

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