REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

AIG SHARED SERVICES CORPORATION (PHILIPPINES),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9879

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
APR 28 2023 8:17 AM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s) "Petition for Relief from Judgment"[1] filed on 31 March 2023.

In the said petition, respondent seeks to be relieved from the effects of the Entry of Judgment dated 19 August 2022[2] issued in relation to the Court's Decision dated 26 October 2021[3] (**26 October 2021 Decision**).

Respondent claims that on 30 January 2023, he or she received a copy of the said Entry of Judgment, through a notice dated 25 January 2023.[4] Thus, respondent claims that he or she has sixty (60) days

---

1 Division Docket, Volume IV, pp. 1964-1992, with attachments.
2 Id., p. 1887.
3 Id., pp. 1798-1851.
4 Id., p. 1886.

therefrom, or until 31 March 2023, within which to file the instant petition.

Respondent avers that the previous handling lawyer, Atty. Marionn Phillbee Tejada (**Atty. Tejada**), failed to file a motion for reconsideration (**MR**) on the 26 October 2021 Decision which resulted to the issuance of Entry of Judgment.

According to respondent, when there is an adverse court decision and the handling counsel recommends that an appeal is no longer to be pursued, it is such counsel's duty to inform respondent through a written recommendation, as provided in Revenue Memorandum Circular (**RMC**) No. 26-01.[5] Atty. Tejada failed to do the same thus respondent had no knowledge that an MR was not filed and was therefore surprised by the issuance of Entry of Judgment.

Respondent posits that he or she did not have participatory negligence in losing the right to file an MR which was attributable to the negligence of the previous handling counsel. Respondent insists that the rule that the mistake of counsel binds the client should not be applied where the observance thereof would result in outright deprivation of client's liberty or property or where the interest of justice so requires.

Given the said scenario, compounded by the fact that the Litigation Division of the Bureau of Internal Revenue (**BIR**) is receiving numerous court notices, resolutions and orders daily, ordinary diligence and prudence could not have guarded the untoward situation that happened.

As to his or her allegation of meritorious defense, respondent contends that petitioner AIG Shared Services Corporation (Philippines)'s (**petitioner**'s) claim for refund lacked legal and factual basis as there was even a finding that it is liable for deficiency value-added tax (**VAT**) amounting to ₱1,268,659.78.

In addition, respondent maintains that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded.

---

[5] Guidelines on Whether or Not to Appeal from Adverse Court Decisions.

However, petitioner failed to establish direct attributability between input tax on purchases *vis-à-vis* its zero-rated sales.

Respondent likewise asserts that based on jurisprudence, technicalities should take a backseat in the interest of justice and every party litigant must be afforded every opportunity to present its side. Finally, respondent maintains that he or she has meritorious arguments that will be raised in his or her MR in the event that the Court allows the filing of the same.

From the foregoing, respondent avers that the substantial ends of justice will be better served by recalling the Entry of Judgment and allowing him or her to avail the remedy of filing an MR.

We resolve.

In *Juliet Vitug Madarang, et al. v. Spouses Jesus D. Morales and Carolina N. Morales*[6], the Supreme Court ruled that the petition may be dismissed outright if the double period required under Section 3[7], Rule 38 of the Rules of Court is not complied with, *viz*:

> ...
>
> A petition for relief from judgment is an equitable relief granted only under exceptional circumstances. To set aside a judgment through a petition for relief, parties must file the petition within 60 days from notice of the judgment **and within six (6) months after the judgment or final order was entered; otherwise, the petition shall be dismissed outright.**
>
> ...
>
> **The double period required under Section 3, Rule 38 is jurisdictional and should be strictly complied with. A petition for relief from judgment filed beyond the reglementary period is dismissed outright. This is because a petition for relief from judgment is an exception to the public policy of immutability of final judgments.**

---

6 G.R. No. 199283, 09 June 2014; Citations omitted and emphasis supplied.

7 **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.

> ...
>
> Thus, the decision became final 15 days after January 29, 2010, or on February 13, 2010. Petitioners had six (6) months from February 13, 2010, or until August 12, 2010, to file a petition for relief from judgment.
>
> Since petitioners filed their petition for relief from judgment on September 24, 2010, the petition for relief from judgment was filed beyond six (6) months from finality of judgment. The trial court should have denied the petition for relief from judgment on this ground.
>
> ...

Here, it did not escape the Court's attention that respondent merely mentioned the 60-day period from notice of the judgment in invoking the timeliness of the filing of the instant Petition from Relief from Judgment. Respondent remained silent as to the other period to be complied with. It is, however, a matter of record that he or she failed to conform therewith.

Records show further that the 26 October 2021 Decision was entered on 19 August 2022. Accordingly, petitioner has six (6) months therefrom, or until 15 February 2023, within which to file the instant petition. However, petitioner filed the instant petition only on 31 March 2023.

Notably, respondent allegedly learned of the 26 October 2021 Decision only when he or she received the notice of the Entry of Judgment on 30 January 2023. Assuming for the sake of argument that the same is true, the 6-month period at that time has not yet lapsed as the same expired only on 15 February 2023. However, respondent opted to exhaust the entire 60-day period before filing the instant petition when he or she could have filed the same prior to the lapse of the 6-month period ending on 15 February 2023, or sometime between 30 January 2023 (when it supposedly learned of the 26 October 2021 Decision) up to 15 February 2023. By exhausting the entire 60-day period while disregarding the 6-month period, respondent's instant petition is now time barred.

Thus, pursuant to the above-mentioned case, the Court may dismiss the instant petition outright for failing to comply with the double period required under Section 3, Rule 38 of the Rules of Court.

Furthermore, the Court finds respondent's Affidavit of Merit attached to the subject petition as inimical or prejudicial even to its own cause.

In the said Affidavit of Merit, respondent's counsel claims that Atty. Tejada suddenly stopped reporting to work only around May 2022. However, the 26 October 2021 Decision was promulgated months earlier when the said counsel was still reporting to work. From the foregoing, it is clear that respondent's failure to file an MR on the 26 October 2021 Decision cannot be attributed to Atty. Tejada's absence from work.

In addition, a thorough examination of the records reveals that the case is not handled by Atty. Tejada alone. Other lawyers, namely: Attys. Felix Paul R. Velasco III, Sylvia R. Alma Jose and Ayesha Hania B. Guiling-Matanog are his co-counsels. Thus, it is improper to attribute the failure to file an MR and the eventual issuance of Entry of Judgment in this case solely to a counsel's alleged sudden absence when the other lawyers should be attending to this case as well with equal enthusiasm and attention.

At any rate, even if the Court would allow respondent to file an MR, his or her invocation of petitioner's supposed VAT liability and its failure to prove "direct attributability" as reasons to deny the claim would not constitute as "good and substantial cause of action or defense" as required under Section 3[8], Rule 38 of the Rules of Court.

In *Commissioner of Internal Revenue v. Toledo Power Company*[9], the Supreme Court categorically ruled that since a claim for tax refund or credit under Section 112[10] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, is not a claim for refund under Section 229[11], the correctness of VAT returns is not an issue and thus there is no

---

8 Supra at note 7.

9 G.R. No. 196415, 02 December 2015; Citations omitted.

10 **SEC. 112.** *Refunds or Tax Credits of Input Tax.* - ...

11 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* - ...

need for the court to determine whether the taxpayer is liable for deficiency VAT, to wit:

> ...
>
> In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. And since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC's VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.
>
> Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period.
>
> ...

On the other hand, as to the issue on "direct attributability", the Supreme Court recently held in *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Taganito HPAL Nickel Corporation*[12] that:

> ...
>
> Tellingly, Section 112(A) *does not require direct attributability* for input tax to be creditable or refundable. In sooth, the law allows as tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to their zero-rated sales. In such instance, what the law requires is *for the creditable input tax to be attributable to the zero-rated or effectively zero-rated sales.*
>
> At any rate, creditable input tax does not arise solely from purchases that form part of the finished goods. A plain reading of Section 110 of the Tax Code readily reveals that it did not limit creditable input tax to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production. In particular, Section 110(A) also treats as input tax all VAT due from or paid by a VAT-registered person in the course of their trade or business on the importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. Corollary

[12] G.R. No. 259024, 28 September 2022 (Notice of Resolution); Citations omitted and italics in the original text.

> thereto, even if the purchased goods do not find their way into the taxpayer's finished product, the input tax incurred therefrom can still be credited against the output tax as long as it is (1) incurred or paid in the course of the VAT-registered taxpayer's trade or business, and (2) supported by a VAT invoice issued in accordance with the invoicing requirements of the law.
>
> ...
>
> Veritably, in a plethora of analogous cases involving claims for input tax refund or issuance of tax credit certificate, the CTA is steadfast in its posture that Section 112 of the Tax Code does not require direct attributability of input taxes to zero-rated sales. This posture becomes all the more significant when juxtaposed with the well-entrenched principle that the factual findings and conclusions of the CTA, as a highly specialized court, are accorded respect and deemed final and conclusive. Therefore, this Court perceives no cogent reason to diverge from the judgment reached by the CTA *En Banc* in this case.
>
> ...

WHEREFORE, petitioner's Petition for Relief from Judgment filed on 31 March 2023 is hereby **DISMISSED** for being filed out of time.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice