REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Second Division

HOLCIM PHILIPPINES MANUFACTURING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10414

Members:

RINGPIS-LIBAN, ***P.J.*** & *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

11:33 AM

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RESOLUTION

RINGPIS-LIBAN, J.:

Before the Court is the *Verified Petition for Relief from Judgment* filed on 17 November 2025[1] by respondent Commissioner of Internal Revenue (CIR), seeking to set aside the Decision dated 14 February 2025[2] rendered by this Court in CTA Case No. 10414, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the present Petition for Review is **GRANTED**.
>
> Accordingly, the PAN dated July 16, 2018, FLD dated July 1, 2019 and undated FDDA issued against petitioner for deficiency CGT assessment in the aggregate amount of Php355,479,878.19, inclusive of surcharges, interests and compromise penalty, are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

The antecedent facts, as gathered from the records, are as follows.

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[1] Rollo, Verified Petition for Relief from Judgment, pp. 1419-1454.
[2] Rollo, Decision dated February 14, 2025, pp. 1364-1385.

On 3 December 2020, petitioner Holcim Philippines Manufacturing Corporation filed a *Petition for Review* seeking the cancellation of deficiency capital gains tax (CGT) assessments issued by the respondent in the aggregate amount of ₱355,479,878.19, inclusive of surcharges, interest, and compromise penalty, covering the two Deeds of Absolute Sale of Shares of Stock dated December 8, 2000 and January 20, 2001.

After full trial and submission of memoranda, this Court rendered the Decision on 14 February 2025,[3] granting the *Petition for Review* on the ground that respondent's right to assess had already prescribed. The PAN dated July 16, 2018, FLD dated July 1, 2019, and undated FDDA were accordingly cancelled and set aside. The Decision was promulgated and duly entered in the records of this Court.

Respondent states that he came to know of the Decision only on 17 September 2025, when this Court issued an Order directing him to comment on petitioner's *Motion for Entry of Judgment*.[4] No Motion for Reconsideration had been filed on behalf of the respondent prior to the finality of the Decision.

On 23 September 2025, respondent filed an *Urgent Motion for Extension of Time to File Comment with Manifestation*,[5] followed on 29 September 2025 by a *Manifestation in Lieu of Comment*.[6]

On 17 November 2025, respondent filed the instant *Verified Petition for Relief from Judgment*, invoking excusable negligence under Rule 38 of the Rules of Court.[7] Respondent contends that the failure to file a Motion for Reconsideration was caused by the transfer and reassignment of the previous handling lawyer to another office, which created a transition gap in the management of the case and resulted in the new counsel being unaware of the issuance of the Decision.

On 11 February 2026, respondent filed a *Manifestation*[8] informing the Court that the copy of the *Petition for Relief from Judgment* served by registered mail upon petitioner's counsel was returned to respondent with the annotation "MOVED OUT". The Court **NOTES** the foregoing *Manifestation*. To date, no opposition or comment from petitioner has been filed.

The Petition is denied.

The Petition was filed within the reglementary period.

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[3] *Id.*
[4] *Id.*, pp. 1391-1395.
[5] *Id.*, pp. 1402-1405.
[6] *Id.*, pp. 1407-1411.
[7] *Id.* at Note 1.
[8] *Id.*, unpaginated.

The Court disposes of the threshold issue of timeliness at the outset before proceeding to the substantive grounds of the Petition.

Section 3, Rule 38 of the Rules of Court prescribes a two-part reglementary period for a petition for relief: it must be filed (1) within sixty (60) days after the petitioner learns of the judgment or final order, and (2) not more than six (6) months after such judgment or final order was *entered*.[9] Both periods are mandatory and must concur. The sixty (60)-day period runs from actual notice; the six (6)-month period runs from *entry* of the judgment — not from its promulgation.

The Decision was promulgated on 14 February 2025. Entry of Judgment was made on 4 December 2025. The six (6)-month period counted from entry of judgment thus expired on 4 June 2026. Since the *Verified Petition for Relief from Judgment* was filed on 17 November 2025[10], it was filed well within the six (6)-month period.

As to the sixty (60)-day period, respondent avers that he learned of the Decision only on 17 September 2025, when he received the Court's Order directing him to comment on petitioner's *Motion for Entry of Judgment*.[11] Sixty (60) days from 17 September 2025 fell on 16 November 2025, a Sunday; the next working day was 17 November 2025 — the date the Petition was filed. The Petition was therefore filed on the last day of the sixty (60)-day period.

Both reglementary periods under Section 3, Rule 38 having been satisfied, the Petition is timely. The Court proceeds to the substantive grounds.

The ground of excusable negligence is not established.

Rule 38 of the Rules of Court is a remedy of last resort. It may be availed of when a judgment or final order is entered through fraud, accident, mistake, or excusable negligence, provided the petitioner demonstrates a meritorious defense or cause of action.[12] The remedy is extraordinary and must be granted only in exceptional circumstances.[13]

Excusable negligence, as a ground under Rule 38, requires that the negligence be of such character that ordinary diligence and prudence could not have guarded against it.[14] More critically, the negligence that may excuse a party is that of the party himself — not of his counsel. The negligence of counsel ordinarily binds the client.[15] The Supreme Court has recognized limited

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[9] Rule 38, Section 3, Rules of Court.
[10] *Id.* at Note 1.
[11] *Id.* at Note 4.
[12] Rule 38, Section 1, Rules of Court.
[13] *Tuason v. Court of Appeals,* G.R. No. 116607, April 10, 1996.
[14] *Yambao v. Court of Appeals,* G.R. No. 140894, October 15, 2003.
[15] *Spouses Que v. Court of Appeals*, 504 Phil. 616, 626 (2005).

exceptions to this rule in *Spouses Que v. Court of Appeals*, where the Court held that the general rule may be relaxed where: (1) the reckless or gross negligence of counsel deprives the client of due process; (2) the rule's application will result in the outright deprivation of the client's liberty or property; or (3) the interest of justice so requires.[16]

Respondent grounds his Petition on the proposition that the transfer of the previous handling lawyer to another division created an unavoidable transition gap that resulted in no Motion for Reconsideration being filed within the reglementary period.[17] He further invokes the general precept that technicalities should yield to the demands of substantial justice and that the government should not be deprived of the opportunity to present its case on the merits.

The Court is not persuaded.

The circumstances described — a reassignment of a government lawyer, the resulting transition gap, and the attendant case management difficulties — are precisely the kind of organizational and administrative challenges that a party is expected to anticipate and guard against through ordinary diligence. These are internal to the Bureau of Internal Revenue (BIR) Litigation Division and lie entirely within respondent's institutional control. The negligence here is not of a kind that ordinary foresight could not have prevented.

The Supreme Court has consistently held that the negligence of government counsel binds the government as a litigant no less than private counsel binds a private party. In *Madarang v. Spouses Morales*[18], the Court reiterated that a client is bound by the negligence of his counsel and cannot be heard to complain that the result might have been different had the counsel proceeded differently.[19] The State, when it descends to the level of an ordinary litigant, must be prepared to accept the consequences of its counsel's acts or omissions. To hold otherwise would create an unjustifiable asymmetry that disadvantages the adverse party who is entitled to rely on the finality of judgments rendered in its favor.

Respondent's own Affidavit of Merit acknowledges that the CIR's counsel learned of the Decision on 17 September 2025 when an Order directing her to comment on the *Motion for Entry of Judgment* was received.[20] The Affidavit further states that no Motion for Reconsideration was filed because of the transition.[21]

The movant's insistence notwithstanding, the rule is settled that the remedy of petition for relief is an exception to the principle of immutability of final judgments. Its availability presupposes a showing of circumstances beyond

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[16] *Apex Mining Co., Inc. v. Court of Appeals*, G.R. No. 152613, June 23, 2006.
[17] See Note 1, pp. 3-5.
[18] G.R. No. 199283, June 9, 2014.
[19] *Id.*
[20] Rollo, Affidavit of Merit of Caroline Claire S. Baric, p. 57.
[21] *Id.*

the petitioner's reasonable control. Organizational difficulties within the BIR — however genuine — do not meet this standard. To grant relief on such grounds would render every judgment in tax cases vulnerable to vacatur whenever a government agency experiences internal transitions, effectively rendering final judgments meaningless against the State.

Respondent fails to demonstrate a meritorious defense.

Even assuming, for the sake of argument, that the negligence invoked qualifies as excusable, Rule 38 further requires that the petitioner demonstrate a meritorious defense or cause of action.[22] This requirement is not a formality. The Court must be satisfied that, were the petition granted and the case reheard, there is a reasonable probability that a different result would obtain.

Respondent's primary substantive argument is that the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, as amended, should not apply to One-Time Transactions (ONETT) such as the sale of shares of stock not traded in the local stock exchange.[23] Respondent asserts that, in ONETT transactions, the prescriptive period for assessment is not triggered until the taxpayer has submitted complete documentary requirements and the BIR has processed the CAR — which petitioner allegedly never did. Respondent further argues that the RMOs governing ONETT verification procedures create a distinct assessment regime that the Decision failed to consider.

This argument was considered and correctly rejected below.

Section 203 of the NIRC of 1997, as amended, is categorical: internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, or from the actual date of filing, whichever is later. Section 52(D) of the same Code provides that the CGT return for each transaction must be filed within thirty (30) days after the transaction.[24] These provisions make no distinction between ONETT and non-ONETT transactions. Respondent's reliance on RMOs cannot override, expand, or modify the prescriptive period expressly fixed by the statute. As held in

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[22] *Heirs of Bertuldo Hinog v. Melicor,* G.R. No. 140954, April 12, 2005.

[23] Rollo, Petition for Review, p. ___.

[24] 1997 NIRC, as amended, **SEC. 52. Corporation Returns.**

(D) *Return on Capital Gains Realized from Sale of Shares of Stock not Traded in the Local or Foreign Stock Exchange.* — Every corporation deriving capital gains from the sale or exchange of shares of stock, not traded through a local or foreign stock exchange as prescribed under Sections 27(D)(4), 28(A)(1), and 28(B)(5)(c), shall file a return within thirty (30) days after each transaction and a final consolidated return of all transactions during the taxable year on or before the fifteenth (15th) day of the fourth (4th) month following the close of the taxable year.

This subsection requires corporations to report and pay the applicable final tax (typically 15% on net capital gains under related provisions) on over-the-counter or non-exchange-traded share sales. It is part of the broader Section 52 on corporation income tax returns.

Commissioner of Internal Revenue v. Next Mobile, Inc., an assessment issued beyond the prescriptive period is void and of no force and effect.[25]

The Decision correctly determined that the CGT returns for the transactions dated December 8, 2000 and January 20, 2001 should have been filed by January 8, 2001 and February 19, 2001 (amended returns actually filed on March 14, 2001), giving respondent until March 14, 2004 to issue valid assessments. The FLD was issued only on July 1, 2019 — over fifteen (15) years after the expiration of the prescriptive period. No clear and convincing evidence of deliberate or willful falsity sufficient to invoke the extraordinary ten (10)-year period under Section 222(a) was presented. The prescription of respondent's right to assess was therefore correctly and fully established.[26]

A second reading of the Decision reveals no such error as respondent now alleges. The argument that RMO No. 15-2003 creates a separate accrual rule for the prescriptive period — running only from the BIR's receipt of complete documentary requirements — is a restatement of arguments already advanced and rejected prior. Respondent does not present any new basis, newly discovered evidence, or supervening legal development that was not available at the time of trial. The Petition, in substance, is an attempt to relitigate the case on grounds that were already before the Court when it rendered judgment. Rule 38 does not countenance this purpose.

WHEREFORE, in light of the foregoing, the *Verified Petition for Relief from Judgment* filed by respondent CIR is hereby **DENIED** for failure to establish excusable negligence as a ground for relief under Rule 38 of the Rules of Court, and for failure to demonstrate a meritorious defense.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[25] *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*, G.R. No. 212825, December 7, 2015.
[26] Rollo, See Note 2, pp. 20-21.

CORAZON G. FERRER-FLORES
Associate Justice