REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

METROPOLITAN BANK &
TRUST COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 4438

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - x

6/30/94

D E C I S I O N

Petitioner herein seeks for the reversal of the decision of respondent holding it liable for the amount of P925,619.06 representing alleged deficiency documentary stamp tax on foreign exchange transaction for the year 1986 and denying its protest on the ground that it was filed beyond the thirty (30) day reglementary period under Section 270 of the 1986 Tax Code.

On October 21, 1988, petitioner received from respondent a demand letter assessing it for deficiency documentary stamp tax on foreign exchange transaction amounting to P925,619.06. Thereafter, petitioner referred the same to its counsel for the purpose of protesting the assessment. However, it appears that the corresponding protest was filed by the petitioner only on August 1, 1989. Consequently, on February 16, 1990, the respondent rendered her decision denying the protest for having been filed beyond the reglementary period provided for by law.

Hence, the instant petition.

Section 270 of the 1986 National Internal Revenue Code provides:

> "**Sec. 270. Protesting of assessment.** - When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.
>
> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable. (As inserted by PD 1773.)"

Petitioner does not deny that the protest on respondent's assessment was filed outside the thirty (30) day period provided for by law. However, petitioner stated that the denial of its protest is a ground for new trial or relief inasmuch as its failure to file the protest within thirty (30) days from its receipt of respondent's decision was attributable to its counsel's negligence.

Thus, the issue to be resolved is whether or not the respondent was correct in dismissing the petitioner's protest based on the ground that said protest was filed beyond the reglementary period prescribed under Section 270 of the 1986 Tax Code.

According to petitioner, Atty. Meliton G. Emuslan, to whom the case was originally assigned by the law firm representing it, resigned from office without filing the corresponding protest with the respondent's office. It was only upon the discovery of such omission by the law firm that the protest of petitioner was filed, or after a period of almost 10 months from the receipt of the assessment notice by petitioner. No valid reason was ever given by the petitioner or by the law firm for Atty. Emuslan's failure to file a protest on time. It would appear that he resigned from office without notifying his superiors of his omission. There is therefore no question that Atty. Emuslan has committed an act of negligence that is wanting of a valid excuse imputable to the law firm in which he is an associate.

The petitioner, invoking the principle of equity, cited the dissenting opinion of Justice Felix in the case of **Republic of the Phil. vs. Luzon Industrial Corporation (102 Phil. 189)**, the pertinent portion of which provides:

> "Anyway, and even assuming for the sake of argument, that the payment was really late by 2 days, yet it would be unconscionable and beyond the bounds of equity to order appellants to pay the whole sum of P9,058.23 (25 per cent of the tax due) for just 2 days of delay which caused no inconvenience or damage to the Government. The circumstances of this

> case would call, at most, for the imposition of a nominal penalty as a compromise, let us say P100. We can take judicial notice that the Collector of Internal Revenue has compromised in recent years claims that deserve less benign consideration."

We believe that the above-quoted opinion cannot be applied to the case at bar. In the instant case, the delay is not merely for 2 days but for 10 months. Such fact alone is clearly indicative of the negligence and lack of foresight of the law firm representing the petitioner.

The petitioner itself is not without blame for its present predicament. It received the letter of demand or assessment notice on October 21, 1988. Conspicuously appearing at the bottom of the demand letter is the following reminder:

> "IMPORTANT: If you disagree with the above assessment, please file with the Collection Office, Room 509, Main BIR Building, Diliman, Quezon City, your protest in writing indicating your reasons therefor in accordance with the requirements of Revenue Regulations No. 12-85 within thirty (30) days from receipt hereof; otherwise, the same becomes final and unappealable, pursuant to the provisions of Section 270 of the Tax Code." (Emphasis supplied.)

It is therefore clear that the petitioner cannot claim that it is ignorant of the law regarding the 30 day period for filing a protest on the subject assessment. Since day one, it had already been fully apprised that failure to comply thereto will ultimately make the assessment final and unappealable. Time and again, it has been consistently held that once a decision becomes final, the

Court can no longer amend, modify, much less set aside the same. **(Adez Realty Inc., vs. Hon. Court of Appeals, et. al., 212 SCRA 623; Petra Duenas vs. The Hon. Pelagio S. Mandi, et. al., 151 SCRA 530; Tarcisio Icao vs. Hon. Simplicio M. Apalisok, 180 SCRA 680; Hannah Corporation vs. Commissioner of Customs, CTA Case No. 4977, Resolution dated January 18, 1994.)**

Consequently, the petitioner now cannot point an accusing finger on its own counsel. It had actual knowledge of the necessity of filing a protest within 30 days from its receipt of the assessment. In spite of such knowledge and until the lapse of the reglementary period, it never inquired into the status of the case with its counsel. Had it exercised diligence and keen interest in the progress of its case, the present situation could have been avoided. "He did not adopt 'the norm of practice expected of men of good intentions'." **(Blaza vs. Court of Appeals, 162 SCRA 461.)**

It is the duty of a party litigant to make inquiries to counsel on matters concerning his case. **(Florendo v. Florendo, L-24982, March 28, 1969, 27 SCRA 432.)** He is duty bound to contact his lawyer from time to time in order that he may be informed of the progress of his case. Thus, a party is bound by the mistake and may suffer for the negligence of his lawyer. **(Reyes vs. Court of Appeals, 189 SCRA 46.)**

Moreover, it is a settled rule that the negligence of counsel is binding on the client just as the latter is bound by the mistakes of his lawyer. **(Paramount Vinyl Products Corporation vs.**

NLRC, 190 SCRA 525; Reyes vs. Court of Appeals, supra.; Lincoln Gerald, Inc., vs. NLRC, 187 SCRA 701; Guitierrez vs. Zulueta, 187 SCRA 607; Manila Electric Co., vs. Court of Appeals, 187 SCRA 200; Eden vs. Ministry of Labor & Employment, 182 SCRA 840; Blaza vs. Court of Appeals, supra.; Negros Stevedoring Co., Inc. vs. Court of Appeals, 162 SCRA 371; Aguila vs. Court of First Instance of Batangas, Branch 1, 160 SCRA 352; Escudero vs. Dulay, 158 SCRA 69; and Villa Rhecar Bus vs. De La Cruz, 157 SCRA 13.)

Therefore, We have failed to see a cogent reason to grant the relief prayed for by petitioner. A petition for relief will not be granted to a party, like the petitioner herein, when the loss of remedy at law (like the instant appeal) was due to its own negligence, otherwise, the petition for relief will be tantamount to reviving the right to appeal which had already been lost. **(Manila Electric Co., vs. Court of Appeals, supra.)**

Prescinding from the foregoing decision, We find it unnecessary to delve into the merits of the case at bar.

WHEREFORE, judgment is hereby rendered **dismissing** the instant petition. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 30, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

This is to certify that the above decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals