

THIRD DIVISION

[G.R. NO. 168498, April 24, 2007]

**RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

RESOLUTION

YNARES-SANTIAGO, J.:

For resolution is petitioner's Motion for Reconsideration of our Decision^[1] dated June 16, 2006 affirming the Decision of the Court of Tax Appeals *En Banc* dated June 7, 2005 in C.T.A. EB No. 50, which affirmed 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.

Petitioner reiterates its claim that its former counsel's failure to file petition for review with the Court of Tax Appeals within the period set by Section 228 of the National Internal Revenue Code of 1997 (NIRC) was excusable and raised the following issues for resolution:

A.

THE DENIAL OF PETITIONER'S PETITION FOR RELIEF FROM JUDGMENT WILL RESULT IN THE DENIAL OF SUBSTANTIVE JUSTICE TO PETITIONER, CONTRARY TO ESTABLISHED DECISIONS OF THIS HONORABLE COURT BECAUSE THE ASSESSMENT SOUGHT TO BE CANCELLED HAS ALREADY PRESCRIBED — A FACT NOT DENIED BY THE RESPONDENT IN ITS ANSWER.

B.

CONTRARY TO THIS HONORABLE COURT'S DECISION, AND FOLLOWING THE LASCONA DECISION, AS WELL AS THE 2005 REVISED RULES OF THE COURT OF TAX APPEALS, PETITIONER TIMELY FILED ITS PETITION FOR REVIEW BEFORE THE COURT OF TAX APPEALS; THUS, THE COURT OF TAX APPEALS HAD JURISDICTION OVER THE CASE.

C.

CONSIDERING THAT THE SUBJECT ASSESSMENT INVOLVES AN INDUSTRY ISSUE, THAT IS, A DEFICIENCY ASSESSMENT FOR DOCUMENTARY STAMP TAX ON SPECIAL SAVINGS ACCOUNTS AND GROSS ONSHORE TAX, PETITIONER IN THE INTEREST OF SUBSTANTIVE JUSTICE AND UNIFORMITY OF TAXATION, SHOULD BE ALLOWED TO FULLY LITIGATE THE ISSUE BEFORE THE COURT OF TAX APPEALS.^[2]

Petitioner's motion for reconsideration is denied for lack of merit.

Other than the issue of prescription, which is raised herein for the first time, the issues presented are a mere rehash of petitioner's previous arguments, all of which have been considered and found without merit in our Decision dated June 16, 2006.

Petitioner maintains that its counsel's neglect in not filing the petition for review within the reglementary period was excusable. It alleges that the counsel's secretary misplaced the Resolution hence the counsel was not aware of its issuance and that it had become final and executory.

We are not persuaded.

In our Decision, we held that:

Relief cannot be granted on the flimsy excuse that the failure to appeal was due to the neglect of petitioner's counsel. 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.

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. 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. 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.^[3]

Petitioner also argues that, in the interest of substantial justice, the instant case should

be re-opened considering that it was allegedly not accorded its day in court when the Court of Tax Appeals dismissed its petition for review for late filing. It claims that rules of procedure are intended to help secure, not override, substantial justice.

Petitioner's arguments fail to persuade us.

As correctly observed by the Court of Tax Appeals in its Decision dated June 7, 2005:

If indeed there was negligence, this is obviously on the part of petitioner's own counsel whose prudence in handling the case fell short of that required under the circumstances. He was well aware of the motion filed by the respondent for the Court to resolve first the issue of this Court's jurisdiction on July 15, 2003, that a hearing was conducted thereon on August 15, 2003 where both counsels were present and at said hearing the motion was submitted for resolution. Petitioner's counsel apparently did not show enthusiasm in the case he was handling as he should have been vigilant of the outcome of said motion and be prepared for the necessary action to take whatever the outcome may have been. Such kind of negligence cannot support petitioner's claim for relief from judgment.

Besides, tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.^[4] Also, petitioner's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.^[5]

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. Section 7 of Republic Act (R.A.) No. 9282, amending R.A. No. 1125, otherwise known as the *Law Creating the Court of Tax Appeals*, provides:

Sec. 7. Jurisdiction. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of 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 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;

Also, Section 3, Rule 4 and Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals^[6] state:

RULE 4
Jurisdiction of the Court

x x x x

SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of 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;

(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 or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229

of the National Internal Revenue Code;

x x x x

RULE 8
Procedure in Civil Cases

x x x x

SECTION 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. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (n)

From the foregoing, it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.^[7]

In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. However, these options are mutually exclusive, and resort to one bars the application of the other.

In the instant case, the Commissioner failed to act on the disputed assessment within

180 days from date of submission of documents. Thus, petitioner opted to file a petition for review before the Court of Tax Appeals. Unfortunately, the petition for review was filed out of time, i.e., it was filed more than 30 days after the lapse of the 180-day period. Consequently, it was dismissed by the Court of Tax Appeals for late filing. Petitioner did not file a motion for reconsideration or make an appeal; hence, the disputed assessment became final, demandable and executory.

Based on the foregoing, petitioner can not now claim that the disputed assessment is not yet final as it remained unacted upon by the Commissioner; that it can still await the final decision of the Commissioner and thereafter appeal the same to the Court of Tax Appeals. This legal maneuver cannot be countenanced. After availing the first option, i.e., filing a petition for review which was however filed out of time, petitioner can not successfully resort to the second option, i.e., awaiting the final decision of the Commissioner and appealing the same to the Court of Tax Appeals, on the pretext that there is yet no final decision on the disputed assessment because of the Commissioner's inaction.

Lastly, we note that petitioner is raising the issue of prescription for the first time in the instant motion for reconsideration. Although the same was raised in the petition for review, it was dismissed for late filing. No motion for reconsideration was filed hence the disputed assessment became final, demandable and executory. Thereafter, petitioner filed with the Court of Tax Appeals a petition for relief from judgment. However, it failed to raise the issue of prescription therein. After its petition for relief from judgment was denied by the Court of Tax Appeals for lack of merit, petitioner filed a petition for review before this Court without raising the issue of prescription. It is only in the instant motion for reconsideration that petitioner raised the issue of prescription which is not allowed. The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal,^[8] much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process.^[9] This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has consistently been rejected.

WHEREFORE, in view of the foregoing, petitioner's motion for reconsideration is **DENIED.**

SO ORDERED.

Austria-Martinez, Callejo, Sr., Chico-Nazario, and Nachura, JJ., concur.

^[1] *Rollo*, pp. 181-188.

[2] *Id.* at 206-207.

[3] *Id.* at 185-186.

[4] *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301, 329.

[5] *Benjamin B. Aban, Law of Basic Taxation in the Philippines*, Revised Edition (1997), p. 247.

[6] A.M. No. 05-11-07-CTA, took effect on December 15, 2005.

[7] *Chan Kian v. Court of Tax Appeals*, 105 Phil. 904, 906 (1959).

[8] *Multi-Realty Development Corporation v. Makati Tuscan Condominium Corporation*, G.R. No. 146726, June 16, 2006, 491 SCRA 9, 23.

[9] *Sta. Rosa Realty Development Corporation v. Amante*, G.R. No. 112526, March 16, 2005, 453 SCRA 432, 478.



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