REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ONE HUNDRED SERVICES, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 8373

Members:
BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ,
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JUN 7 2012
ABFernando 10:47 a.m.

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RESOLUTION

COTANGCO-MANALASTAS, *J.*:

The Court is confronted with the following pending incidents:

I. *"Answer (with Motion to Dismiss)"* [1] filed by respondent Commissioner of Internal Revenue (CIR) on December 29, 2011. Respondent's answer pleads as special and affirmative defense the prescription or belated filing of the instant petition as a ground for dismissal. In accordance with Section 6, Rule 16 of the Rules of Court, the Court deems it prudent to first resolve the same as if a motion to dismiss had been filed.

II. *"Manifestation and Motions for Leave to [I] Amend Petition for Review and [II] Admit Attached Amended Petition"*[2] filed by petitioner One Hundred Services, Inc., on January 19, 2012, praying for this Court to note the manifestation; excuse the petitioner from filing the required comment to the motion to dismiss; grant

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[1] *Docket*, pp. 129 143.
[2] *Docket*, pp. 150-191.

petitioner leave to amend the petition; and admit the attached amended petition alleging facts and circumstances that addresses the ground raised by the respondent for the dismissal of the petition.

On December 29, 2011, this Court received respondent's *"Answer (with Motion to Dismiss)"*[3] to the instant Petition for Review; the answer pleads as special and affirmative defense the belated filing of the instant petition as a ground for dismissal.

Petitioner was ordered to file its comment on respondent's *"Answer (with Motion to Dismiss)"* on January 3, 2012. In lieu of a comment, petitioner filed a *"Manifestation and Motions for Leave to [I] Amend Petition for Review and [II] Admit Attached Amended Petition"*[4] on January 19, 2012.

In a Resolution[5] dated January 30, 2012, respondent was ordered to comment on the above-mentioned manifestation and motions. In compliance thereto, a "*Comment and/or Opposition (to the Manifestation and Motions for Leave to [I] Amend Petition for Review and [II] Admit Attached Amended Petition)"*[6] was posted by respondent on February 13, 2012.

On March 6, 2012 the Court received petitioner's *"Reply (To Respondent's Comment and/or Opposition dated February 13, 2012)"*[7] filed by registered mail on February 27, 2012.

In view of the foregoing, respondent's *"Answer (with Motion to Dismiss)"*, which pleads as special and affirmative defense the belated filing of the instant

[3] *Docket*, pp. 129-143.
[4] *Docket*, pp. 150 191.
[5] *Docket*, p. 194.
[6] *Docket*, pp. 195 211.
[7] *Docket, pp.* 213-227.

petition as a ground for dismissal, and petitioner's *"Manifestation and Motions for Leave to [I] Amend Petition for Review and [II] Admit Attached Amended Petition"* were submitted for resolution.

In its *"Answer (with Motion to Dismiss)"*[8], respondent contents that the instant petition was filed beyond the period allowed by law, making the assessment final, executory and demandable. Respondent emphasizes that petitioner received a copy of the Final Decision on Disputed Assessment (FDDA) on October 10, 2011, thus, it only had thirty (30) days, or until November 9, 2011, from receipt of the same to file an appeal with this Court; hence, the filing of the instant petition on November 10, 2011 clearly shows that it was belatedly made.

In lieu of a comment to respondent's answer with motion to dismiss, petitioner filed its *"Manifestation and Motions for Leave to [I] Amend Petition for Review and [II] Admit Attached Amended Petition"*[9] where it seeks to amend the instant petition in order to allege facts and circumstances that will explain the excusable, inadvertent and unintentional nature of the one-day delay in the filing of the instant case; and to include the argument of prescription of respondent's right to assess on the ground that the waivers intended to extend the period to asses are void.

In the amendatory allegations, petitioner explains that: by reason of the subsequent service of FDDA on October 19, 2011 through personal delivery, petitioner, then still unaided by counsel, was led to honestly believe that the 30-day period to file an appeal should be reckoned from said latter service instead of the

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[8] *Supra,* Note 3.
[9] *Supra,* Note 4.

earlier service by registered mail received on October 10, 2011; the one-day delay will not cause any substantial prejudice upon the respondent; if the case is not heard on the merits, petitioner will suffer great prejudice in complying with erroneous assessments in the huge amount of P10.6 million; this is one occasion when the exception based on the interest of substantial justice and the avoidance of a miscarriage thereof ought to be implemented.

Anent the argument of prescription of respondent's right to assess, petitioner argues that the waivers executed in this case did not have the effect of extending the three (3) year period to assess as the requirements under Bureau of Internal Revenue (BIR) Revenue Memorandum Order No. 20-90 were not strictly complied with. Petitioner explains that since the instant petition involves assessments amounting to P10,613,798.04, the waivers should have been signed by the Commissioner of Internal Revenue and not merely by the BIR Regional Director and Revenue District Officer, as in this case.

Respondent, in her *"Comment and/or Opposition"* [10] to the above manifestation, insists that the alleged excuse is bereft of any legal and/or factual basis; cause of the petitioner cannot be salvaged merely by invoking prejudice as it was given due process thru its protest on the preliminary assessment notice (PAN) and final assessment notice (FAN); the revenue officers who accepted the three (3) waivers are duly authorized under the rules and regulations, it follows that the PAN and FAN were made within the validly extended period of prescription; the

[10] *Supra*, Note 6.

manifestation and motion should be denied for the same intends to introduce new matters which radically alter the theory and nature of the action.

In its *"Reply (To Respondent's Comment and/or Opposition dated February 13, 2012)"*[11], petitioner maintains that the one-day delay may be excused in the interest of substantial justice and considering the factual circumstances of the case its merits deserve to be heard by the Court; the three(3) waivers signed by the petitioner with the *conforme* of the BIR officers are void, hence right to assess has already prescribed.

The Court shall address first the issue on prescription or belated filing of the instant petition as a ground for dismissal, pleaded as a special and affirmative defense in the *"Answer (with Motion to Dismiss)"*[12] of the respondent, since the resolution of which is crucial in determining whether this Court has jurisdiction over the subject Petition for Review; and consequently, whether this Court should proceed in considering the manifestation and motion for amendment of the instant petition.

Replete are the laws which explicitly provide for the periods to be observed in protesting an assessment to this Court; for one, Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, states that:

> **"SEC. 228. Protesting of Assessment.** –
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of**

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[11] *Supra*, Note 7.
[12] *Docket*, pp. 129-143.

> **Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**

Another one is that found on Section 11 of Republic Act (RA) 1125, An Act Creating the Court of Tax Appeals, as amended by RA 9282, which provides that:

> "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision**, ruling or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case en banc.
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> xxx"

Consistent with the above provisions is Section 3 (a), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), *viz*:

> **"SEC. 3.** *Who may appeal; period to file petition.* – (a) **A party adversely affected by a decision, ruling** or the inaction **of the**

> **Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx"

Likewise, in varying but consistent language, the Supreme Court has emphasized that "the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost".[13] In fine, the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment.[14]

Nonetheless, the limitation on the period to appeal is not without exceptions, in *Department of Justice Secretary Raul M. Gonzales v. Pennisi*,[15] the Supreme Court elucidated on the exception to the rules on reglementary periods:

> "xxx. By way of exception, unintended lapses are disregarded so as to give due course to appeals filed beyond the reglementary period on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof. The purpose behind the limitation of the period of appeal is to avoid an unreasonable delay in the administration of justice and to put an end to controversies."

[13] *Producers Bank of the Philippines vs. CA*, G.R. No. 126620, April 17, 2002 citing Ortiz vs. Court of Appeals, 299 SCRA 708 (1998).

[14] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006 citing *Commissioner of Internal Revenue v. Western Pacific Corporation*, 121 Phil. 889, 893 (1965).

[15] G.R. No. 169958, March 5, 2010, 614 SCRA 292.

Some of such strong and compelling reasons, warranting the relaxation of the period to appeal, were exemplified in the following cases, *to wit*:

- In *Heirs of Rodolfo Crisostomo vs. Rudex International Development Corporation*[16] the delay was excused because it was aptly explained and proved that the secretary of the party's counsel, who failed to file the petition, indeed brought her children to the doctor on the deadline for filing the petition for review; petitioners submitted an affidavit from the secretary, who narrated her ordeal that day and why she was not able to inform her employer of the whereabouts of the petition and a certification from the doctor of one of the secretary's children.
- In *Gonzales vs. Pennisi*[17], the respondent had a valid excuse for the late filing of the petition as there was a pending petition for prohibition before the trial court that had to be withdrawn before the filing of the petition for review with the appellate court.
- In *Dalton-Reyes vs. Court of Appeals*[18], the reason for the delay given by petitioner, a stenographic reporter of the Office of the Ombudsman, that she was not assisted by a lawyer at that time was considered as an excusable negligence under the policy of social justice where the law bends over backward to accommodate the

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[16] G.R. No. 176129, August 24, 2011 citing *Philippine Amusement and Gaming Corporation v. Angara*, 511 Phil. 486, 498 (2005).
[17] *Supra*, Note 15.
[18] G.R. No. 149580, March 16, 2005.

interests of the working class on the humane justification that those with less privilege in life should have more in law; more so in the case of one who pursues her case even without the assistance of counsel.

After a meticulous examination of the records, arguments, relevant laws and jurisprudence, *We* are convinced that the reason advanced by petitioner to justify the belated filing of the instant petition, cannot be catalogued as one of the exceptions sufficient to exempt petitioner from the stringent application of the laws and rules limiting the period to appeal with this Court.

In this case, petitioner explained that the delay is excusable, inadvertent and unintentional and it is by reason of the subsequent service of FDDA on October 19, 2011 through personal delivery, that petitioner, then still unaided by counsel, was led to honestly believe that the 30-day period to file an appeal should be reckoned from said latter service instead of the earlier service by registered mail received on October 10, 2011.

We have noted a number of significant and peculiar circumstances in this case which preclude this Court from appreciating the foregoing reasoning/claim as a matter fact and from considering the same as an excusable negligence.

First, a perusal of the instant petition shows that petitioner disclosed, as part of his jurisdictional allegation, its receipt of the FDDA through registered mail on October 10, 2011, acknowledging the same as the reckoning of the 30-day period to appeal; there was no mention of the subsequent personal service on October 19, 2011. It was only after respondent moved to dismiss the petition on the ground of late filing, that petitioner raised its reasoning/claim that the subsequent personal service on October 19, 2011 led it to honestly believe that the latter date is the reckoning of the 30-day period to appeal. Indeed, this Court cannot help but view this reasoning/claim, which is in checkered contrast to the original allegation, as a mere afterthought to justify the late filing.

It bears to stress that the instant petition for review was *verified* as true and correct based on personal knowledge and authentic records by the petitioner itself, through one of its officer, thus, If petitioner 'honestly believed' the subsequent personal service on October 19, 2011 to be the reckoning of the 30-day period to appeal, it should have indicated so in this petition for review.

Second, the Court refuse to give credence to petitioner's cry of ignorance as to the reckoning of the 30-day period; a scrutiny of the records show that petitioner was able to timely file its protest to the PAN and FAN in the administrative level, such fact fairly establishes petitioner's awareness to the procedures in protesting an assessment.

Lastly, the acts of petitioner which caused the late filing of the petition could hardly be considered as excusable, much less unavoidable. Fully aware of the fact that the deficiency assessments against petitioner involve a huge amount of P10.6 million, petitioner still failed to exercise ordinary diligence by failing to transmit the FDDA to its counsel within a reasonable period of time; the FDDA was transmitted only on November 9, 2012, deadline for the filing of appeal to this Court. Assuming *arguendo* that the reckoning is on October 19, 2011, even so, ordinary prudence was not dutifully exercised in this case as the FDDA was transmitted to counsel barely ten (10) days before the deadline.

"Negligence to be "excusable" must be one which ordinary diligence and prudence could not have guarded against and by reason of which the rights of an aggrieved party have probably been impaired."[19]

Section 228 provides that the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Accordingly, petitioner is barred from disputing the correctness of the assessments.

In *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*[20], the Supreme Court had the occasion to reiterate the ruling in In *Ker & Company, Ltd. v. Court of Tax Appeals*[21], viz:

> "the Court held that while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss."

The failure of petitioner to comply with the 30-day statutory period bars its appeal and deprives the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments.[22]

[19] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, June 16, 2006 citing *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005, 461 SCRA 369, 388.
[20] *Supra.*
[21] G.R. No. L-12396, January 31, 1962, 4 SCRA 160, 163.

In view thereof, the resolution of the *"Manifestation and Motions for Leave to [I] Amend Petition for Review and [II] Admit Attached Amended Petition"* filed by petitioner is hereby considered moot and academic.

WHEREFORE, premises considered, the prayer of respondent for the dismissal of the instant petition, on the ground of prescription or belated filing, pleaded as a special and affirmative defense in the *"Answer (with Motion to Dismiss)"*[23], is hereby **GRANTED.**

Accordingly, the instant Petition for Review is hereby **DISMISSED,** the failure of petitioner to comply with the 30-day statutory period to appeal effectively deprived this Court of its jurisdiction to entertain and determine the correctness of the subject assessments.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[22] *Commissioner of Internal Revenue v. Western Pacific Corporation*, 121 Phil. 889, 893 (1965).
[23] *Supra*, Note 1.