FIRST DIVISION

RIZAL COMMERCIAL BANKING CORPORATION,	G.R. No. 168498
Petitioner,	Present:
- versus -	Panganiban, *C.J.* (Chairperson), Ynares-Santiago, Austria-Martinez, Callejo, Sr., and Chico-Nazario, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	June 16, 2006

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DECISION

YNARES-SANTIAGO, *J.*:

This is a petition for review under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Tax Appeals (CTA) *En Banc* dated June 7, 2005 in C.T.A. EB No. 50 which affirmed the Resolutions of the CTA Second Division dated May 3, 2004[2] and November 5, 2004[3] in C.T.A. Case No. 6475 denying petitioner's Petition for Relief from Judgment and the Motion for Reconsideration thereof, respectively.

The undisputed facts are as follows:

On July 5, 2001, petitioner Rizal Commercial Banking Corporation received a Formal Letter of Demand dated May 25, 2001 from the respondent Commissioner of Internal

Revenue for its tax liabilities particularly for Gross Onshore Tax in the amount of P53,998,428.29 and Documentary Stamp Tax for its Special Savings Placements in the amount of P46,717,952.76, for the taxable year 1997.[4]

On July 20, 2001, petitioner filed a protest letter/request for reconsideration/reinvestigation pursuant to Section 228 of the National Internal Revenue Code of 1997 (NIRC).[5]

As the protest was not acted upon by the respondent, petitioner filed on April 30, 2002 a petition for review with the CTA for the cancellation of the assessments which was docketed as C.T.A. Case No. 6475.[6]

On July 15, 2003, respondent filed a motion to resolve first the issue of CTA's jurisdiction,[7] which was granted by the CTA in a Resolution dated September 10, 2003.[8] The petition for review was dismissed because it was filed beyond the 30-day period following the lapse of 180 days from petitioner's submission of documents in support of its protest, as provided under Section 228 of the NIRC and Section 11 of R.A. No. 1125, otherwise known as the *Law Creating the Court of Tax Appeals*.

Petitioner did not file a motion for reconsideration or an appeal to the CTA *En Banc* from the dismissal of its petition for review. Consequently, the September 10, 2003 Resolution became final and executory on October 1, 2003 and Entry of Judgment was made on December 1, 2003.[9] Thereafter, respondent sent a Demand Letter to petitioner for the payment of the deficiency tax assessments.

On February 20, 2004, petitioner filed a *Petition for Relief from Judgment*[10] on the ground of excusable negligence of its counsel's secretary who allegedly misfiled and lost the September 10, 2003 Resolution. The CTA Second Division set the case for hearing on April 2, 2004[11] during which petitioner's counsel was present.[12] Respondent filed an

Opposition[13] while petitioner submitted its Manifestation and Counter-Motion.[14]

On May 3, 2004, the CTA Second Division rendered a Resolution[15] denying petitioner's Petition for Relief from Judgment.

Petitioner's motion for reconsideration was denied in a Resolution dated November 5, 2004,[16] hence it filed a petition for review with the CTA *En Banc*, docketed as C.T.A. EB No. 50, which affirmed the assailed Resolutions of the CTA Second Division in a Decision dated June 7, 2005.

Hence, this petition for review based on the following grounds:

I.

THE HONORABLE CTA AND CTA *EN BANC* GRAVELY ERRED IN DENYING PETITIONER'S PETITION FOR RELIEF, WITHOUT FIRST AFFORDING IT THE OPPORTUNITY TO ADDUCE EVIDENCE TO ESTABLISH THE FACTUAL ALLEGATIONS CONSTITUTING ITS ALLEGED EXCUSABLE NEGLIGENCE, IN CLEAR VIOLATION OF PETITIONER'S BASIC RIGHT TO DUE PROCESS.

II.

CONSIDERING THAT THE SUBJECT ASSESSMENT, INSOFAR AS IT INVOLVES ALLEGED DEFICIENCY DOCUMENTARY STAMP TAXES ON SPECIAL SAVINGS ACCOUNTS, IS AN ISSUE AFFECTING ALL MEMBERS OF THE BANKING INDUSTRY, PETITIONER, LIKE ALL OTHER BANKS, SHOULD BE AFFORDED AN EQUAL OPPORTUNITY TO FULLY LITIGATE THE ISSUE, AND HAVE THE CASE DETERMINED BASED ON ITS MERITS, RATHER THAN ON A MERE TECHNICALITY.[17]

Relief from judgment under Rule 38 of the Rules of Court is a legal remedy that is allowed only in exceptional cases whereby a party seeks to set aside a judgment rendered against him by a court whenever he was unjustly deprived of a hearing or was prevented from taking an appeal, in either case, because of fraud, accident, mistake or excusable neglect.[18]

Petitioner argues that it was denied due process when it was not given the opportunity to be heard to prove that its failure to file a motion for reconsideration or appeal from the

dismissal of its petition for review was due to the failure of its employee to forward the copy of the September 10, 2003 Resolution which constitutes excusable negligence.

Petitioner's argument lacks merit.

It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[19] In *Batongbakal v. Zafra*,[20] the Court held that:

> There is no question that the "essence of due process is a hearing before conviction and before an impartial and disinterested tribunal" but due process as a constitutional precept does not, always and in all situations, require a trial-type proceeding. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. **"To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.** (Emphasis supplied)

As correctly pointed by the Office of the Solicitor General (OSG), the CTA Second Division set the case for hearing on April 2, 2004 after the filing by the petitioner of its petition for relief from judgment. Petitioner's counsel was present on the scheduled hearing and in fact orally argued its petition.

Moreover, after the CTA Second Division dismissed the petition for relief from judgment in a Resolution dated May 3, 2004, petitioner filed a motion for reconsideration and the court further required both parties to file their respective memorandum. Indeed, petitioner was not denied its day in court considering the opportunities given to argue its claim.

Relief cannot be granted on the flimsy excuse that the failure to appeal was due to the neglect of petitioner's counsel.[21] Otherwise, all that a losing party would do to salvage his case would be to invoke neglect or mistake of his counsel as a ground for reversing or setting aside the adverse judgment, thereby putting no end to litigation.[22]

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.[23] Petitioner's former counsel's omission could hardly be characterized as excusable, much less unavoidable.

The Court has repeatedly admonished lawyers to adopt a system whereby they can always receive promptly judicial notices and pleadings intended for them.[24] Apparently, petitioner's counsel was not only remiss in complying with this admonition but he also failed to check periodically, as an act of prudence and diligence, the status of the pending case before the CTA Second Division. The fact that counsel allegedly had not renewed the employment of his secretary, thereby making the latter no longer attentive or focused on her work, did not relieve him of his responsibilities to his client. It is a problem personal to him which should not in any manner interfere with his professional commitments.

In exceptional cases, when the mistake of counsel is so palpable that it amounts to gross negligence, this Court affords a party a second opportunity to vindicate his right. But this opportunity is unavailing in the case at bar, especially since petitioner had squandered the various opportunities available to it at the different stages of this case. Public interest demands an end to every litigation and a belated effort to reopen a case that has already attained finality will serve no purpose other than to delay the administration of justice.[25]

Since petitioner's ground for relief is not well-taken, it follows that the assailed judgment stands. Assuming *ex gratia argumenti* that the negligence of petitioner's counsel is excusable, still the petition must fail. As aptly observed by the OSG, even if the petition for relief from judgment would be granted, petitioner will not fare any better if the case were to be returned to the CTA Second Division since its action for the cancellation of its assessments had already prescribed.[26]

Petitioner protested the assessments pursuant to Section 228 of the NIRC, which provides:

> SEC. 228. *Protesting of Assessment*.- x x x.

x x x x

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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

The CTA Second Division held:

Following the periods provided for in the aforementioned laws, from July 20, 2001, that is, the date of petitioner's filing of protest, it had until September 18, 2001 to submit relevant documents and from September 18, 2001, the Commissioner had until March 17, 2002 to issue his decision. As admitted by petitioner, the protest remained unacted by the Commissioner of Internal Revenue. Therefore, it had until April 16, 2002 within which to elevate the case to this court. Thus, when petitioner filed its Petition for Review on April 30, 2002, the same is outside the thirty (30) period.[27]

As provided in Section 228, the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment.

In *Ker & Company, Ltd. v. Court of Tax Appeals*,[28] 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.

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.[29]

WHEREFORE, in view of the foregoing, the Decision of the Court of Tax Appeals *En Banc* dated June 7, 2005 in C.T.A. EB No. 50 affirming the Resolutions of the Court of Tax Appeals Second Division dated May 3, 2004 and November 5, 2004 in C.T.A. Case No. 6475 denying petitioner's Petition for Relief from Judgment and Motion for Reconsideration, respectively, is **AFFIRMED**.

SO ORDERED.

CONSUELO YNARES-SANTIAGO
Associate Justice

WE CONCUR:

ARTEMIO V. PANGANIBAN
Chief Justice
Chairperson

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

ROMEO J. CALLEJO, SR.
Associate Justice

MINITA V. CHICO-NAZARIO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ARTEMIO V. PANGANIBAN
Chief Justice

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[1] *Rollo*, pp. 35-42. Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Lovell R. Bautista, Erlinda P. Uy and Caesar A. Casanova.

[2] *Id*. at 43-46.

[3] *Id*. at 47-48.

[4] CTA Second Division records, pp. 8-9.

[5] *Id*. at 2.

[6] *Id*. at 1-7.

[7] *Rollo,* pp. 87-94.

[8] *Id*. at 95-99.

[9] CTA Second Division records, p. 113.

[10] *Id*. at 115-129.

[11] *Id*. at 130.

[12] *Id*. at 131.

[13] *Id*. at 134-144.

[14] *Id*. at 145-148.

[15] *Id*. at 149-152. Penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Lovell R. Bautista and Juanito C. Castañeda, Jr.

[16] *Id*. at 188-189.

[17] *Id*. at 18.

[18] *Quelnan v. VHF Philippines*, G.R. No. 138500, September 16, 2005, 470 SCRA 73, 80.

[19] *Estares v. Court of Appeals*, G.R. No. 144755, June 8, 2005, 459 SCRA 604, 623.

[20] G.R. No. 141806, January 17, 2005, 448 SCRA 399, 410.

[21] *Insular Life Savings and Trust Company v. Runes*, *Jr.*, G.R. No. 152530, August 12, 2004, 436 SCRA 317, 326.

[22] *Ragudo v. Fabella Estate Tennants Association, Inc.*, G.R. No. 146823, August 9, 2005, 466 SCRA 136, 146.

[23] *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005, 461 SCRA 369, 388.

[24] *Azucena v. Foreign Manpower Services*, G. R. No. 147955, October 25, 2004, 441 SCRA 346, 356.

[25] *Mesina v. Meer*, 433 Phil. 124, 137 (2002).

[26] *Rollo,* pp. 170-171.

[27] *Id*. at 97-98.

[28] G.R. No. L-12396, January 31, 1962, 4 SCRA 160, 163.

[29] *Commissioner of Internal Revenue v. Western Pacific Corporation*, 121 Phil. 889, 893 (1965).