REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1649** (CTA Case Nos. 8802 & 8842)
- versus -	
FILMINERA RESOURCES CORPORATION, *Respondent.*	

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FILMINERA RESOURCES CORPORATION, *Petitioner,*	**CTA EB No. 1653** (CTA Case Nos. 8802 & 8842)
	Present:
- versus -	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** SEP 25 2018 8:15 a.m.

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RESOLUTION

***DEL ROSARIO, P.J.*:**

This resolves the following:

1. Filminera Resources Corporation's ("FRC") **Motion for Reconsideration (Re: Decision dated March 19, 2018)** filed on April 17, 2018, without Commissioner of Internal Revenue's ("CIR") comment despite notice as per Records Verification dated June 19, 2018; and

2. CIR's **Motion for Reconsideration Re: Decision dated March 19, 2018** filed on April 17, 2018, with FRC's **"Comment (On the CIR's Motion for Reconsideration dated April 17, 2018)."**

In its Motion for Reconsideration, FRC claims that it honestly believed in good faith that it received the Notice of Resolution dated April 19, 2017 on May 3, 2017. FRC alleges that upon investigation, it appeared that the discrepancy was due to the honest mistake and mere inadvertence of the administrative assistant/receptionist of the counsel of FRC in recording the date of receipt of the said Resolution. When the CTA Division's Resolution was delivered to the counsel's office, the said receptionist was just a newly hired employee of the firm. Thus, she was just in the process of familiarizing herself with the firm's procedures specifically with respect to the recording of incoming and outgoing documents.

Considering that FRC's counsel relies on the receiving stamp in recording the deadlines of documents that need to be filed in court, FRC's counsel had no way of knowing that the actual receipt of the Resolution was May 2, 2017, as per CTA Records. FRC prays that its Petition be given due course in keeping with the administration of substantial justice.

We resolve to deny FRC's Motion for Reconsideration.

With regard to FRC's contention that such late filing of the appeal was essentially due to the honest mistake and mere inadvertence of counsel's administrative assistant/receptionist, the same cannot be countenanced.

The Supreme Court has consistently frowned upon litigants blaming their secretaries or other employees for their failure to comply with the rules and regulations of the Court. In *Asian Spirit Airlines (Airline Employees Cooperative) vs. Spouses Benjamin and Anne Marie Bautista, et. al*,[1] the Supreme Court made it clear that the

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[1] G.R. No. 164668, February 14, 2005.

negligence of counsel's secretary or clerk is itself a negligence attributable to counsel, *viz.*:

> "**Blaming its counsels unidentified secretary for its abject failure to file its brief is a common practice for negligent lawyers to cover up for their own negligence, incompetence, indolence, and ineptitude. Such excuse is the most hackneyed and habitual subterfuge employed by litigants who fail to observe the procedural requirements prescribed by the Rules of Court. <u>It bears stressing that it is the duty of counsel to adopt and strictly maintain a system that insures that all pleadings should be filed and duly served within the period therefor and, if he fails to do so, the negligence of his secretary or clerk to file such pleading is imputable to the said counsel.</u>**
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> xxx xxx xxx
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> The right to appeal is a statutory right and 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. More so, as in this case, where petitioner not only neglected to file its brief within the stipulated time but also failed to seek an extension of time for a cogent ground before the expiration of the time sought to be extended." (Emphases supplied)

The Court accordingly reiterates its discussion in the Decision dated March 19, 2018 that the right to file an appeal granted to party litigants is statutory and strict compliance therewith is not only mandatory, but jurisdictional. Hence, failure to perfect the same renders the judgment final and executory.[2]

Considering that the assailed Decision and Resolution of the Court in Division have become final and executory with regard to FRC, the Court *En Banc* has no jurisdiction over FRC's Petition for Review which, needless to say, should be dismissed outright.

On the other hand, the CIR claims, in his Motion for Reconsideration, that the Court erred in ruling that the non-submission of complete supporting documents in the administrative level is not fatal to a taxpayer's judicial claim. CIR further argues that even assuming that the Court can exercise jurisdiction over this case, FRC is still not entitled to the claimed refund for failure to prove that the input tax is directly attributable to its zero-rated sales.

In rebuttal, FRC contends that it submitted complete documents in support of its administrative claim for refund. Moreover, it claims that

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[2] *Apex Mining Co., Inc. vs. Commissioner of Intemal Revenue and Court of Appeals*, G.R. No. 122472, October 20, 2005.

whether input tax is attributable to zero-rated sales is an issue raised by the CIR for the first time at a late stage, which the Court should not consider.

The Court finds the CIR's Motion for Reconsideration without merit.

For one, the CIR's argument that the non-submission of complete supporting documents in the administrative level is fatal to a taxpayer's judicial claim is a mere reiteration of that raised in the Petition for Review and in his Memorandum. Such issue has been exhaustively and thoroughly discussed in the assailed Decision, ***particularly on pages 12 to 14 thereof***.

For another, the CIR's insistence that FRC failed to prove that the input tax is directly attributable to its zero-rated sales is an argument that was never presented by the CIR in its Petition for Review with the Court *En Banc*. It is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[3]

All told, the Court *En Banc* finds no cogent reason to reverse or set aside the assailed Decision.

WHEREFORE, in light of the foregoing, FRC's Motion for Reconsideration (Re: Decision dated March 19, 2018) and CIR's Motion for Reconsideration Re: Decision dated March 19, 2018, both filed on April 17, 2018 are **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] *Maxicare PCIB CIGNA Healthcare, et. al. vs. Marian Brigitte A. Contreras, M.D.*, G.R. No. 194352, January 30, 2013.

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice