

SECOND DIVISION

[G.R. No. 166829, April 19, 2010]

**TFS, INCORPORATED, PETITIONER, VS. COMMISSIONER OF
INTERNAL REVENUE, RESPONDENT.**

DECISION

DEL CASTILLO, J.:

Only in highly meritorious cases, as in the instant case, may the rules for perfecting an appeal be brushed aside.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the November 18, 2004^[1] Resolution of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 29 which dismissed petitioner's Petition for Review for having been filed out of time. Also assailed is the January 24, 2005^[2] Resolution denying the motion for reconsideration.

Factual Antecedents

Petitioner TFS, Incorporated is a duly organized domestic corporation engaged in the pawnshop business. On January 15, 2002, petitioner received a Preliminary Assessment Notice (PAN)^[3] for deficiency value added tax (VAT), expanded withholding tax (EWT), and compromise penalty in the amounts of P11,764,108.74, P183,898.02 and P25,000.00, respectively, for the taxable year 1998. Insisting that there was no basis for the issuance of PAN, petitioner through a letter^[4] dated January 28, 2002 requested the Bureau of Internal Revenue (BIR) to withdraw and set aside the assessments.

In a letter-reply^[5] dated February 7, 2002, respondent Commissioner of Internal Revenue (CIR) informed petitioner that a Final Assessment Notice (FAN)^[6] was issued on January 25, 2002, and that petitioner had until February 22, 2002 within which to file a protest letter.

On February 20, 2002, petitioner protested the FAN in a letter^[7] dated February 19, 2002.

There being no action taken by the CIR, petitioner filed a Petition for Review^[8] with the

CTA on September 11, 2002, docketed as CTA Case No. 6535.

During trial, petitioner offered to compromise and to settle the assessment for deficiency EWT with the BIR. Hence, on September 24, 2003, it filed a Manifestation and Motion withdrawing its appeal on the deficiency EWT, leaving only the issue of VAT on pawnshops to be threshed out. Since no opposition was made by the CIR to the Motion, the same was granted by the CTA on November 4, 2003.

Ruling of the Court of the Tax Appeals

On April 29, 2004, the CTA rendered a Decision^[9] upholding the assessment issued against petitioner in the amount of P11,905,696.32, representing deficiency VAT for the year 1998, inclusive of 25% surcharge and 20% deficiency interest, plus 20% delinquency interest from February 25, 2002 until full payment, pursuant to Sections 248 and 249(B) of the National Internal Revenue Code of 1997 (NIRC). The CTA ruled that pawnshops are subject to VAT under Section 108(A) of the NIRC as they are engaged in the sale of services for a fee, remuneration or consideration.^[10]

Aggrieved, petitioner moved for reconsideration^[11] but the motion was denied by the CTA in its Resolution dated July 20, 2004,^[12] which was received by petitioner on July 30, 2004.

Ruling of the Court of Appeals

On August 16, 2004, petitioner filed before the Court of Appeals (CA) a Motion for Extension of Time to File Petition for Review.^[13] On August 24, 2004, it filed a Petition for Review^[14] but it was dismissed by the CA in its Resolution^[15] dated August 31, 2004, for lack of jurisdiction in view of the enactment of Republic Act No. 9282 (RA 9282).^[16]

Ruling of the Court of Tax Appeals En Banc

Realizing its error, petitioner filed a Petition for Review^[17] with the CTA *En Banc* on September 16, 2004. The petition, however, was dismissed for having been filed out of time per Resolution dated November 18, 2004. Petitioner filed a Motion for Reconsideration but it was denied in a Resolution dated January 24, 2005.

Hence, this petition.

Issues

In its Memorandum,^[18] petitioner interposes the following issues:

WHETHER THE HONORABLE COURT OF TAX APPEALS *EN BANC* SHOULD HAVE GIVEN DUE COURSE TO THE PETITION FOR REVIEW AND NOT STRICTLY APPLIED THE TECHNICAL RULES OF PROCEDURE TO THE DETRIMENT OF JUSTICE.

WHETHER OR NOT PETITIONER IS SUBJECT TO THE 10% VAT.^[19]

Petitioner's Arguments

Petitioner admits that it failed to timely file its Petition for Review with the proper court (CTA). However, it attributes the procedural lapse to the inadvertence or honest oversight of its counsel, who believed that at the time the petition was filed on August 24, 2004, the CA still had jurisdiction since the rules and regulations to implement the newly enacted RA 9282 had not yet been issued and the membership of the CTA *En Banc* was not complete. In view of these circumstances, petitioner implores us to reverse the dismissal of its petition and consider the timely filing of its petition with the CA, which previously exercised jurisdiction over appeals from decisions/resolutions of the CTA, as substantial compliance with the then recently enacted RA 9282.

Petitioner also insists that the substantive merit of its case outweighs the procedural infirmity it committed. It claims that the deficiency VAT assessment issued by the BIR has no legal basis because pawnshops are not subject to VAT as they are not included in the enumeration of services under Section 108(A) of the NIRC.

Respondent's Arguments

The CIR, on the other hand, maintains that since the petition was filed with the CTA beyond the reglementary period, the Decision had already attained finality and can no longer be opened for review. As to the issue of VAT on pawnshops, he opines that petitioner's liability is a matter of law; and in the absence of any provision providing for a tax exemption, petitioner's pawnshop business is subject to VAT.

Our Ruling

The petition is meritorious.

Jurisdiction to review decisions or resolutions issued by the Divisions of the CTA is no longer with the CA but with the CTA *En Banc*. This rule is embodied in Section 11 of RA 9282, which provides that:

SECTION 11. Section 18 of the same Act is hereby amended as follows:

SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* - No civil proceeding

involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*. (Emphasis supplied)

Procedural rules may be relaxed in the interest of substantial justice

It is settled that an appeal must be perfected within the reglementary period provided by law; otherwise, the decision becomes final and executory.^[20] However, as in all cases, there are exceptions to the strict application of the rules for perfecting an appeal.^[21]

We are aware of our rulings in *Mactan Cebu International Airport Authority v. Mangubat*^[22] and in *Alfonso v. Sps. Andres*,^[23] wherein we excused the late filing of the notices of appeal because at the time the said notices of appeal were filed, the new rules^[24] applicable therein had just been recently issued. We noted that judges and lawyers need time to familiarize themselves with recent rules.

However, in *Cuevas v. Bais Steel Corporation*^[25] we found that the relaxation of rules was unwarranted because the delay incurred therein was inexcusable. The subject SC Circular 39-98 therein took effect on September 1, 1998, but the petitioners therein filed their petition for *certiorari* five months after the circular took effect.

In the instant case, RA 9282 took effect on April 23, 2004, while petitioner

filed its Petition for Review on *Certiorari* with the CA on August 24, 2004, or four months after the effectivity of the law. By then, petitioner's counsel should have been aware of and familiar with the changes introduced by RA 9282. Thus, we find petitioner's argument on the newness of RA 9282 a bit of a stretch.

Petitioner likewise cannot validly claim that its erroneous filing of the petition with the CA was justified by the absence of the CTA rules and regulations and the incomplete membership of the CTA *En Banc* as these did not defer the effectivity^[26] and implementation of RA 9282. In fact, under Section 2 of RA 9282,^[27] the presence of four justices already constitutes a quorum for *En Banc* sessions and the affirmative votes of four members of the CTA *En Banc* are sufficient to render judgment.^[28] Thus, to us, the petitioner's excuse of "inadvertence or honest oversight of counsel" deserves scant consideration.

However, we will overlook this procedural lapse in the interest of substantial justice. Although a client is bound by the acts of his counsel, including the latter's mistakes and negligence, a departure from this rule is warranted where such mistake or neglect would result in serious injustice to the client.^[29] Procedural rules may thus be relaxed for persuasive reasons to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.^[30] Such is the situation in this case.

Imposition of VAT on pawnshops for the tax years 1996 to 2002 was deferred

Petitioner disputes the assessment made by the BIR for VAT deficiency in the amount of P11,905,696.32 for taxable year 1998 on the ground that pawnshops are not included in the coverage of VAT.

We agree.

In *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue*,^[31] we ruled that:

x x x Since petitioner is a non-bank financial intermediary, it is subject to 10% VAT for the tax years 1996 to 2002; **however, with the levy, assessment and collection of VAT from non-bank financial intermediaries being specifically deferred by law, then petitioner is not liable for VAT during these tax years.** But with the full implementation of the VAT system on non-bank financial intermediaries starting January 1, 2003, petitioner is liable for 10% VAT for said tax year. And beginning 2004 up to the present, by virtue of R.A. No. 9238, petitioner is no longer liable for VAT but it is subject to percentage tax on gross receipts from 0% to 5%, as the case may be. (Emphasis in the original text)

Guided by the foregoing, petitioner is not liable for VAT for the year 1998. Consequently, the VAT deficiency assessment issued by the BIR against petitioner has no legal basis and must therefore be cancelled. In the same vein, the imposition of surcharge and interest must be deleted.^[32]

In fine, although strict compliance with the rules for perfecting an appeal is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business, strong compelling reasons such as serving the ends of justice and preventing a grave miscarriage may nevertheless warrant the suspension of the rules.^[33] In the instant case, we are constrained to disregard procedural rules because we cannot in conscience allow the government to collect deficiency VAT from petitioner considering that the government has no right at all to collect or to receive the same. Besides, dismissing this case on a mere technicality would lead to the unjust enrichment of the government at the expense of petitioner, which we cannot permit. Technicalities should never be used as a

shield to perpetrate or commit an injustice.

WHEREFORE, the Petition is **GRANTED**. The assailed November 18, 2004 Resolution of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 29 which dismissed petitioner's Petition for Review for having been filed out of time, and the January 24, 2005 Resolution which denied the motion for reconsideration, are hereby **REVERSED** and **SET ASIDE**. The assessment for deficiency Value Added Tax for the taxable year 1998, including surcharges, deficiency interest and delinquency interest, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Carpio, (Chairperson), Nachura^{}, Abad, and Perez, JJ., concurred.*

* In lieu of Associate Justice Arturo D. Brion, per Raffle dated April 12, 2010.

[1] *Rollo*, p. 50.

[2] *Id.* at 51-54.

[3] *Id.* at 82-83.

[4] *Id.* at 84-87.

[5] *Id.* at 88.

[6] *Id.* at 89-94.

[7] *Id.* at 95-98.

[8] *Id.* at 72-81.

[9] *Id.* at 100-111.

[10] *Id.* at 107.

[11] *Id.* at 112-125.

[12] *Id.* at 126.

[13] Id. at 128-132.

[14] Id. at 134-160.

[15] Id. at 161.

[16] 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 Sections of Republic Act No. 1125, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[17] *Rollo*, pp.162-189.

[18] Id. at 268-326.

[19] Id. at 274.

[20] *Nationwide Security and Allied Services, Inc. v. Court of Appeals*, G.R. No. 155844, July 14, 2008, 558 SCRA 148, 155-156.

[21] *Monreal v. Court of Appeals*, 204 Phil. 395, 401 (1982).

[22] 371 Phil. 393, 398-399 (1999).

[23] 439 Phil. 298, 306-307 (2002).

[24] On the alternative modes of service of pleading and the Revised Rules of Civil Procedure, respectively.

[25] 439 Phil. 793, 805-806 (2002).

[26] SECTION 19. *Effectivity Clause*. - This Act shall take effect after fifteen (15) days following its publication in at least two newspapers of general circulation.

[27] Now Amended by RA 9503, "An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and For Other Purposes," Approved June 12, 2008.

[28] Section 2 of the same Act is hereby amended to read as follows:

"SEC. 2. Sitting En Banc or Division; Quorum; Proceedings. -- The CTA may sit en banc or in two (2) Divisions, each Division consisting of three (3) Justices.

Four (4) Justices shall constitute a quorum for sessions en banc and two (2) Justices for sessions of a Division: Provided, That when the required quorum cannot be constituted due to any vacancy, disqualification, inhibition, disability, or any other lawful cause, the Presiding Justice shall designate any Justice of other Divisions of the Court to sit temporarily therein.

The affirmative votes of four (4) members of the Court en banc or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution."

[29] *Meneses v. Secretary of Agrarian Reform*, G.R. No. 156304, October 23, 2006, 505 SCRA 90, 97-98.

[30] *Spouses Ello v. Court of Appeals*, 499 Phil. 398, 411 (2005), citing *Sebastian v. Morales*, 445 Phil. 595, 605 (2003).

[31] G.R. No. 174134, July 30, 2008, 560 SCRA 606, 621.

[32] See *Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 179085, January 21, 2010.

[33] *Villanueva v. Court of Appeals*, G.R. No. 99357, January 27, 1992, 205 SCRA 537, 545.