's **Opposition (re: Petitioner's Motion for Partial Reconsideration with Comment/Opposition dated 16 December 2018)**, filed on December 3, 2018.

Respondent moves that the Resolution dated August 22, 2018, denying respondent's Petition for Relief from Judgment filed on May 11, 2018, be reversed and set aside.

In the said resolution, the Court denied respondent's Petition on the basis that the alleged negligence committed in this case cannot be considered excusable.

In the instant motion, respondent argues that the Bureau of Internal Revenue (BIR) should not be made to suffer the consequences of the negligence of his counsel.

On the other hand, in its Comment/Opposition, petitioner counters that respondent failed to present cogent and compelling grounds to reverse the denial of the petition since respondent failed to dispute the findings of the Court on his allegation of excusable negligence. Further, petitioner points out that in respondent's motion, he admitted that it was Atty. Josephine Doria and Atty. Romel Curiba who were negligent and not some unnamed staff who supposedly failed to forward a copy of the April 19, 2017 Resolution to Atty. Doria. That being so, the Affidavit of Merit attached to the petition appears to be false. Petitioner asserts that negligence of the counsel is not a valid ground for a petition for relief from judgment.

Petitioner adds that the Petition rehashes arguments that have already been passed upon in the Decision as well as in the Resolution, particularly, the issue on jurisdiction by reason of the alleged finality of the Formal Assessment Notice.

However, petitioner moves for partial reconsideration on the pronouncement of the Court in the Resolution dated August 22, 2018 on the ground of lack of jurisdiction due to (1) the unavailability of the remedy of a petition for relief from judgment under Rule 38 of the Rules of Court; or assuming *arguendo* such remedy is available, (2) the failure of respondent to comply with the jurisdictional period to file the same.

Petitioner maintains that the Court has no jurisdiction over the petition as the Rules of Procedure of the Court of Tax Appeals (CTA) does not include a petition for relief from judgment as among the remedies available to an aggrieved party from a decision of the CTA, as this remedy is only available in the Municipal/Metropolitan or Regional Trial Courts.

Petitioner further posits that, assuming *arguendo* that the Court has jurisdiction, respondent's petition for relief from judgment was filed beyond the jurisdictional period. Petitioner avers that the Court erroneously reckoned the 60-day reglementary from receipt of the Entry of Judgment, while it should be counted from the receipt of the April 19, 2017 Resolution denying the Motion for Reconsideration, which was duly received by the Office of the Solicitor General (OSG) on May 2, 2017 and by the BIR Litigation Division on April 24, 2017. Counting from May 2, 2017, the 60-day reglementary period expired on

July 1, 2017. Thus, respondent's petition for relief from judgment filed on May 11, 2018 or more than ten (10) months from July 1, 2017, is clearly time-barred.

In his opposition, respondent counters that though the Revised Rules of the Court of Tax Appeals (RRCTA) does not provide for the rules on the filing of a petition for relief from judgment, the Court still has jurisdiction over the petition pursuant to Section 3, Rule 1 of RRCTA, which provides that the Rules of Court shall apply suppletorily to the RRCTA. Further, on the timeliness of the filing of the petition, respondent maintains that he complied with the jurisdictional period.

Negligence of his counsel binds respondent

Considering the circumstances presented, the Court finds respondent's Motion for Reconsideration without merit.

Section 1, Rule 38 of the Rules of Court allows the filing of a petition for relief from judgment when a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence.

However, relief cannot be granted on the flimsy excuse that the failure to appeal was due to the neglect of a party's counsel. Otherwise, all that a losing party would do to salvage his case would be to invoke neglect or mistake of his counsel as a ground for reversing or setting aside the adverse judgment, thereby putting no end to litigation.[1]

Negligence to be excusable must be one which ordinary diligence and prudence could not have guarded against and by reason of which the rights of an aggrieved party have probably been impaired.[2]

As provided in the Resolution dated August 22, 2018, respondent failed to show that his failure to file an appeal was due to excusable negligence.

In the instant motion, however, respondent relies on the gross negligence of his lawyer as an excuse for the reversal of the Resolution dated August 22, 2018.

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[1] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, June 16, 2006.

[2] *Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005.

The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. There are exceptions to this rule, such as when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the general rule results in the outright deprivation of one's property through a technicality.[3]

For a claim of gross negligence of counsel to prosper, nothing short of clear abandonment of the clients' cause must be shown.[4] In this case, respondent failed to show that the action of his lawyer is so gross that it constitutes abandonment. Besides, there was no abandonment when respondent's counsel even tried to rectify her mistake or negligence when she prepared and filed the petition for relief from judgment.

Moreover, the Supreme Court has previously directed the BIR to adopt mechanisms, procedures, or measures that can effectively monitor the progress of cases being handled by its counsels to prevent similar disadvantageous incidents against the government in the future.[5] Accordingly, the respondent is bound by the negligence of his counsel in this case. Being the head of the BIR, respondent should have adopted measures in monitoring the progress of his cases as well as ensure the proper turnover of cases to his counsels.

The Court, in aid of its jurisdiction, has authority to control all ancillary and incidental matters to the case

Contrary to petitioner's argument, the Court has jurisdiction to resolve the petition for relief from judgment filed by respondent.

In the case of *The City of Manila vs. Hon. Grecia-Cuerdo, et al.*[6], the Supreme Court held that the jurisdiction of the CTA includes all auxiliary and incidental matters necessary to efficiently and properly exercise its jurisdiction:

> A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. **It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction**. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which

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[3] *Estate of Felomina G. Macadangdang vs. Gaviola, et. al.,* G.R. No. 156809, March 4, 2009.

[4] *Spouses Que vs. Court of Appeals,* G.R. No. 150739, August 18, 2005.

[5] *Commissioner of Internal Revenue vs. Kepco Ilijan Corporation*, G.R. No. 199422, June 21, 2016.

[6] G.R. No. 175723, February 4, 2014.

might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. **These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.**

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. **These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.**

Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." **Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.** (*Emphasis supplied.*)

Though the remedy of petition for relief from judgment is not provided by the Revised Rules of the CTA, such petition is considered as auxiliary or incidental to the case. Accordingly, in order to effectively exercise its jurisdiction, the Court has jurisdiction over such petition.

Moreover, the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[7] involves a petition for relief from judgment filed before the CTA. If a petition for relief from judgment only applies to Municipal/Metropolitan and Regional Trial Courts, then the Supreme Court could have dismissed the said case for such reason. Instead, the Supreme Court resolved the appeal assailing the Decision of the CTA *En Banc* which affirmed the Resolutions of the CTA Second Division denying the Petition for Relief from Judgment and the Motion for Reconsideration thereof.

The Petition for Relief of Judgment was not timely filed

In the Resolution dated August 22, 2018, the Court affirmed that the Petition for Relief of Judgment filed by respondent on May 11, 2018, was timely filed, complying with the two (2) reglementary periods under Section 3, Rule 38 of the Rules of Court.

Petitioner posits that the 60-day reglementary period should be reckoned from the time respondent received the Resolution dated April 19, 2017, denying respondent's Motion for Reconsideration of the Decision dated November 17, 2016, and not on the Resolution dated March 9, 2018 on the Entry of Judgment. Petitioner avers that the Office of the Solicitor General (OSG) received the Resolution dated April 19, 2017 on May 2, 2017, hence, counting 60 days from May 2, 2017, the instant petition having been filed on May 11, 2018, or more than 10 months from July 1, 2017, is clearly time-barred.

The Court disagrees with petitioner that the reckoning point should be upon receipt of the OSG of the Resolution dated April 19, 2017. It is crucial to determine the date when respondent learned of the Resolution dated April 19, 2017. Considering that the BIR handling lawyers shall be the lead lawyer of the case, who appear before the CTA and prepare all the pleadings, etc. and that the OSG handling Associate Solicitor will be the lead lawyer for cases appealed before the Supreme Court, pursuant to the Memorandum of Agreement between the BIR and the OSG as published in Revenue Memorandum Circular No. 25-2010, then, the reckoning period should be from the time the BIR handling lawyers learned of the Resolution dated April 19, 2017.

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[7] G.R. No. 168498, June 16, 2006.

The 60-day period should be reckoned from the time respondent's counsel acquired knowledge or upon discovery of the Resolution dated April 19, 2017 in accordance with Section 3, Rule 38 of the Rules of Court, which states:

> SEC. 3. *Time for filing petition; contents and verification.* — A petition provided for in either of the preceding sections of this Rule must be verified, filed **within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside**, and **not more than six (6) months after such judgment or final order was entered**, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. (*Emphasis supplied.*)

Based on the afore-quoted provision, the filing of the petition for relief from judgment should comply with the two reglementary periods: (1) within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set side; and (2) not more than six (6) months after such judgment or final order was entered, or such proceeding was taken. Both periods should be complied concurrently.

In *Spouses Reyes vs. Court of Appeals, et al.*[8], the Supreme Court held that sixty 60-day period from knowledge of the decision against which relief is sought, and the 6-month period from entry of judgment must concur and both periods are inextendible and uninterruptible, to wit:

> xxx We have ruled in *Quelnan* that the **sixty 60-day period from knowledge of the decision against which relief is sought, and the 6-month period from entry of judgment must concur**, otherwise the petition will be deemed filed out of time. On this score alone, the petition may be instantly denied.
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> However, for the purpose of settling the issue squarely raised in the instant petition, the Court will discuss further.
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> It should be noted that the 60-day period from knowledge of the decision, and the 6-month period from entry of judgment, are both **inextendible and uninterruptible**. We have also time and again held that because relief from a final and executory judgment is really more of an exception than a rule due to its equitable character and nature, strict compliance with these periods, which are definitely jurisdictional, must always be observed.

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[8] G.R. 150722, August 17, 2007.

xxx xxx xxx

> We cannot agree with the petitioners' thesis that the 60-day period may only be reckoned from their receipt on 31 May 2000 of a copy of this Court's decision in G.R. No. 132294, at which time they allegedly learned with certainty that they were bound by the 8 December 1995 RTC decision. The Rules cannot be clearer when it states that the petition for relief must be filed within sixty (60) days after the petitioner **learns of the judgment**, final order, or other proceeding **to be set aside**. It cannot be contested that the judgment sought to be set aside in their petition for relief is the 8 December 1995 RTC decision and not the decision of this Court in G.R. No. 132294. The 60-day period will, therefore, have to be reckoned from the time petitioners learned of the 8 December 1995 RTC decision. And this, they learned on 30 May 1997 when, as declared by the CA, they received an order from said court directing them to comment on the petition for *certiorari* and mandamus filed by the Voluntads in CA-G.R. SP No. 44141, to which [order] a copy of the Decision in Civil Case No. 142-M-93 had been attached.

Based on the above-mentioned case, the Supreme Court clearly ruled that the 60-day reglementary period is reckoned after the petitioner learns of the judgment, order or other proceeding to be set aside.

On March 12, 2018, the respondent received the Court's Resolution dated March 7, 2018, stating:

> Considering that the Records Verification Report of the Judicial Records Division dated February 26, 2018, stating that no appeal to the Court *En Banc* or Supreme Court has been taken by any of the parties in this case within the time provided in the 2005 Revised Rules of the Court of Tax Appeals, as amended, the Decision promulgated on November 17, 2016 has become final and executory.

It was only upon receipt of the above resolution that respondent discovered that the Decision dated November 17, 2016 became final and executory considering that, based on the verified petition and Affidavit of Merits, respondent's previous and present handling counsels never received the Resolution dated April 19, 2017, denying respondent's Motion for Reconsideration of the Decision dated November 17, 2016.

Counting 60 days from such knowledge or discovery of the Resolution dated April 19, 2017, respondent had until May 11, 2018 from March 12, 2018 to file the petition for relief from judgment, which was complied with by respondent when he filed the instant petition on May 11, 2018. Hence, the petition for relief from judgment filed by respondent complied with the 60-day relgementary period.

However, upon review of the records, respondent's petition for relief from judgment was filed beyond the 6-month reglementary period from the Entry of Judgment. It should be noted that the Entry of Judgment[9] states that the "xxx on November 17, 2016, a Decision rendered in the above-entitled case was filed in this Office, xxx and that the same has, on **June 15, 2017**, become final and executory, xxx and is hereby recorded in the Book of Entries of Judgments". Hence, the petition for relief from judgment, filed on May 11, 2018, was filed beyond six months from June 15, 2017. Hence, the petition should likewise be denied for having been filed beyond the 6-month period from entry of judgment.

WHEREFORE, in view of the foregoing, respondent's **Motion for Reconsideration (Re: Resolution promulgated on 22 August 2018)** and petitioner's **Motion for Partial Reconsideration (Of the Resolution dated August 22, 2018)**, are **DENIED** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[9] Docket, vol. 3, p. 1064.