REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1992
(CTA Case No. 8863)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

- versus -

TOP DRAW ANIMATION, INC.,
Respondent.

Promulgated:

FEB 13 2019 2:56 p.m.

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RESOLUTION

UY, *J.*:

For resolution is petitioner's **"MOTION TO ADMIT PETITION FOR REVIEW,"**[1] and "**PETITION FOR REVIEW,**"[2] both filed on January 10, 2019, with respondent's **"COMMENT/OPPOSITION [Re: Motion to Admit Petition for Review Dated 9 January 2019]"** filed on January 21, 2019.

In his Motion, counsel for the petitioner stated that he received the Resolution of the Court in Division, denying the Motion for Reconsideration, on December 7, 2018. He intended to file a Motion for Extension of Time to File Petition for Review on December 27, 2018, but he was not able to travel back from his hometown in Baguio City, where he spent his Christmas holiday. His travel was allegedly "inhibited by the severe back pains he experienced caused by his

[1] Docket, pp. 1 to 5.
[2] Docket, pp. 6 to 7.

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slipped disc aggravated by the cold weather." Thus, counsel for the petitioner prays for the admission of the attached Petition for Review, in the interest of justice.

In its Comment, respondent counters that petitioner failed to present a valid and compelling reason for its procedural lapse in order to merit the liberality of this Court. Although appeal is an essential part of judicial process, it has been held that it is not a natural right or a part of due process, but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory, but also jurisdictional, and the failure of a party to conform to the rules regarding appeal will render the judgment final and executory.

Moreover, respondent argues that while procedural rules may be relaxed in the interest of justice, it was never intended to be a license for erring litigants to violate the rules with impunity. To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice. In this case, the reasons for petitioner's failure to file a Petition for Review are not valid and compelling enough to warrant the relaxation of the procedural laws in its favour.

In addition, respondent points out that petitioner has three (3) handling counsels for this case, and any of the other two (2) could have filed the Petition for Review, or, at least, a Motion for Extension of Time to File Petition for Review. The negligence of petitioner's counsels to file the necessary pleading to present its case binds the petitioner. The evident disregard of the procedural rules causes unjust delays, disrupts the orderly discharge of judicial business, and is prejudicial to the rights of the respondent.

Petitioner's Motion, as well as his Petition for Review, are both filed out of time.

In assailing the Decision and Resolution of the Court in Division, petitioner's recourse before this Court, sitting *En Banc,* is governed by Section 18 of R.A. No. 1125, as amended, in relation to Sections 3 (a) and 4 (b) of Rule 8 of the Revised Rules of the Court of Tax Appeals, to wit:

"**Republic Act No. 1125, as amended**

> **Section 18.** ***Appeal to the Court of Tax Appeals En Banc.*** – No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
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> A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *En Banc.*
>
> **Revised Rules of the Court of Tax Appeals**
>
> **Rule 8 – Procedure in Civil Cases**
>
> **Section 3.** ***Who may appeal; period to file petition.*** – x x x
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> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen (15) days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen (15) days from the expiration of the original period within which to file the petition for review.
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> x x x x
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> **Section 4.** ***Where to Appeal; Mode of Appeal.*** – x x x
>
> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court *(now the 1997 Rules of Civil Procedure).* The Court *En Banc* shall act on the appeal." *(Underscoring supplied.)*

Based on the foregoing provisions, in order to successfully file a Petition for Review before this Court, a party litigant must file a motion for extension of time to file its Petition for Review, or the actual Petition for Review, within fifteen (15) days from receipt of the questioned decision or resolution. Moreover, the petitioner must likewise comply with the requirements set forth in Rule 43 of the 1997 Rules of Civil Procedure.

Unfortunately for petitioner in this case, counsel for the petitioner failed to comply with both requirements.

With regard to the timeliness of petitioner's motion and her Petition for Review, counsel for the petitioner categorically admits that he received a copy of the assailed Resolution dated December 4, 2018, issued by the Court in Division, on December 7, 2018.[3] Thus, he has fifteen (15) days, or until December 22, 2018, within which to file his Petition for Review, or a motion for extension of time. The last day for filing, December 22, 2018, having fallen on a Saturday, petitioner had until the next working day, December 27, 2018, a Thursday, within which to file his pleading. However, records show that counsel for the petitioner only filed a "Motion to Admit Petition for Review" on January 10, 2019, or fourteen (14) days beyond the prescribed period for filing a Petition for Review, or a motion for extension of time.

In his Motion, counsel for the petitioner states that he intended to file a Motion for Extension of Time, but was unable to do so as he was unable to travel back to work from his hometown in Baguio. He merely alleged, without proof, that his travel was inhibited by the severe back pains he experienced caused by his slipped disc, aggravated by the cold weather.

We are not convinced.

The excuses given by petitioner's counsel are untenable. First of all, this Court notes that counsel merely alleged, without proof, that he was incapable of filing the necessary Petition for Review or Motion for Extension of Time to file the said Petition. Second, assuming that counsel for the petitioner was in fact, unable to travel due to severe back pains, Atty. Dayne B. Medina is not the only counsel assigned to the instant case. Atty. Oscar A. Aguilar, or Atty. Philip A. Mayo, could have easily filed a Motion for Extension of Time to file the Petition for Review. However, all three (3) of them had failed to do so.

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[3] Docket, p. 1.

Consequently, the assailed Decision and Resolution of the Court in Division has become final due to the fatal mistake of petitioner's counsel to timely file his Petition for Review.

As held by the Supreme Court in the case of *Apex Mining Co., Inc. vs. Commissioner of Internal Revenue,* [4] the period granted litigants within which to file an appeal is merely statutory and strict compliance thereof is not only mandatory, but jurisdictional as well, to wit:

> "To stress, the right to appeal is merely statutory and one who seeks to avail of it must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory. And, just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party has the correlative right to enjoy the finality of a decision in his favor."

Finally, the Court notes that the Motion to Admit Petition for Review, and attached Petition for Review, likewise suffers from another infirmity, which is the petitioner's failure to comply with the requirements set forth in Rule 43 of the 1997 Rules of Civil Procedure, which includes, among others, the submission of proof of service of a copy of the Petition for Review on the adverse party.[5] Under Section 13, Rule 13[6] of the same rules, if the service is made

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[4] G.R. No. 122472, October 20, 2005.

[5] "**Rule 43, Section 5.** ***How appeal taken.*** – Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, <u>with proof of service of a copy thereof on the adverse party</u> and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner. x x x x."

[6] "**Rule 13, Section 13.** ***Proof of service.*** – Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or <u>the affidavit of the party serving, containing a full statement of the date, place and manner of service</u>. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. <u>If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office</u>. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof of the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee."

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by registered mail, proof thereof shall consist of: 1) an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 of the 1997 Rules of Civil Procedure; and the 2) registry receipt issued by the mailing office.

A perusal of the subject Motion to Admit Petition for Review and attached Petition for Review, however, shows that counsel for the petitioner failed to execute an Affidavit of Service, or attach a registry receipt, to prove proper service of the aforementioned pleadings to the adverse party, by registered mail.

The failure to comply with the foregoing requirement shall be a sufficient ground for dismissal under Section 7, Rule 43[7] of the 1997 Rules of Civil Procedure.

WHEREFORE, premises considered, the Motion to Admit Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[7] **"Rule 43, Section 7.** ***Effect of failure to comply with requirements.*** – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof."

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

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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