

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.*