510 Phil. 268

THIRD DIVISION

[G.R. NO. 122472, October 20, 2005]

APEX MINING CO., INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE AND COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

GARCIA, J.:

Thru this petition for review on certiorari under Rule 45 of the 1997 Rules of Court, petitioner Apex Mining Company, Inc., seeks the reversal and setting aside of the following issuances of the Court of Appeals (CA) in *C.A.-G.R. SP No. 37054*, to wit:

> 1) **Decision dated August 18, 1995**,[1] modifying that of the Court of Tax Appeals by upholding the assessment made by the respondent Commissioner of Internal Revenue of deficiency excise tax on minerals purchased by petitioner from small-scale miners and subsequently sold to the Central Bank; and
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> 2) **Resolution dated October 27, 1995**,[2] denying petitioner's Motion for Extension of Time to File Motion for Reconsideration, as well as the motion for reconsideration itself.

As summarized in the decision under review, the facts are, as follows:

> During the period from January to June 1988, Apex Mining Co. Inc. (or Apex for brevity) was engaged in the business of mining, milling, concentrating, converting, smelting, manufacturing, buying, selling and otherwise producing and dealing in all kinds of ores, metals and mineral, as well as the products and by-products thereof.
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> During the same period, Apex either produced its own minerals/mineral products or made purchases from small scale miners. For this reason, the Bureau of Internal Revenue assessed Apex *ad valorem* tax due on the minerals/mineral products it produced at the rate of 5% and on minerals it purchased from small scale miners pursuant to Section 151 in relation to Section 127 of the Tax Code in a Pre-assessment notice issued on 7 November 1989.
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> On 17 November 1989, [petitioner] protested the assessment. On 11 December

> 1989, [respondent Commissioner of Internal Revenue] in a letter advised [petitioner] to pay the amount of P3,748,961.21 representing the uncontested portion of the latter's deficiency *ad valorem* tax assessment due on its own mineral products.
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> Likewise, [petitioner] protested on 25 January 1990 the *ad valorem* tax imposed on the minerals it purchased from small scale miners in the amount of P8,212,983.50. At the same time, Apex informed [respondent] that it is not contesting the *ad valorem* tax assessment corresponding to its production of mineral products in the amount of P2,570,863.17, exclusive of increments to delinquency.
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> On 23 February 1990, [petitioner] reiterated its protest against the assessment issued on the mineral products it purchased from small scale miners. This was denied by [respondent] in a letter dated 12 March 1990 and simultaneously demanding payment of the amounts of P10,225,637.87 and P4,659,368.13, representing [petitioner's] deficiency *ad valorem* tax assessment due on the mineral products it purchased from small scale miners and its own production, respectively.
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> On 27 April 1990, [petitioner] filed with the Court of Tax Appeals a petition for review questioning the validity of said assessment. The CTA rendered its decision ordering [petitioner] to pay the *ad valorem* tax due on the mineral products it produced in the amount of P2,570,863.17 plus 25% surcharge and 20% interest thereon per annum from date of removal from its place of production until the same is fully paid, pursuant to Sections 248(a) (3) and 249 (c) (3) of the Tax Code. **However, the assessment for deficiency excise tax due on the mineral products purchased from the small scale miners was declared cancelled for lack of legal basis. [Respondent] filed a motion for reconsideration which was denied by the Court of Tax Appeals in a Resolution dated 15 March 1995.**[3] (Words in brackets ours; Emphasis supplied).

Taking exception from the tax court's ruling cancelling the assessment of deficiency excise tax on petitioner's purchase of mineral products from small scale miners, and insisting on the legality thereof, respondent Commissioner of Internal Revenue went on appeal to the Court of Appeals (CA) whereat the recourse was docketed as *CA-G.R. SP No. 37054*.

As stated at the outset hereof, the appellate court, in a Decision dated August 18, 1995, modified that of the tax court by upholding respondent's assessment of *ad valorem tax* on minerals purchased by petitioner from small scale miners and later sold to the Central Bank. More specifically, the CA decision dispositively reads:

> WHEREFORE, premises considered, the appealed decision of the Court of Tax Appeals dated 6 October 1994 is MODIFIED only with respect to the

> assessment of ad valorem tax on minerals purchased from small scale miners against [petitioner]. The assessment for deficiency excise tax on minerals purchased from small scale miners and subsequently sold to the Central Bank is upheld. The decision of the Court of Tax Appeals is affirmed in all other respects.
>
> SO ORDERED.[4] (Word in bracket ours)

In sustaining respondent's assessment on the petitioner *vis a vis* mineral products purchased by it from small scale miners, the CA preliminary explained that since in the case of those locally extracted or produced minerals, the rate of the *ad valorem* tax is based on the actual market value of the gross output thereof at the time of removal from place of production pursuant to Section 151(a)(3) of the (old) Tax Code, the excise tax on the extracted minerals while still in the hands of the small scale miners cannot as yet be determined, not until the same is given a value when sold to a buyer like petitioner. The appellate court then ratiocinated that because the liability of petitioner as regards minerals purchased from small scale miners cannot be as a manufacturer or producer nor the present owner or possessor of the same in accordance with Section 127(a) of the (old) Tax Code,[5] said provision should be related to other provisions of the Code, specifically Section 151 (c) thereof which provides that the excise tax on minerals shall be due and payable upon removal of the minerals from the locality where mined. Hence, since there was no showing of a tax return filed by the small scale miners upon their extraction of the minerals, petitioner should be the one assessed for having caused the removal of the minerals from the locality where mined when it purchased the same from the small scale miners. Partly says the CA in its decision:

> The acts of Apex in causing the minerals to be removed from the place where extracted and a value thereof determined by purchased, after which with evident intention to profit sold it to the Central Bank leads to the conclusion that the excise tax became due while the minerals where in the possession and ownership of Apex. To rule otherwise, will permit Apex to evade the payment of the tax[6].

Receiving a copy of the same Decision on September 11, 1995, petitioner, thru counsel, filed on September 22, 1995, a motion for a 30-day extension of time to file motion for reconsideration. And, on October 11, 1995, petitioner did file its **Motion for Reconsideration**,[7] therein asserting that the conclusion reached by the appellate court is a conclusion of law which extended by implication the provisions of Section 127 (a), in relation to Section 151 both of the Tax Code beyond what said provisions expressly and clearly declare, or enlarged the operation thereof by embracing persons not specifically pointed out.

In its equally impugned Resolution of October 27, 1995, the appellate court denied not only petitioner's motion for extension of time to file a motion for reconsideration, but also

the very motion for reconsideration itself for having been filed out of time.[8]

Hence, petitioner's instant petition for review.

We DENY.

A judicious perusal of the records reveals that the assailed decision of the appellate court had become final and executory due to petitioner's failure to file a timely motion for reconsideration thereof.

It is a matter of record that petitioner received a copy of the CA decision on **September 11, 1995**. Going by the Rules, petitioner had only fifteen (15) days therefrom or until September 26, 1995, within which to move for a reconsideration. However, instead of a motion for reconsideration, what petitioner filed on September 22, 1995 was a **motion for extension of time**. The very motion for reconsideration itself was in fact filed only on October 11, 1995, or 30 days later from petitioner's receipt of the copy of the appellate court's decision, a fatal procedural lapse.

The rule is and has been that the period for filing a motion for reconsideration is non-extendible.[9] The Court has made this clear as early as 1986 in *Habaluyas Enterprises, vs. Japzon*.[10] Since then, the Court has consistently and strictly adhered thereto.[11]

Given the above, we rule without hesitation that the appellate court's denial of petitioner's motion for reconsideration is justified, precisely because petitioner's earlier motion for extension of time did not suspend/toll the running of the 15-day reglementary period for filing a motion for reconsideration. Under the circumstances, the CA decision has already attained finality when petitioner filed its motion for reconsideration. It follows that the same decision was already beyond the review jurisdiction of this Court. As we said in *Rolloque, et al vs. CA et al*.[12]

> "The filing by petitioners of a motion for extension of time to file motion for reconsideration did not toll the fifteen (15) days period before a judgment becomes final and executory.
>
> Since the decision of respondent Court of Appeals dated November 28, 1986 has long become final and executory at the time of the filing of this petition, this court can no longer alter or modify the same."

Not denying its procedural infraction, petitioner presently begs the Court for a relaxation of the rules on ground of substantial justice and equity. Relying on our ruling in *Lagunzad vs. CA*[13] cited in the subsequent case of *Amorganda vs. CA*,[14] counsel for petitioner confesses that in filing the motion for extension of time to file motion for reconsideration, he was solely driven by honest mistake, good motives and intentions without any desire to delay the proceedings or transgress the rules. Upon this premise, counsel submits that the

requirement as to the timeliness of pleadings should not have been strictly applied in this case, arguing that rules of procedure are designed to serve not override substantial justice.

The Court cannot heed counsel's plea, what with the reality that procedural rules setting the period for perfecting an appeal are generally inviolable.

To stress, the right to appeal is merely statutory and one who seeks to avail of it must comply with the statute or rules.[15] The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays.[16] Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory.[17] And, just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party has the correlative right to enjoy the finality of a decision in his favor.[18]

True it is that in a number of instances, the Court has relaxed the governing periods of appeal in order to serve substantial justice. But this we have done only in exceptional cases. Sadly, the instant case is definitely not one of them.

Counsel for petitioner states that the reason for the delay in filing his client's motion for reconsideration is that he (counsel) had to leave for the United States to attend to his ailing wife at a hospital thereat. While laudable, the excuse given is not justification to exempt counsel from complying with the rules, more so in the light of the fact that a law firm represents petitioner in this case.

The corollary excuse that it would be impossible for a different lawyer to familiarize himself with the case and be able to prepare and file a motion for reconsideration within the reglementary period, is simply inexcusable and absolutely unacceptable.

By no stretch of reasoning then can petitioner now harps that it was denied substantial justice and equity on a "*mere technicality*".

The decision of the appellate court having become final and no longer reviewable on appeal, we find it inappropriate to still dwell on the other issues raised by petitioner.

WHEREFORE, the petition is **DENIED**.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and *Carpio Morales, JJ.,* concur.

[1] Penned by Associate Justice Antonio M. Martinez (now ret.) with Associate Justices Consuelo Ynares-Santiago (now a member of this Court) and Ruben T. Reyes, concurring; Rollo, pp. 27-34

[2] Rollo, p. 35.

[3] CA Decision; Rollo, pp. 27-28.

[4] *Ibid*, at p. 34.

[5] Now Section 130 (a) (1) &(2), Tax Code of 1998.

[6] CA Decision at pp. 33-34.

[7] Petition, Annex "D"; Rollo, pp. 48-59.

[8] Rollo, p. 35.

[9] *Phil. Coconut Authority vs. Garrido*, 374 SCRA 154,159 [2002]

[10] 142 SCRA 208, 212; We ruled in this case: "No motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan in Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort which may in its discretion either grant or deny the extension requested."

[11] *Uy vs. CA*, 286 SCRA 343 [1998]; *Lacsamana vs. Second Special Cases Div. of the IAC*, 143 SCRA 643 [1986]; *Rolloque, et al. vs. CA et al and Rivera vs. CA et al*., 193 SCRA 47 [1991]; *Caltex (Phil) Inc. vs. IAC*, 215 SCRA 580 [1992].

[12] *Supra*, p. 56.

[13] 154 SCRA 199.

[14] 166 SCRA 203 [1988].

[15] *Corporate Inn Hotel vs. Lizo*, 429 SCRA 573,577 [2004].

[16] *Ibid*.

[17] *Cuevas vs. Bais Steel Corporation*, 391 SCRA 192, 202 [2002].

[18] *Ibid*.
