REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BASES CONVERSION AND DEVELOPMENT AUTHORITY, Petitioner,	C.T.A. CASE NO. 8487
	Members:
- versus -	UY, *Acting Chairperson and* FABON-VICTORINO, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 14 2013 ; 3:35 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

Alleging that the instant *Petition for Review* was filed beyond the prescriptive period to appeal, respondent Commissioner of Internal Revenue (CIR) moves to dismiss the instant case on jurisdictional ground.

Respondent alleges that she received petitioner's administrative claim for refund dated January 12, 2012 on January 28, 2012. Thereafter, or on March 15, 2012, she issued a letter, thru Maridur V. Rosario, the Revenue District Officer of RDO No. 44, Revenue Region No. 8, denying petitioner's application for refund. The said letter was received by petitioner on April 3, 2012 at 9:40 o'clock in the morning.

Pursuant to Section 11 of Republic Act No. 1125[1], as amended, any taxpayer adversely affected by her decision

[1] An Act Creating the Court of Tax Appeals.

appeal such decision to the Court of Tax Appeals (CTA) within thirty (30) days from receipt thereof.

In the instant case, petitioner belatedly filed its *Petition for Review* only on May 10, 2012 or thirty seven (37) days from receipt of the denial of the administrative claim for refund on April 3, 2012. Worse, petitioner never revealed such denial of its administrative claim and its receipt in the *Petition for Review*.

Citing the case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*[2], respondent contends that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. 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.

In opposition, petitioner contends that the instant *Petition for Review* strongly begs to be resolved on the merits because of the transcendental and novel issue raised that only the CTA has appellate jurisdiction to review by appeal, decisions or inaction of the CIR, and in this case, whether petitioner is entitled to its claim for refund. It stressed that unless the issue is resolved on the merits, it would ceaselessly be in quandary as to whether it is exempt from Creditable Withholding Tax (CWT).

Petitioner claims that it is a Government Instrumentality with Corporate Powers (GICP) under Republic Act No. (RA) 10149[3] and Paragraph 10[4], Section 2 of the Introductory Provisions of the 1987 Administrative Code. It is mandated to dispose of certain areas in Fort Bonifacio and Villamor Airbase and the proceeds from the disposition/sale of properties transferred to it by the National Government shall serve as its capital funding and more importantly, these proceeds shall be deemed

[2] G.R. No. 167606, August 11, 2010.
[3] GOCC Governance Act of 2011.
[4] (10) Instrumentality refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter.

appropriated for the capital-intensive purposes enumerated in RA 7227[5], such as but not limited to the following: 1) to finance the modernization program of the Armed forces of the Philippines (AFP) military camps; 2) to finance infrastructure such as highways, railways to make Subic-Clark and other former bases accessible; 3) to finance the National Shelter Program.[6]

Section 8 of RA 7227, as amended by RA 7917 provides that "[T]he provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefore, exempt from all forms of taxes and fees." Further, under its amendatory law, viz., RA 7917, the only deduction allowed from the proceeds of the above-mentioned sale, are, "expenses related to the sale", as the "proceeds from any sale shall be deemed appropriated for the purposes provided with their corresponding percent shares of proceeds." [7] Petitioner believes that respondent erroneously collected CWT for which it is entitled to claim refund hinged on its tax-exempt status.

Petitioner claims that the receipt of the adverse decision was discovered by the lawyer in-charge, Atty. Edilberto R. Rebato only on July 9, 2012 upon perusal of respondent's *Answer*. Verification revealed that respondent's letter denying petitioner's claim for refund was actually received on April 3, 2012, but it was not forwarded to counsel. Thus, based on honest belief that its claim for refund was not acted upon by respondent, petitioner's Petition for Review was timely filed.

Contrary to respondent's claim, the filing of the instant petition is only seven (7) days late from the lapse of the 30-day reglementary period. The 30-day prescriptive period should be counted from receipt of the decision on April 3, 2012 hence, the last day of filing the appeal would be May 10, 2012.

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[5] Bases Conversion and Development Act of 1992.
[6] Section 8(d), Republic Act No. 7227 (March 13, 1992), as amended by Republic Act No. 7917 (February 24, 1995).
[7] *Ibid.*

Petitioner invokes Section 2, Rule 1 of the CTA Revised Rules of Procedure, which states:

> SEC. 2. Liberal construction. - The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court.

Citing the case of *Suarez v. Judge Villarama, Jr.*,[8] the Supreme Court has not hesitated to relax the procedural rules in order to serve and achieve substantial justice. Thus, it submits that the obtaining circumstances warrant the relaxation if not liberal interpretation of the rules as it has no intention to disregard the procedure of the Court.

The Court was already deprived of jurisdiction when petitioner sought judicial intervention through its Petition for Review justifying the dismissal of the instant case.

The CTA is a specialized court of limited jurisdiction,[9] hence, it can only take cognizance of such matters as are clearly within its jurisdiction. Section 7 of RA 1125,[10] as amended by RA 9282,[11] defines the appellate jurisdiction of the CTA as follows:

> Sec. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) <u>Exclusive appellate jurisdiction to review by appeal</u>, as herein provided:
>
> (1) <u>Decisions of the Commissioner of Internal Revenue</u>

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[8] G.R. No. 124512, June 27, 2006, 493 SCRA 74.
[9] *Southern Cross Cement Corporation vs. Philippine Cement Manufacturers Corporation*, G.R. No. 158540, July 8, 2004, 434 SCRA 65.
[10] The Law Creating the Court of Tax Appeals.
[11] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for other purposes.

> in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (*Underscoring supplied*)

Further, Section 11 of the same law prescribes how the remedy of appeal before this Court should be taken, thus:

> 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. (*Emphases supplied*)

In relation thereto, Section 3 (a), Rule 8 of the Revised Rules of the CTA states:

> SEC. 3. Who may appeal; period to file petition. — 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**... (*Emphases supplied*)

Clear as a day that the CTA has appellate jurisdiction over a Petition for Review filed by any party adversely affected by a decision, ruling or inaction of respondent, within thirty (30) days from receipt of the said decision or ruling, or in case of inaction of the CIR, from the expiration of the period fixed by law to act thereon.

In the instant case, petitioner is claiming refund of alleged erroneously or illegally collected tax pursuant to Section 229 NIRC of 1997, which reads as follows:

> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Petitioner admits having **received the letter of March 15, 2012** denying its claim for refund **on April 3, 2012.** Pursuant to the foregoing provisions, petitioner had 30 days or **until May 3, 2012,** within which to invoke this Court's competence via a petition for review. Without any pretension, petitioner admits that it **belatedly filed** the instant *Petition for Review* only **on May 10, 2012**. At that time, the Court was already deprived of its jurisdiction to entertain the judicial claim for refund filed way beyond the 30-day period to appeal as provided under Section 3 (a), Rule 8 of the Revised Rules of the CTA, in relation to Section 11 of RA 1125, as amended.

Indeed, petitioner has not been vigilant and has slept on his rights either by negligence, folly or inattention,[12] as to be entitled to the relief prayed for. Settled is the rule that an appeal is neither a natural nor constitutional right but a mere statutory privilege. Hence, parties who seek to avail of the privilege must comply with the statutes or rules allowing it.[13] The perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well. And failure to perfect an appeal within the reglementary period deprived the court - otherwise competent - of jurisdiction to hear and determine it.

The lack of jurisdiction affects the very authority of the court to take cognizance of and to render judgment on the action; otherwise, inevitable consequence would make the court's decision a "lawless" thing.[14]

In the 1996 case of *Videogram Regulatory Board v. Court of Appeals*,[15] the Supreme Court, no less, chronicled the inviolability of the period of perfecting an appeal in this fashion:

> . . . There are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review, for it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of that right must comply with the statute or rules. The rules, particularly the requirements for perfecting an appeal within the reglementary period specified in the law, must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business. Furthermore, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional and the failure to perfect

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[12] *Catholic Bishop of Balanga v. Court of Appeals*, 264 SCRA 181 (1996); *Vda. de Cabrera v. Court of Appeals*, 267 SCRA 339 (1997); *Chavez v. Bonto-Perez*, 242 SCRA 73 (1995).
[13] *Air France Philippines v. Leachon*, 472 SCRA 439, 442-443 [2005].
[14] *Municipality of Sta. Fe vs. Municipality of Aritao*, 533 SCRA 586
[15] G.R. No. 106564, November 28, 1996.

> the appeal renders the judgment of the court final and executory. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his/her case. These periods are carefully guarded and lawyers are well-advised to keep track of their applications. After all, a denial of a petition for being time-barred is a decision on the merits.

Irrefragably, the timeliness of an appeal is a jurisdictional caveat that not even the Supreme Court can trifle with.[16]

IN VIEW OF ALL THE FOREGOING, the *Motion to Dismiss* dated November 29, 2012, filed by respondent, is hereby **GRANTED**. Consequently, the *Petition for Review* filed by petitioner Bases Conversion and Development Authority, is hereby **DISMISSED**, for lack of jurisdiction.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I concur:

ERLINDA P. UY
Associate Justice

[16] BA vs. Gerochi, Jr., 230 SCRA 9 [1994].