REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special First Division

THE HEIRS OF EMILIO L. GAN, *Petitioners,*	**CTA Case No. 9600**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** and **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 30 2021 10:51 am

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RESOLUTION

MANAHAN, J.:

This resolves respondent's **Motion for Reconsideration Ad Cautelam (Re: Amended Decision promulgated on 08 January 2021)** posted on January 28, 2021 and received by this Court on February 3, 2021, praying that the *Amended Decision* dated January 8, 2021 (Assailed Amended Decision) be reversed and set aside and that a new one be issued instead which shall dismiss the instant Petition for Review.

Respondent argues that this Court erred in relaxing the technical rules of procedure as petitioner's right to appeal this Court's *Decision* dated June 29, 2020 (First Decision) was already lost because the latter decision became final and executory and more so, the Assailed Amended Decision prejudiced the interest of government in collecting taxes.

Respondent further argues that petitioner's counsel cannot hide behind her personal responsibilities to shield her professional negligence in an effort to salvage her client's interest because as a lawyer, she should have been circumspect in monitoring the reglementary period of her cases.

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Respondent also faulted this Court for ruling on the issue of absence of Letter of Authority (LOA) which was an issue belatedly raised by petitioner during appeal, hence, a violation of fair play and his right to due process.

Respondent insists that there is no strict requirement under the law to issue an LOA in the conduct of inventory taking.

On the other hand, petitioners, in their **Opposition to Respondent's Motion for Reconsideration** filed on March 17, 2021, argue that respondent, on the contrary, did not conduct any inventory taking and even if such was conducted, an LOA is required before an examination can be conducted.

Petitioners insist that respondent's right to due process was not violated in the instant case but it is the latter who violated the former's right to due process when it conducted its alleged tax examination without the issuance of the required LOA.

Petitioners also aver that this Court may not limit itself to the issues stipulated by the parties but may also rule on related issues to achieve an orderly disposition of cases, and that it has the authority and discretion to relax the technical rules to facilitate the ends of justice.

This Court shall determine first whether the instant motion was filed on time. Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that:

> "SECTION 1. *Who may and when to file motion.*- **Any aggrieved party may seek a reconsideration** or new trial **of any decision**, resolution, or order **of the Court**. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question." (*Emphasis supplied*)

The records of the case reveal that respondent received the Assailed Decision on January 13, 2021. In accordance with the abovementioned provision of the RRCTA, respondent had until January 28, 2021 within which to file his motion for reconsideration. Thus, the filing by respondent of his *Motion for Reconsideration Ad Cautelam (Re: Amended Decision*

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promulgated on 08 January 2021) on January 28, 2021 was on time.

The Court may relax the technical rules of procedure based on a strong compelling reason

Now on the substantive arguments raised in the said motion, respondent faulted this Court in relaxing the technical rules of procedure even when the filing of the instant petition was beyond the thirty (30)-day period provided under the law.

As cited in the Assailed Amended Decision, this Court may relax the application of technical rules when there is merit in the case and the dismissal thereof was due to the negligence of the counsel and not of the petitioner because the main primordial interest of the Court is to ascertain the truth and to render a just decision based on the same.

Such premise was reiterated in the recent case of *Misnet, Inc. v. Commissioner of Internal Revenue*[1], where the Supreme Court emphasizes a strong compelling reason, such as serving the ends of justice and preventing a grave miscarriage of law as the reason for relaxing the technical rules of procedure, to wit:

> In the instant case, petitioner allegedly failed to observe the 30-day period within which to appeal the final decision of the CIR to the CTA. As records would show, petitioner admittedly received the FDDA on March 28, 2011. Reckoned from this date of receipt, it has until April 27, 2011, within which to appeal with the CTA. However, petitioner filed its appeal (Petition for Review) only on July 26, 2011 or after the lapse of ninety-three (93) days from its receipt of the FDDA. It appears that petitioner's filing of an appeal with the CTA was beyond the statutory period to appeal.
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> Nonetheless, this Court has on several occasions relaxed this strict requirement. We have on several instances allowed the filing of an appeal outside the period prescribed by law in the interest of justice, and in the exercise of its equity jurisdiction. Thus:
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>> x x x [F]or a party to seek exception for its failure to comply strictly with the statutory requirements for perfecting its appeal, **strong compelling reasons** such as serving the ends of

[1] G.R. No. 210604, June 03, 2019.

> justice and preventing a grave miscarriage thereof must be shown, in order to warrant the Court's suspension of the rules. Indeed, the Court is confronted with the need to balance stringent application of technical rules *vis-a-vis* strong policy considerations of substantial significance to relax said rules based on equity and justice. (Emphasis supplied; citation omitted)

In the instant case, the Court found a compelling reason to consider relaxing the application of technical rules of procedure because strictly applying the same shall cause a miscarriage of justice.

Respondent should be aware that every time he or his representative conducts a tax examination, audit or investigation against a taxpayer, he or she should be clothed with a valid authority or by the required LOA under Sections 6(A) and 13 of the 1997 National Internal Revenue Code (NIRC), as amended. Otherwise, the subsequent notices that will be issued as a result of such invalid audit are null and void as pronounced in the cases of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[2], *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[3], and *Commissioner of Internal Revenue v. Composite Materials, Inc.*[4], which are all cited in the Assailed Amended Decision.

The strict application of the technical rules of procedure despite the lapse of only one (1) day in the filing of the instant petition shall definitely result to a grave miscarriage of justice considering that the tax examination conducted against petitioner has no valid authority in the first place.

Respondent claims that the ruling in the Assailed Amended Decision shall prejudice the interest of government in collecting taxes. However, respondent must be reminded that in the exercise of the taxing power of the state, it should be done reasonably and in accordance with the prescribed procedure, as held in *Commissioner of Internal Revenue v. Algue, Inc., et al.*[5], to wit:

> "Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the

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[2] G.R. No. 178697, November 17, 2010.
[3] G.R. No. 222743, April 5, 2017.
[4] G.R. No. 238352, September 12, 2018.
[5] G.R. No. L-28896. February 17, 1988.

> other hand, such collection should be made in accordance with law as **any arbitrariness will negate the very reason for government itself**. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved." (*Emphasis supplied*)

It will be petitioner's right to due process that will be prejudiced if this Court shall strictly apply the technical rules of procedure in this case. The arbitrary act of respondent in having his agent conduct a tax examination without the requisite LOA is glaringly devoid of legal and jurisprudential bases. As aptly held in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*[6] following the *Algue* ruling, the Supreme Court ruled, to wit:

> "Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, including summary processes, with as little interference as possible. However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. The BIR' s power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure."

In the instant case, we find compelling reasons to forego technicality to be able to serve the broader interests of justice. First, the conduct of the audit was authorized by a mere LN and not an LOA. As such, the assessment is void due to the absence of an LOA. Second, the filing of the Petition for Review a day late does not appear to have greatly prejudiced respondent's substantial rights. Thus, the dismissal of petitioner's case for belated filing is not commensurate to the lapse committed by its counsel.

Technical rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice as declared by the Supreme Court in the case of *Arnold Ginete, et al. v. Hon. Court of Appeals, et al.*[7], to wit:

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[6] G.R. Nos. 197945 & 204119-20, July 9, 2018.
[7] G.R. No. 127596, September 24, 1998.

> The Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. As applied to instant case, in the language of Justice Makalintal, technicalities "should give way to the realities of the situation."

Also, in the case of *La Sallian Educational Innovators Foundation (De La Salle University-College of St. Benilde), Inc. v. Commissioner of Internal Revenue*[8], the Supreme Court ruled:

> ... While payment of docket fee and other legal fees within the thirty (30)-day reglementary period to appeal a tax assessment to the CTA is mandatory and jurisdictional, this Court will not hesitate to exercise its equity jurisdiction and allow a liberal interpretation of the rules of procedure if a rigid application will defeat substantial justice.
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> This Court has ruled in the past that if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice and depending on the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction.
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> Taking into account the importance of the issues raised in the petition filed before the CTA Division, and what petitioner stands to lose, the CTA En Banc should have considered the merits of said petition. By ruling for the denial of the said petition solely based on technicalities, the CTA En Banc absolutely foreclosed the resolution of the issues raised therein. Definitely, justice would have been better served if the CTA En Banc allowed the resolution of the issues that were raised in the petition.
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> It is worthy to note that this kind of lenient application of the rules of procedure for exceptionally persuasive and meritorious reasons is not novel. In fact, in the case of *Tanenglian v. Lorenzo, et al.*, this Court gave due course to the appeal which was not only made through a wrong mode but was even filed beyond the reglementary period. This

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[8] G.R. No. 202792, February 27, 2019.

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Court recognized the broader interest of justice and reasoned that:

> We have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules, allowing us, depending on the circumstances, to set aside technical infirmities and give due course to the appeal. In cases where we dispense with the technicalities, we do not mean to undermine the force and effectivity of the periods set by law. I those rare cases where we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement o procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause. x x x.

The Court may resolve issues not raised in the parties' pleadings

Respondent also faulted the Court in resolving an issue belatedly raised by petitioner during an appeal, hence, a violation of fair play and his right to due process.

Respondent should be aware that this Court is not precluded from resolving issues not raised during the hearing of the instant case as held in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[9], to wit:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
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> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
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> > SECTION 1. *Rendition of judgment.* - x x x
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> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
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> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its

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[9] G.R. No. 183408, July 12, 2017.

> authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda, The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

Hence, the issue as to the absence of an LOA can be resolved by this Court considering such authority affects the validity of the assessment.

LOA covers all acts to be performed by respondent and his agent in tax examination

Lastly, respondent argues that an LOA is not required in the conduct of inventory taking.

Respondent should be aware that inventory taking is an audit technique or procedure adopted in any tax audit which is referred to in the 1997 NIRC, as amended. He should also be aware that the required LOA covers all investigative activities, inventory taking included, that he and his agents shall perform upon entering the petitioner's premises. Thus, respondent is totally mistaken.

There being no other new issues or matters raised by the petitioner in the instant motion, this Court finds no compelling reason to reverse the ruling in the Assailed Amended Decision.

WHEREFORE, respondent's *Motion for Reconsideration Ad Cautelam (Re: Amended Decision promulgated on 08 January 2021)* is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice