REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

- versus -

GH RESOURCES AND TRAINING SERVICES, INC., GRACE H. CARTAGO

Accused.

CTA CRIM. CASE NO. O-818

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:

SEP 30 2021 11:45 AM

x- x

RESOLUTION

For the Court's resolution are the following:

1. plaintiff's **Petition for Relief from Judgment (with Notice of Change of Address),**[1] filed through registered mail on February 26, 2021 and received by this Court on March 10, 2021; and

2. accused's **failure to comply** with the Court's Resolution dated May 20, 2021.

To have a clear view of the facts surrounding the subject Petition for Relief from Judgment, a brief backgrounder is in order.

On February 26, 2020, an Information[2] was filed before this Court by Assistant State Prosecutor Susan T. Villanueva against GH

[1] Docket, pp. 77 to 90.
[2] Docket, pp. 5 to 7.

Resources and Training Services, Inc., a domestic corporation, and its corporate officer, Grace H. Cartago, being its alleged President, for willful failure to pay the national internal revenue taxes for the taxable year 2007, in violation of Section 255, in relation to Sections 253 (d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended.

However, the said case was dismissed in the Court's Resolution dated June 1, 2020[3] on the ground of prescription, which copy was received by the Department of Justice (DOJ) and by the Bureau of Internal Revenue (BIR) on June 5, 2020 and June 8, 2020, respectively.

There being no appeal taken by the public and special prosecutors within the prescribed period, as per Records Verification dated September 28, 2020,[4] the Court rendered the Resolution promulgated on June 1, 2020 final and executory in its Resolution dated October 7, 2020,[5] thereby making the issuance of the entry of judgment in this case a ministerial duty on the part of the Court. Records show that copy of the Resolution dated October 7, 2020 was respectively received by the DOJ and by the BIR on October 14, 2020 and October 20, 2020.

On November 3, 2020, a Motion for Reconsideration[6] was filed through registered mail by plaintiff's special counsels, Attys. Raul S.J. de Guzman, Carl Fitri A. Hussin and Philip A. Mayo, alleging, among others, that they only received the Court's Resolution dated June 1, 2020 on October 16, 2020, and that the handling prosecutor was already transferred to Makati. Nonetheless, the said Motion for Reconsideration was denied in the Resolution dated December 9, 2020,[7] on the grounds that the said special counsels failed to offer proof of such late receipt, and for having filed the instant Motion for Reconsideration beyond the reglementary period. Copy of the December 9, 2020 Resolution was received by plaintiff's special counsels on January 7, 2021, while the DOJ received the same on December 14, 2020.

Then, on February 26, 2021, plaintiff's special counsels filed through registered mail the present Petition for Relief from Judgment

---

[3] Docket, pp. 55 to 59.
[4] Docket, p. 60.
[5] Docket, p. 62.
[6] Docket, pp. 63 to 69.
[7] Docket, pp. 75 to 76.

(with Notice of Change of Address).[8] They likewise filed a Manifestation (Return to Sender of Petition for Relief from Judgment)[9] through registered mail on March 15, 2021.

In the Resolution dated May 20, 2021,[10] the Court noted the special counsels' Notice of Change of Address, and directed the accused to file her answer to plaintiff's Petition for Relief from Judgment, within 15 days from receipt thereof. The Court also noted the prosecution's Manifestation (Return to Sender of Petition for Relief from Judgment)[11] in its Resolution dated May 27, 2021.[12]

Accused, on the other hand, failed to comply with the Court's Resolution dated May 20, 2021, requiring her to file an answer to the subject Petition for Relief from Judgment, as per Records Verification dated July 16, 2021.

Hence, this Resolution.

In the subject Petition for Relief from Judgment, plaintiff's special counsels claim that their office – Legal Division, Revenue Region 8A- Makati City, was not furnished with a copy of the June 1, 2020 Resolution, dismissing the instant criminal case, notwithstanding the statement in the Referral Letter, attached in the Complaint filed before the DOJ, that they will represent the plaintiff in the instant case. As such, they insist that they had no knowledge of the said Resolution until the same was indorsed to them by the BIR, National Office, Prosecution Division (BIR main office) on October 16, 2020, as accordingly shown in the 1st Indorsement dated September 17, 2020, attached as Annex "A" in the subject petition. Consequently, they claim that they had fifteen (15) day from October 16, 2020, or until November 1, 2020, to file plaintiff's Motion for Reconsideration. But since November 1 and 2, 2020 were accordingly declared holidays, they had until November 3, 2020 to question the June 1, 2020 Resolution. That being the case, they aver that their Motion for Reconsideration, filed on November 3, 2020, must be held filed on time.

More so, plaintiff's special counsels claim that justice would be better achieved if the complaint would be decided on the merits and

---

[8] See footnote no. 1.
[9] Docket, pp. 117 to 119.
[10] Docket, pp. 115 to 116.
[11] Docket, pp. 117 to 119.
[12] Docket, p. 123.

not on technical nicety, following the ruling of the Supreme Court in *Alonso vs. Villamor, et al.,*[13] *NEA vs. CA,*[14] and *Pablo vs. People of the Philippines.*[15]

They likewise assert that the Court erred in dismissing the instant case on the basis of *Tupaz vs. Ulep*[16] case as the same is not on all fours to the instant case. According to them, the assessment in the former case became final and executory, without any warrant of distraint and/or levy issued against the taxpayer, while in the latter case, the final and executory assessment was accompanied by a warrant of distraint and/or levy. They continue that Section 281 of the National Internal Revenue Code (NIRC), as amended, must be applied and read together with Section 223 of the same Code, and that the filing of criminal case against the accused was primarily meant to collect his unpaid taxes. Accordingly, although the Final Assessment Notice (FAN) for taxable year 2007 was issued against the accused on December 16, 2010 and, thus, became final and executory thirty (30) days thereafter for failure of the accused to file her protest thereon, plaintiff proceeded to issue collection notices against the latter. One of which was through the issuance of a warrant of distraint and/or levy (WDL) on September 15, 2011. But as collection efforts were accordingly proved futile, plaintiff brought this action to the DOJ on May 17, 2019. Thus, plaintiff's special counsels insist that the period of prescription should be reckoned from May 17, 2019, as the issuance of WDL had the effect of stopping the running of prescriptive period, pursuant to the case of *Palanca vs. Commissioner of Internal Revenue.*[17]

Lastly, plaintiff's special counsels notify the Court of the latter's change of address, and request that they be furnished with copies of all orders, resolutions, notices and other pleadings at the following new address:

"BIR Legal Division, Revenue Region 8A
36th Floor, Export Bank Plaza Building
Sen. Gil Puyat Ave. corner Chino Roces Ave., Makati City"

Hence, this Resolution.

---

[13] G.R. No. L-2352, July 26, 1910.
[14] G.R. No. L-32490, December 29, 1983, 126 SCRA 394.
[15] G.R. No. 219510, November 14, 2016.
[16] G.R. No. 127777, October 1, 1999.
[17] G.R. No. L-16661, January 31, 1962.

At the outset, the court **NOTES** accused's failure to comply with the Court's Resolution dated May 20, 2021, requiring her to file an Answer to plaintiff's Petition for Relief from Judgment within fifteen (15) days from receipt thereof.

Anent the above-stated Notice of Change of Address, suffice to state this Court had already taken note of the same in its Resolution dated May 20, 2021[18] and, thus, need not be further noted in the instant Resolution.

With respect to the alleged timeliness of the filing of the instant Petition for Relief from Judgment, Section 3, Rule 38 of the Revised Rules of Court provides:

Section 3, Rule 38 of the Revised Rules of Court provides:

> "Rule 38
> Relief from Judgments, Orders, or Other Proceedings.
>
> Section 1. *Petition for Relief from judgment, order or other proceedings.* — 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, he may file a petition in such court and in the same case praying that a judgment, order or proceeding be set aside.
>
> x x x x x x x x x
>
> Section 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 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."

---

[18] Docket, pp. 115 to 116.

Being an equitable remedy, the foregoing rules strictly requires compliance with these two (2) reglementary periods: *first*, the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and *second*, within a fixed period of six (6) months from entry of such judgment, order or other proceeding. Failure to avail of this final chance within the grace period fixed by the Rules is fatal,[19] as the same is considered as a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order to put an end to litigation.[20]

In the instant case, plaintiff's special counsels received a copy of the Resolution dated December 9, 2020, denying their Motion for Reconsideration of the Resolution dated June 1, 2020, on January 7, 2021. Counting 60 days from January 7, 2021, they had until March 8, 2021, within which to file the Petition for Relief. Thus, there was a compliance on the above-stated 60-day period. Meanwhile, the end of the 6-month period commencing from the date the Court ordered the Entry of Judgment on October 7, 2020 is April 7, 2021. As such, when plaintiff's special counsels filed the instant Petition for Relief from Judgment on February 26, 2021, they were able to satisfy the 6-month period rule provided in Section 3, Rule 38 of the Revised Rules of Court.

As to the substantive aspect of the Petition for Relief from Judgment, the Supreme Court, in the case of *Purcon Jr., vs. MRM Philippines, Inc., et al.,*[21] categorically ruled that the "relief afforded by Rule 38 will not be granted to a party who seeks to be relieved from the effect of the judgment when the loss of the remedy of law was due to his own negligence, or mistaken mode of procedure for that matter; otherwise the petition for relief will be tantamount to reviving the right of appeal which has already been lost, either because of inexcusable negligence, due to mistake of procedure by counsel."

In the subject Petition for Relief from Judgment, plaintiff's special counsels claim they committed an excusable negligence of failing to timely file an appeal on the Court's Resolution dated June 1, 2020 (dismissing plaintiff's complaint on account of prescription), as

---

[19] *Philippine Amanah Bank vs. Contreras*, G.R. No. 173168, September 29, 2014, citing *Quelnan vs. VHF Philippines,* 507 Phil. 75, 83 (2005).
[20] *Thomasites Center for International Studies vs. Rodriguez, et al.,* G.R. No. 203642, January 18, 2016.
[21] G.R. No. 182718, September 26, 2008.

they had no knowledge of the same until a copy thereof was indorsed to them by the BIR main office on October 16, 2020. According to them, they should had been furnished a copy of the said Resolution, and not the BIR main office, as there was a statement in the Referral Letter, attached in the Complaint filed before the DOJ, that they will represent the herein plaintiff in the prosecution of the instant case.

The Court does not agree.

As a rule, when a party is represented by counsel of record, service of orders and notices must be made upon his/her counsels or one of them. Notice to any one of the several counsels on record is equivalent to notice to all, and such notice starts the running of the period to appeal notwithstanding that the other counsel on record has not received a copy of the decision or resolution.[22]

In this case, records evidently show that the Information was filed by Assistant State Prosecutor Susan T. Villanueva on behalf of the Republic. Hence, the latter is considered the Public Prosecutor on record entitled to be furnished copies of all court orders, notices and decisions, after all, all criminal actions commenced by complaint or information are prosecuted under the direction and control of public prosecutors.[23] Thus, the receipt by the DOJ of the assailed Resolutions dated June 1, 2020 and December 9, 2020 on June 5, 2020 and October 14, 2020, respectively, is equivalent to notice to all.

Moreover, while the names of Attys. Raul S.J. de Guzman and Carl Fitri A. Hussin, to the exclusion of Atty. Philip A. Mayo, were mentioned in the Commissioner of Internal Revenue Caesar R. Dulay's Referral Letter dated May 17, 2019, referring the case for preliminary investigation to the Secretary of Justice Menardo I. Guevarra, and designating them, among others, as representative of the Bureau of Internal Revenue "in the preliminary investigation and prosecution of the case", the same does not automatically make them the counsels on records, until they filed by registered mail the subject Motion for Reconsideration on November 3, 2020. Thus, the

---

[22] *Philippine Asset Growth Two, Inc. vs. Fastech Synergy Philippines, Inc.*, G.R. No. 206528, June 28, 2016, citing the cases of *National Power Corporation v. Sps. Laohoo,* 611 Phil. 194, 212-213 (2009) and *Philippine Ports Authority v. Sargasso Construction & Development Corp.,* 479 Phil. 428, 438 (2004), *Albano v. CA,* 415 Phil. 76, 85 (2001).

[23] Section 5, Rule 110, 5, Rules of Court.

Court did not err in notifying only the Assistant State Prosecutor Villanueva and the BIR main office of the assailed Resolutions.

It must be stressed that Court's foregoing ruling finds support in in *People of the Philippines vs. Benedicta Mallari and Chi Wei-Neng,*[24] where the Supreme Court stated:

> "Petitioner avers that the period for the filing of the Motion for Reconsideration has not yet run since it did not receive a proper notice of the December 14, 2009 Resolution of the CTA First Division. Besides, assuming that ACP Mendoza, the deputized special counsel, failed to timely file the said motion, his inadvertence cannot be imputed against the State especially on matters relating to the exercise of its inherent power to tax.
>
> We are not persuaded.
>
> ***The Motion for Reconsideration was filed beyond the 15-day prescribed period.***
>
> **Section 1, Rule 15 of A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the CTA, states that an aggrieved party shall file a motion for reconsideration within 15 days from the date he/she received notice of the assailed decision, resolution or order of the court in question.**
>
> **A perusal of the records shows that the BIR Main Office and the Office of the City Prosecutor received the Notice of the December 14, 2009 Resolution of the CTA First Division on December 17, 2009 and December 21, 2009, respectively. From the date of receipt, petitioner only had until January 4, 2010 and January 5, 2010, respectively, to file its Motion for Reconsideration. Petitioner, however, filed its motion only on January 18, 2010 or 14 days beyond the prescribed period. Thus, we find no cogent reason to depart from the findings of the CTA Special First Division, which was affirmed by**

[24] G.R. No. 197164, December 4, 2019.

the CTA *En Banc*, that petitioner filed its Motion for Reconsideration beyond the 15-day reglementary period.

Consequently, petitioner's failure to duly file on time a Motion for Reconsideration of the CTA First Division's December 14, 2009 Resolution resulted in losing its right to assail the CTA First Division's judgment before this Court. This is in accordance with the basic rule that a party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law for the purpose loses the right to do so. As laid down in *Barrio Fiesta Restaurant v. Beronia*:

> For purposes of determining its timeliness, a motion for reconsideration may properly be treated as an appeal. As a step to allow an inferior court to correct itself before review by a higher court, a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal.

Notice of the December 14, 2009 Resolution of the CTA First Division was properly served to petitioner.

Petitioner claims that the Notice of the CTA First Division Resolution dated December 14, 2009 was not properly served to the designated special prosecutors of the DOJ stated under Department Order No. 86 who would assist in the criminal case filed against Mallari and Wei-Neng, and that it should have been sent to BIR Regional Office in Manila and not to BIR Main Office.

We disagree.

It is settled that when a party is represented by counsel of record, service of orders and notices must be made upon his/her counsels or one of them. Otherwise, notice to the

client and to any other lawyer, not the counsel of record, is not notice in law.

Petitioner, through ACP Mendoza, was properly served notice of the December 14, 2009 Resolution of the CTA First Division.

A review of the records shows that the notices of the Resolutions dated October 7, November 10 and 26, 2009, respectively, were duly served on the Office of the City Prosecutor, through ACP Mendoza and now Court of Appeals Associate Justice Jhosep Y. Lopez, and the BIR Main Office, respectively. To note, ACP Mendoza was the same prosecutor who initiated the filing of the Information against Mallari and Wei-Neng for violation of the NIRC before the CTA. Interestingly, there is dearth of records showing that petitioner questioned the services of the notices that were made upon the BIR Main Office and the named city prosecutors in the OCP with respect to the said Resolutions.

It is even more interesting that petitioner's alleged special counsels, Atty. Ramon B. Lorenzo of the BIR Manila and Atty. Mario A. Saldevar, filed an Entry of Appearance with Leave to Admit Attached Motion for Reconsideration only on January 18, 2010. Petitioner did not provide any valid justification as regards their belated entry of appearance. **As special counsels, they should have been more vigilant in keeping track of the criminal case filed against Mallari and Wei-Neng as the State stands to suffer injury of failing to claim payment of taxes amounting to several millions of pesos. Hence, the services of notice made to the OCP through ACP Mendoza and the BIR Main Office, respectively, are deemed proper and are thus service of notice to petitioner itself.**

The alleged negligence of special counsel, ACP Mendoza, binds petitioner.

Petitioner avers that assuming ACP Mendoza failed to duly file on time the motion for reconsideration, his act cannot be imputed against the

State as it concerns the exercise of its inherent power to tax.

Its claim is unmeritorious.

We stress the settled rule that the negligence and mistakes of a counsel are binding on the client. This is so because a counsel, once retained, has the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his/her client, petitioner in this case. As such, any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself/herself.

The alleged negligence of ACP Mendoza binds petitioner." *(Emphases ours)*

As such, the Court maintains its position that the subject Motion for Reconsideration was filed beyond the reglementary period and, thus, resulted in losing plaintiff's right to assail the June 1, 2020 Resolution of this Court.

Likewise, the Court finds no excusable negligence in the present Petition for Relief from Judgment that could justify the remedy prayed for since the belated filing of the Motion for Reconsideration could have been avoided had the BIR main office immediately forwarded a copy of the June 1, 2020 Resolution to its Legal Division, Revenue Region 8A, Makati City. Quite glaringly, plaintiff's special counsels did not bother to explain why it took the BIR main office one hundred twenty-nine (129) days to indorse the said Resolution to their office, notwithstanding the urgency of the matter involved in the said Resolution, and the fact that the plaintiff's special counsels' office is likewise located within the Metropolitan Manila area. Had the BIR devised a system or measure that can effectively monitor the progress of cases being handled by its counsels, including the immediate transmittal or route of the notices it received to the handling lawyer, then the foregoing circumstance could have been avoided. Thus, the alleged negligence in the instant case is one that ordinary diligence and proper case management could have guarded against. More so, had plaintiff's special counsels bothered to check the status of the Information filed before this

Court on February 26, 2020, then they would have discovered the dismissal thereof on account of prescription.

At this juncture, the Court reiterates that procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows a relaxation in the application of the rules, it never intend to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of the rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules; these rules illumine the path of the law and place the pursuit of justice.[25]

Having thus concluded, the Court sees no need to discuss the other issues which may have been raised in this petition.

WHEREFORE, premises considered, plaintiff's **Petition for Relief from Judgment** is **DENIED**, for lack of merit.

SO ORDERED.

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[25] *Anderson vs. Ho*, G.R. No. 172590, January 7, 2013.