REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

RED FOX GROUP, INC., Duly represented herein by its Authorized Representative, Ms. Ria A. Sablon, Petitioner,	**CTA EB NO. 2504** (CTA Case No. 9752)
	Present:
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE (CIR), BUREAU OF INTERNAL REVENUE (BIR), Respondents.	**Promulgated:** OCT 14 2021 2:52 p.m.

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RESOLUTION

On July 13, 2021, petitioner filed a ***"PETITION FOR REVIEW UNDER RULE 43"*** [1] praying that the Court *En Banc* give due course to the instant Petition for Review or appeal, and that after review of the case at bar, the Decision and the Resolution, both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 9752, be reversed and set aside.

Records show that on February 12, 2020, the Court in Division rendered the assailed Decision[2] denying petitioner's *Petition for Review* in CTA Case No. 9752 for lack of jurisdiction, the dispositive portion of which reads:

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[1] EB Docket, pp. 1 to 21.
[2] Division Docket (CTA Case No. 9752), pp. 302 to 313.

> "**WHEREFORE**, the foregoing considered, the petitioner's Petition for Review filed on 15 January 2018 is **DENIED** for lack of jurisdiction."

Aggrieved, petitioner filed a *Motion for Reconsideration*[3] on February 28, 2020.

In the assailed **<u>Resolution dated October 16, 2020</u>**[4], the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit. The dispositive portion thereof reads as follows:

> "**WHEREFORE**, the foregoing considered, petitioner Red Fox Group, Inc.'s Motion for Reconsideration filed on 28 February 2020 is **DENIED** for lack of merit. Accordingly, the Decision dated 12 February 2020 in the above-captioned case is hereby, **AFFIRMED**."

In the instant *Petition*, petitioner earnestly pleads for the admission of the present appeal as no appeal within the fifteen-day reglementary period from the Resolution dated October 16, 2020 of the Second Division was filed by petitioner. Allegedly, its failure to timely file an appeal was the direct result of the inaction of its counsel of record, Atty. Roger Terence Camua.

It appears that the alleged inaction of Atty. Camua to protect the interest of his client came about during the pendency of petitioner's Motion for Reconsideration filed in CTA Case No. 9752, wherein Atty. Camua failed to immediately inform the Court in Division of the change in his address. Thus, when the assailed Resolution dated October 16, 2020 resolving petitioner's Motion for Reconsideration was promulgated by the Court in Division, petitioner's copy thereof was served, thru registered mail, at his old address.

Consequently, when Atty. Camua informed the Court in Division a month after the assailed Resolution was already sent through registered mail, his motion to be furnished with a copy thereof was denied by the Court in Division. We quote pertinent portions of the instant *Petition* on the matter, to wit:

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[3] Division Docket (CTA Case No. 9752), pp. 314 to 333.
[4] Division Docket (CTA Case No. 9752), pp. 359 to 362.

"In fact, signs of Atty. Camua's inaction to protect the interest of his client began with the matter of receipt of the Resolution. In its 09 February 2021 Resolution (Annex "D" hereof), the Second Division denied his prayer in his 06 January 2021 Manifestation that he be served a copy of the 16 October 2020 Resolution as he alleged that he has not yet received the same. Said the Honorable Second Division:

> Counsel's "Manifestation" is NOTED. However, it appears that the notice of the Resolution was served on counsel through registered mail at his previous address more than a month prior to notifying this Court of his change of address. Given that at the time the service was effected, counsel's address of record remained to be his previous one, service thereof is considered valid.
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> xxx xxx xxx
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> As provided in his notice, his present address of record is also his place of residence. Counsel could have easily avoided the present predicament if he merely informed the Court of his change prior to the actual closure of his office since this would at least ensure receipt of communications from the Court or the opposing party. **The failure of counsel to do so by reason of his own negligence therefore, is no reason for this Court to bend the rules and provide counsel an opportunity for his client to avail of remedies it has already lost**.
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> xxx xxx xxx
>
> Accordingly, with the foregoing, the Court is constrained to DENY counsel's prayer for a copy this Court's Resolution dated 16 October 2020 as the same is already deemed served in accordance with the Rules of Court."[5]

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[5] Petition for Review, EB Docket, pp. 3 to 4.

According to petitioner, Atty. Camua mishandled the very act of receiving a copy of the assailed Resolution. And after failing to timely notify the Court in Division of his change of address which led to the constructive service of the assailed Resolution dated October 16, 2020 at his previous address, Atty. Camua was not able to file the requisite appeal to the Court *En Banc*.

After careful consideration of the factual antecedents in the instant case and petitioner's allegations and arguments in its *Petition for Review,* the Court *En Banc* finds that it has no jurisdiction to take cognizance of the instant appeal for having been filed late. Hence, it is constrained to outrightly dismiss the instant "*Petition for Review under Rule 43*".

The instant Petition was filed out of time.

Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides as follows:

> "**RULE 8**
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> **PROCEDURE IN CIVIL CASES**
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> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition* –
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> xxx xxx xxx
>
> (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 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 days from the expiration of the original period within which to file the petition for review." *(Emphasis supplied)*

Clearly from the foregoing, a party adversely affected by the decision or resolution of the Court in Division on a motion for reconsideration or new trial, may appeal the same by filing a petition for review with the Court *En Banc* within fifteen (15) days from receipt of the questioned resolution.

In the instant case, records show that the assailed Resolution dated October 16, 2020 was served to petitioner, through counsel, *via* registered mail on October 21, 2020[6]. On May 31, 2021, a *Records Verification*[7] was issued by the Judicial Records Division of this Court stating that no appeal was filed by the parties within the reglementary period. In view thereof, the Court in Division issued a Resolution[8] on June 16, 2021 ordering the issuance of an *Entry of Judgment*.

Further, a cursory reading of the instant *Petition* shows that petitioner categorically admits that "***no appeal or petition for review whatsoever was filed within fifteen days from receipt of the Resolution in accordance with Rule 8 Sections 3 and 4 of the Revised Rules of the Court of Tax Appeals***".[9]

Evidently, by its own admission, petitioner failed to file the instant *Petition* within the 15-day reglementary period. In fact, the same was filed only on July 13, 2021. Consequently, the assailed Decision and Resolution of the Second Division have become final and executory.

Petitioner contends that the failure to timely file the instant *Petition* was due to the gross negligence of its former counsel, Atty. Camua, and thus should not bind petitioner.

We are not unmindful of the case of *Gotesco Properties, Inc. vs Spouses Edna and Alberto Moral*[10] (*Gotesco case)* cited by petitioner, where the Supreme Court recognized the exceptions to the general rule that a client is bound by the acts or mistakes of its counsel, namely: (i) gross or palpable negligence of counsel depriving the client of due process of law, (ii) when the application of the rule will result in the outright deprivation of the client's liberty or property, and (iii) where the interests of justice so require. Interestingly, the Supreme Court held that the subject case does not fall under the said exceptions and ruled that the counsel was merely guilty of simple negligence.

Likewise in the instant case, the Court *En Banc* finds that the mistake or negligence of petitioner's counsel, Atty. Camua, in failing to file an appeal within the reglementary period as simple negligence and does not fall under the aforementioned recognized exceptions to the general rule.

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[6] Division Docket (CTA Case No. 9752), p. 358.
[7] Division Docket (CTA Case No. 9752), p. 373.
[8] Division Docket (CTA Case No. 9752), p. 375.

[9] *Petition for Review*, EB Docket, p. 3.
[10] G.R. No. 176834, November 21, 2012.

As a general rule, a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique. The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that 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.[11]

Moreover, it is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough.[12]

In the case of petitioner, We take special note that the Court in Division found that at the administrative level, petitioner also failed to file its protest to the Formal Letter of Demand (FLD) within the time allowed, which means that the validity or correctness of the subject assessment may no longer be questioned on appeal. And for this reason, the Court in Division dismissed CTA Case No. 9752 for lack of jurisdiction.

Clearly, petitioner belatedly filed, not only its necessary protest at the administrative level, but also its appeal at the judicial level before the Court *En Banc*. However, there is no showing that Atty. Camua was also responsible for the late filing of petitioner's administrative protest. Hence, there is no justification to apply any of the exceptions mentioned in the *Gotesco* case.

Lastly, it must be remembered that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. Thus, the failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[13]

In sum, considering petitioner's failure to timely file the necessary appeal, this Court did not acquire jurisdiction over the instant case.

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[11] *Engr. Pablito S. Paluca, in his capacity as the General Manager of the Dipolog City Water District, v. Commission on Audit*, G.R. No. 218240, June 28, 2016
[12] *Lagua v. Court of Appeals,* G.R. No. 173390, June 27, 2012,
[13] *Ibid.*

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review under Rule 43* is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice