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FIRST DIVISION

[G.R. No. 190680, September 13, 2012]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. COURT OF TAX APPEALS AND AYALA LAND, INC., RESPONDENTS.

R E S O L U T I O N

REYES, J.:

Subject of this petition for *certiorari* under Rule 65 of the Rules of Court is the Resolution[1] dated October 30, 2009 of the Court of Tax Appeals (CTA) *en banc* in CTA EB No. 402, which dismissed herein petitioner Commissioner of Internal Revenue's (CIR) petition for relief from judgment under Rule 38 of the Rules of Court.

The factual antecedents that led to the filing of this petition are as follows: In 2005, private respondent Ayala Land, Inc. (ALI) filed with the CTA a petition for review[2] to question the CIR's assessment against it for deficiency value-added tax (VAT) for the calendar year 2003. Before the tax court, the CIR and ALI filed their Joint Stipulation of Facts and Issues, which was cited in the present petition to read in part:

> Petitioner (herein private respondent) is primarily engaged in the sale and/or lease of real properties and, among others, likewise owns and operates theaters or cinemas.
>
> Petitioner received respondent's (herein petitioner) Final Assessment Notice (hereinafter referred to as the 2003 FAN) dated 29 October 2004 whereby respondent was assessing petitioner alleged deficiency 10% value added tax (VAT) on its alleged income from cinema operations for the taxable year 2003 in the aggregate amount of One Hundred Three Million Three Hundred Forty-Six Thousand Six Hundred Ninety[-]One and 40/100 Pesos ([P]103,346,691.40) inclusive of 20% interest.
>
> On 10 December 2004, petitioner filed its protest with the office of respondent contesting the factual and legal bases of the VAT assessment.
>
> On 28 April 2005, petitioner received respondent's 25 April 2005 Decision denying petitioner's protest, with a notation that the same constitutes respondent's Final Decision on the matter.
>
> Petitioner received on 23 November 2004, respondent's 19 November 2004 Letter of Authority No. 0002949 for the examination of ALL INTERNAL REVENUE TAXES of petitioner from 1 [J]anuary 2003 to 31 December 2003.

> In order to protect its right, petitioner filed the Petition for Review pursuant to Section 228 of the Tax Code.[3]

Proceedings ensued. On April 11, 2008, the CTA Second Division rendered its Decision granting ALI's petition for review. The assessment against ALI for deficiency VAT in the amount of P103,346,691.40 for the calendar year 2003 was ordered cancelled and set aside. The CIR's motion for reconsideration was denied, prompting him to file an appeal to the CTA *en banc*.

On February 12, 2009, the CTA *en banc* rendered its Decision affirming the decision of the CTA Second Division. Feeling aggrieved, the CIR filed a motion for reconsideration, but this was denied by the CTA *en banc* in its Resolution dated March 25, 2009.

The CIR claims that neither he nor his statutory counsel, the Office of the Solicitor General (OSG), received a copy of the CTA *en banc's* resolution denying his motion for reconsideration. It then came as a surprise to him when he received on June 17, 2009 a copy of the CTA *en banc's* Resolution dated June 10, 2009 which provided that the CTA Decision dated February 12, 2009 had become final and executory. The CIR then filed on July 2, 2009 a Manifestation with the Motion to Reconsider Resolution Ordering Entry of Judgment,[4] questioning the CTA's entry of judgment and seeking the following reliefs: (1) for the CTA to withdraw its resolution ordering the issuance of entry of judgment; (2) for the CTA to resolve the CIR's motion for reconsideration filed on March 4, 2009; and (3) should there be an existing resolution of the motion for reconsideration, for the CTA to serve a copy thereof upon the CIR and his counsel. The petitioner explained in his manifestation:

> **On 17 June 2009, he received Resolution dated 10 June 2009 holding that in the absence of an appeal, the Honorable Court's Decision dated 12 February 2009 has become final and executory**. Thus, the Honorable Court ordered the issuance of an Entry of Judgment in this case.
>
> Respondent respectfully manifests that on 4 March 2009, he filed a Motion for Reconsideration of the Honorable Court's Decision dated 12 February 2009, the same decision which the Honorable Court has now deemed to be final and executory.
>
> Further, **a check with his records reveals that there is no Resolution which has been issued by the Honorable Court denying his Motion for Reconsideration**. To double check, on three (3) occasions he has inquired from his counsel the Office of the Solicitor General, particularly State Solicitor Bernardo C. Villar, on whether he has received any Resolution on the Motion for Reconsideration. Respondent was informed that there was none.
>
> Finally, he checked with the Honorable Court and was informed that there is a Resolution dated 25 March 2009. In short, while petitioner and his counsel were of the mind that the Motion for Reconsideration still had to

be resolved, it appears that it already was.

However, it is respectfully manifested that petitioner and his counsel have not received the said Resolution and thus, such failure has prevented petitioner from filing the necessary Petition for Review before the Honorable Supreme Court. Such petition would have barred the Decision dated 12 February 2009 from attaining finality and eventual entry in the Book of Judgements.[5] (Emphasis ours)

On July 29, 2009, the CTA *en banc* issued its Resolution denying the motion. It reasoned that per its records, the CIR and OSG had received on March 27, 2009 and March 30, 2009, respectively, a copy of the resolution denying the motion for reconsideration.[6] The CIR received its copy of said Resolution dated July 29, 2009 on August 3, 2009.

The CIR then filed on October 2, 2009 with the CTA *en banc* a petition for relief[7] asking that the entry of judgment in the case be recalled, and for the CIR and OSG to be served with copies of the Resolution dated March 25, 2009. To show the timeliness of the petition for relief, the CIR claimed that he knew of the Resolution dated March 25, 2009 only on August 3, 2009, when he received a copy of the Resolution dated July 29, 2009. He then claimed that the sixty (60)-day period for the filing of the petition for relief should be reckoned from August 3, 2009, giving him until October 2, 2009 to file it. Further, CIR's counsel Atty. Felix Paul R. Velasco III (Atty. Velasco) tried to explain the CIR's and OSG's alleged failure to receive the CTA's Resolution dated March 25, 2009, notwithstanding the CTA's records showing the contrary, by alleging in his Affidavit of Merit[8] attached to the petition for relief that:

14. I noted that, as stated by the Honorable CTA in its 29 July 2009 Resolution, there were rubber stamps of both petitioner and the OSG signifying receipt of the resolution. But given the fact that both petitioner and the OSG did not have copies of this Resolution, the only logical explanation is that the front notice page was indeed correct and stamped by both offices but the received enclosed order of the Honorable Court probably contained a different one. This error has happened to petitioner in other cases but these were subsequently and timely noticed and no detrimental effects occurred[.][9]

On October 30, 2009, the CTA *en banc* dismissed the petition for relief for having been filed out time, *via* the assailed resolution which reads in part:

The Supreme Court has ruled that "a party filing a petition for relief from judgment must strictly comply with two reglementary periods; first, the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and second, within a fixed period of six (6) months from entry of such judgment, order or other proceeding. Strict compliance with these periods is required because a petition for relief from judgment is a final act of liberality on

the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order to put at last an end to litigation."

x x x x

In this case, petitioner seeks relief from judgment of the Court *En Banc's* Resolution dated March 25, 2009. **Records show that petitioner learned of the Resolution dated March 25, 2009 when he received on June 17, 2009, the Resolution of the Court *En Banc* dated June 10, 2009 ordering the Entry of Judgment. This was in fact stated in petitioner's "Manifestation with Motion to Reconsider Resolution Ordering Entry of Judgment" which petitioner filed on July 2, 2009. Hence, the 60 days should be counted from June 17, 2009 and the 60th day fell on August 16, 2009 which was a Sunday. Hence, the last day for the filing of the petition for relief was on August 17, 2009. Even if the 60-day period is counted from petitioner's receipt of the Entry of Judgment on July 1, 2009, with the 60th day falling on August 30, 2009, the petition for relief filed on October 2, 2009 will still be filed beyond the 60-day period**.[10] (Emphasis ours)

Without filing a motion for reconsideration with the CTA en banc, the CIR filed the present petition for *certiorari*. The CIR argues that his 60-day period under Rule 38 should have been counted from August 3, 2009, when he received a copy of the Resolution dated July 29, 2009 and claimed to have first learned about the Resolution dated March 25, 2009 denying his motion for reconsideration.[11]

The issue then for this Court's resolution is: Whether or not the CTA committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that the petition for relief of the CIR was filed beyond the 60-day reglementary period under Rule 38.

At the outset, this Court holds that a dismissal of the petition is warranted in view of the petitioner's failure to file before the CTA *en banc* a motion for reconsideration of the assailed resolution. The settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rationale of the rule rests upon the presumption that the court or administrative body which issued the assailed order or resolution may amend the same, if given the chance to correct its mistake or error. The "plain speedy, and adequate remedy" referred to in Section 1, Rule 65 of the Rules of Court is a motion for reconsideration of the questioned order or resolution.[12] While the rule is not absolute and admits of settled exceptions, none of the exceptions attend the present petition.

Even if we set aside this procedural infirmity, the petition is dismissible. In resolving the substantive issue, it is crucial to determine the date when the petitioner learned of the CTA *en banc's* Resolution dated March 25, 2009, as Section 3, Rule 38 of the