

SECOND DIVISION

[G.R. No. 167606, August 11, 2010]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. FORT BONIFACIO DEVELOPMENT CORPORATION, RESPONDENT.

DECISION

MENDOZA, J.:

At bar is a petition for review under Rule 45 of the Rules of Court, filed by the Commissioner of Internal Revenue (*CIR*) against Fort Bonifacio Development Corporation (*FBDC*), challenging the Resolutions of the Court of Appeals (*CA*) dated: **(1)** January 27, 2003,^[1] *denying* the prayer of petitioner *CIR* and the Revenue District Officer, Revenue District No. 44, Taguig and Pateros, Bureau of Internal Revenue (*BIR*), to admit the Amended Petition for Review; and **(2)** March 18, 2005,^[2] *denying* their motion for the reconsideration thereof.

In its decision^[3] dated December 7, 2001, the Court of Tax Appeals (*CTA*) granted the petition of *FBDC* and ordered the *CIR* and the Revenue District Officer, Revenue District No. 44, Taguig and Pateros, *BIR*, to *refund* or *issue a Tax Credit Certificate* in the total amount of P15,036,891.26 in favor of *FBDC* for the fourth quarter of taxable year 1997.

The *CIR* sought to appeal the *CTA* decision to the *CA*. The appeal was docketed as CA-G.R. SP No. UDK-4443. On December 28, 2001, petitioner filed, by registered mail, a motion^[4] praying for an extension of fifteen (15) days from December 28, 2001, the last day for filing the petition for review, or **until January 12, 2002** within which to file the petition.

On **January 21, 2002**, the petitioner filed a Motion for Re-Extension of Time to File Petition for Review praying for another extension of fifteen (15) days or until **January 27, 2002**.^[5]

On **January 29, 2002**, the Court of Appeals, acting on the first motion for extension, issued a Resolution^[6] dismissing the petition for non-payment of docket and other legal fees pursuant to Section 1 (c) Rule 50 of the 1997 Rules of Civil Procedure. Notably, it was *FBDC*, and not *CIR*, that was designated as petitioner in the latter's Motion for Extension of Time to File Petition for Review.^[7] *FBDC* is not exempt from the payment of docket and other legal fees.

In its Manifestation^[8] dated February 7, 2002, *FBDC* pointed out the defects in the motion filed by the *CIR*. Thus:

1.00. On February 1, 2002, the undersigned counsel received a copy of the Resolution of this Honorable Court dated January 29, 2002, denying the "MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW" (dated December 21, 2001) filed by the Commissioner of Internal Revenue ("Commissioner") as well as the Petition for Review.

1.01. The title of the above-entitled case is wrong. The petitioner should be the Commissioner of Internal Revenue. The decision of the Court of Tax Appeals ("CTA") in CTA Case No. 5962 subject of the above-entitled case is favorable to FBDC and the latter is not appealing said decision to this Court.

2.00. Earlier, on January 17, 2002, undersigned counsel received a copy of the Commissioner's "MOTION FOR RE-EXTENSION OF TIME TO FILE PETITION FOR REVIEW" dated January 14, 2002.

2.01. It will be noted that in the aforesaid second motion for extension, the Commissioner prayed for "an extension of fifteen (15) days from January 12, 2002 or until January 27, 2002." Thus, when the Commissioner filed his motion for second extension, dated January 14, 2002, the first extension prayed for had already expired.

2.02. Moreover, the second motion for extension does not show that there is a "most compelling reason" for the second extension prayed for. Section 4 of Rule 9 of the Revised Internal Rules of the Court of Appeals ("RIRCA") provides that "No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days." An identical provision is found in the 1997 Rules of Civil Procedure ("RCP") (Sec. 4, Rule 43).

3.00. On February 5, 2002, undersigned counsel received a copy of the Commissioner's "PETITION FOR REVIEW," dated January 28, 2002. The following has been noted in said Petition:

3.01. It is not "accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers" (Sec. 6[c], Rule 9, RIRCA; Sec. 6, Rule 43, RCP).

3.02. The Petition does not "[s]tate the specific material dates showing that it was filed within the period fixed herein" (Sec. 6[e], Rule 9, RIRC; Sec. 6, Rule 43, RCP).

3.03. It is not accompanied by proof of service of a copy of the Petition on the Court of Tax Appeals (Sec. 5, RCP).

On June 10, 2002, the CIR and the Revenue District Officer filed a Manifestation^[9] dated May 16, 2002 acknowledging their inadvertence in failing to correct the title of the petition where FBDC was designated as petitioner and attaching a copy of the Amended Petition for Review.^[10]

FBDC then filed a Counter-Manifestation^[11] insisting on the denial of the admission of petitioners' amended petition on the same grounds stated in its February 7, 2002 Manifestation. It further argued that the original petition for review^[12] could no longer be amended as the same was only filed on January 31, 2002, or past the deadline of January 27, 2002, as prayed for in the second motion for extension. FBDC further stressed that the CA Resolution dated January 29, 2002, denying the "Motion for Extension of Time to File Petition for Review" and dismissing the petition, had already become final and executory for the CIR's failure to file a motion for reconsideration.^[13]

In its assailed **January 27, 2003** Resolution, the CA *denied* the prayer of petitioners to admit the amended petition for review, thus, reiterating the dismissal of the petition for review. The CA gave the following reasons:

1) The dismissal of the petition for review and denial of the amended petition are premised on: **(a)** the late filing of the original petition for review earlier filed by the petitioner CIR et al.; **(b)** the absence of a motion for reconsideration of the Resolution dated January 29, 2002;^[14] and **(c)** lack of authority of Atty. Alberto R. Bomediano, Jr., legal officer of the BIR Region 8, Makati City, to pursue the case on behalf of the petitioner CIR.

2) It should be noted that the first extension to file petition for review prayed for a period of fifteen (15) days from December 28, 2001 or until **January 12, 2002**. The second motion for extension prayed for an extension of another fifteen (15) days from January 12, 2002 or until January 27, 2002. The second motion was dated **January 14, 2002**. Clearly, the *second motion for extension dated January 14, 2002 was filed after the expiration of the first extension on January 12, 2002, hence, there was no more period to extend*. There was no reason for the petitioners to assume that the motion for re-extension of time would be granted.

3) The last day of filing of the petition for review was on January 12, 2002. The filing of the petition for review on January 31, 2002 was definitely beyond the extension prayed for. The timeliness of the appeal is a *jurisdictional caveat*.

4) When petitioners received the Resolution dated January 29, 2002, denying the motion for extension of time to file petition, thus, dismissing the petition for review on February 4, 2002, they did not file a motion for

reconsideration. Said resolution, therefore, had already become final and executory.

5) The proper officer that should have filed the case was the Solicitor General, citing the case of *CIR v. La Suerte Cigar and Cigarette Factory*, [15] not an officer of the BIR.

Petitioners, this time through the Office of the Solicitor General (OSG), filed a *Motion for Reconsideration (Re: Resolution dated January 27, 2003)* [16] but it was denied by the CA in a Resolution [17] dated March 18, 2005. The CA stated that it would have been more sympathetic to the pleas of the petitioner had the procedural flaws been isolated and non-jurisdictional.

Aggrieved, petitioner CIR seeks relief from this Court *via* this petition for review anchored on the following:

I

THE COURT OF APPEALS ERRED IN DISMISSING THE AMENDED PETITION FOR REVIEW DATED MAY 16, 2002 ON PURE TECHNICALITY AND IN NOT ADJUDICATING THE CASE ON THE MERITS CONSIDERING ITS IMPORTANCE AS IT INVOLVES AN ENORMOUS AMOUNT OF MONEY WHICH THE GOVERNMENT STANDS TO LOSE SHOULD THE PETITION BE DISMISSED OUTRIGHT.

II

THE COURT OF APPEALS ERRED IN HASTILY DISMISSING THE AMENDED PETITION FOR REVIEW CONSIDERING THAT THE PETITIONER HAS MERITORIOUS GROUNDS SHOWING WANT OF BASIS OF RESPONDENT'S CLAIM FOR REFUND IN THE AMOUNT OF P15,036,891.26, THEREBY DEPRIVING THE GOVERNMENT OF ITS RIGHT TO DUE PROCESS. [18]

On February 22, 2006, the Court resolved to give due course to the petition and directed the parties to submit their respective memoranda within thirty (30) days from notice. [19]

Petitioner and respondent filed their respective memoranda. [20]

It appears that the only issue to be resolved by this Court is *whether or not the Court of Appeals correctly dismissed the original Petition for Review, and denied admission of the Amended Petition for Review.*

We resolve the issue in the affirmative.