REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA EB CRIM. NO. 091** (CTA Crim. Case No. O-818)
	Present:
	Del Rosario, *P.J.*, Uy, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, Cui-David, and Ferrer-Flores, *JJ.*
- versus -	
GH RESOURCES AND TRAINING SERVICES, INC., GRACE H. CARTAGO, *Respondents.*	Promulgated: MAY 22 2023

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DECISION

RINGPIS-LIBAN, *J.:*

This is an appeal, by way of Petition for Review,[1] filed by petitioner People of the Philippines under Section 2(4), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) of the Resolutions dated September 30, 2021 and February 17, 2022, respectively, (Assailed Resolutions) both rendered by the Second Division of this Court (Court in Division) in CTA Crim. Case No. O-818. In the September 30, 2021 Resolution, the Court in Division denied petitioner's Petition for Relief from Judgment for lack of merit. On the other hand, the February 17, 2022 Resolution denied petitioner's Motion for Reconsideration of the September 30, 2021 Resolution.

[1] Court *En Banc's* Docket, pp. 1-14.

THE FACTS

As narrated by the Court in Division in its September 30, 2021 Resolution, the facts of the present case are as follows:[2]

> "On February 26, 2020, an Information was filed before this Court by Assistant State Prosecutor Susan T. Villanueva against GH Resources and Training Services, Inc., a domestic corporation, and its corporate officer, Grace H. Cartago, being its alleged President, for willful failure to pay the national internal revenue taxes for the taxable year 2007, in violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended.
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> However, the said case was dismissed in the Court's Resolution dated June 1, 2020 on the ground of prescription, which copy was received by the Department of Justice (DOJ) and by the Bureau of Internal Revenue (BIR) on June 5, 2020 and June 8, 2020, respectively.
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> There being no appeal taken by the public and special prosecutors within the prescribed period, as per Records Verification dated September 28, 2020, the Court rendered the Resolution promulgated on June 1, 2020 final and executory in its Resolution dated October 7, 2020, thereby making the issuance of the entry of judgment in this case a ministerial duty on the part of the Court. Records show that copy of the Resolution dated October 7, 2020 was respectively received by the DOJ and by the BIR on October 14, 2020 and October 20, 2020.
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> On November 3, 2020, a Motion for Reconsideration was filed through registered mail by plaintiff's special counsels, Attys. Raul S.J. de Guzman, Carl Fitri A. Hussin and Philip A. Mayo, alleging, among others, that they only received the Court's Resolution dated June 1, 2020 on October 16, 2020, and that the handling prosecutor was already transferred to Makati. Nonetheless, the said Motion for Reconsideration was denied in the Resolution dated December 9, 2020, on the grounds that the said special counsels failed to offer proof of such late receipt, and for having filed the instant Motion for Reconsideration beyond the reglementary period. Copy of the December 9, 2020 Resolution was received by plaintiff's special counsels on January 7, 2021, while the DOJ received the same on December 14, 2020.

[2] *Id.*, pp. 18-20 (Citations omitted).

> Then, on February 26, 2021, plaintiff's special counsels filed through registered mail the present Petition for Relief from Judgment (with Notice of Change of Address). They likewise filed a Manifestation (Return to Sender of Petition for Relief from Judgment) through registered mail on March 15, 2021.
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> In the Resolution dated May 20, 2021, the Court noted the special counsels' Notice of Change of Address, and directed the accused to file her answer to plaintiff's Petition for Relief from Judgment, within 15 days from receipt thereof. The Court also noted the prosecution's Manifestation (Return to Sender of Petition for Relief from Judgment) in its Resolution dated May 27, 2021.
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> Accused, on the other hand, failed to comply with the Court's Resolution dated May 20, 2021, requiring her to file an answer to the subject Petition for Relief from Judgment, as per Records Verification dated July 16, 2021."

On September 30, 2021, the Court in Division rendered the first Assailed Resolution denying petitioner's Petition for Relief from Judgment for lack of merit.

Aggrieved, petitioner filed a Motion for Reconsideration but the Court in Division likewise denied the same for lack of merit in the second Assailed Resolution dated February 17, 2022.

On March 10, 2022, petitioner filed the present Petition for Review via registered mail.

In a Resolution[3] dated April 18, 2022, the Court *En Banc* ordered the respondents to file a Comment to the Petition for Review within ten (10) days from receipt thereof.

Respondents, however, failed to file the required comment as per the Records Verification Report issued by this Court's Judicial Records Division on June 28, 2022.[4]

Thus, in a Resolution[5] dated July 19, 2022, the present Petition for Review was submitted for decision.

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[3] *Id.*, pp. 107-108.
[4] *Id.*, p. 109.
[5] *Id.*, pp. 111-112.

THE ISSUES

Petitioner seeks the review of the Assailed Resolutions of the Court in Division based on the following grounds:

1. The CTA *En Banc* has jurisdiction over the present Petition for Review;

2. The petitioner committed an excusable negligence of failing to file a timely appeal on this Court's Resolution dated June 1, 2020 dismissing petitioner's complaint;

3. The Court in Division's Resolution dated October 7, 2020 rendering its earlier Resolution dated June 1, 2020 to be final and executory on the basis of petitioner's alleged failure to appeal on time lacks factual and legal bases;

4. The petitioner has a good and substantial cause of action; and

5. The *Tupaz v. Ulep* case cited by the Court in Division dismissing the case due to prescription as provided for by Section 281 is not on all fours to the instant case.

THE COURT *EN BANC*'S RULING

At the outset, the Court *En Banc* finds that the present Petition for Review must be dismissed for being procedurally flawed as the petitioner availed of a wrong remedy. Section 1, Rule 41 of the Rules of Court, as amended, plainly enumerates those cases from which no appeal may be taken, to wit:

> "**SEC. 1.** ***Subject of appeal.*** — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
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> **No appeal may be taken from:**
>
> (a) An order denying a motion for new trial or reconsideration;
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> **(b) An order denying a petition for relief or any similar motion seeking relief from judgment;**
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> (c) An interlocutory order;
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> (d) An order disallowing or dismissing an appeal;

(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(f) An order of execution;

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65." *(Emphasis supplied)*

Even assuming that the present Petition for Review is the proper remedy, the same must still be denied for lack of merit. After an evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* finds that there is no compelling reason to disturb the findings of the Court in Division in the Assailed Resolutions.

In the present Petition for Review, petitioner mainly argues that it committed an **excusable negligence** when it failed to file a timely appeal of the Court in Division's Resolution dated June 1, 2020 which dismissed the Information filed against respondents based on prescription.[6] According to petitioner, the failure to file a timely appeal cannot be attributed to the legal officers of BIR Revenue Region No. 8 for it was beyond their control.[7] It had no knowledge of the Court in Division's Resolution dated June 1, 2020 until October 16, 2020 when the BIR National Office indorsed the said resolution to BIR Revenue Region No. 8A.[8] Petitioner also faulted the Court in Division for having served its June 1, 2020 Resolution to the BIR National Office instead of BIR Revenue Region No. 8A given that the legal officers are allegedly the petitioner's counsels of record in the present case.[9] Finally, petitioner contends that justice would be better achieved if the present case is decided on its merits and not merely based on technicalities.[10]

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[6] *Id.*, pp. 6-9.
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*

In *City of Dagupan v. Madamba*,[11] the Supreme Court explained what constitutes "excusable negligence" as a ground for a petition for relief from judgment as follows:

> "**Excusable negligence as a ground for a petition for relief requires that the negligence be so gross 'that ordinary diligence and prudence could not have guarded against it.' This excusable negligence must also be imputable to the party-litigant and not to his or her counsel whose negligence binds his or her client. The binding effect of counsel's negligence ensures against the resulting uncertainty and tentativeness of proceedings if clients were allowed to merely disown their counsels' conduct.**
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> Nevertheless, this court has relaxed this rule on several occasions such as: '(1) where [the] reckless or gross negligence of counsel deprives the client of due process of law; (2) when [the rule's] application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require.' Certainly, excusable negligence must be proven." *(Emphasis supplied)*

The Court *En Banc* agrees with the Court in Division's finding that the omission of petitioner's counsel can hardly be characterized as excusable negligence. The negligence of petitioner's counsel is of such nature that ordinary diligence and prudence could easily have guarded against. Thus, in this case, the doctrine that "negligence of the counsel binds the client" reasonably applies. The Court *En Banc* thus quotes with approval the Court in Division's relevant discussion on this matter:

> "As a rule, when a party is represented by counsel of record, service of orders and notices must be made upon his/her counsels or one of them. Notice to any one of the several counsels on record is equivalent to notice to all, and such notice starts the running of the period to appeal notwithstanding that the other counsel on record has not received a copy of the decision or resolution.
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> In this case, records evidently show that the Information was filed by Assistant State Prosecutor Susan T. Villanueva on behalf of the Republic. Hence, the latter is considered the Public Prosecutor on record entitled to be furnished copies of all court orders, notices and decisions, after all, all criminal actions commenced by complaint or information are prosecuted under the direction and control of public prosecutors. Thus, the receipt by the DOJ of the assailed Resolutions dated June 1, 2020 and December 9, 2020 on

[11] G.R. No. 174411, July 2, 2014.

June 5, 2020 and October 14, 2020, respectively, is equivalent to notice to all.

Moreover, while the names of Attys. Raul S.J. de Guzman and Carl Fitri A. Hussin, to the exclusion of Atty. Philip A. Mayo, were mentioned in the Commissioner of Internal Revenue Caesar R. Dulay's Referral Letter dated May 17, 2019, referring the case for preliminary investigation to the Secretary of Justice Menardo I. Guevarra, and designating them, among others, as representative of the Bureau of Internal Revenue 'in the preliminary investigation and prosecution of the case', the same does not automatically make them the counsels on records, until they filed by registered mail the subject Motion for Reconsideration on November 3, 2020. Thus, the Court did not err in notifying only the Assistant State Prosecutor Villanueva and the BIR main office of the assailed Resolutions.

xxx xxx xxx

Likewise, the Court finds no excusable negligence in the present Petition for Relief from Judgment that could justify the remedy prayed for since the belated filing of the Motion for Reconsideration could have been avoided had the BIR main office immediately forwarded a copy of the June 1, 2020 Resolution to its Legal Division, Revenue Region 8A, Makati City. Quite glaringly, plaintiff's special counsels did not bother to explain why it took the BIR main office one hundred twenty-nine (129) days to indorse the said Resolution to their office, notwithstanding the urgency of the matter involved in the said Resolution, and the fact that the plaintiff's special counsels' office is likewise located within the Metropolitan Manila area. Had the BIR devised a system or measure that can effectively monitor the progress of cases being handled by its counsels, including the immediate transmittal or route of the notices it received to the handling lawyer, then the foregoing circumstance could have been avoided. Thus, the alleged negligence in the instant case is one that ordinary diligence and proper case management could have guarded against. More so, had plaintiff's special counsels bothered to check the status of the Information filed before this Court on February 26, 2020, then they would have discovered the dismissal thereof on account of prescription." *(Citations omitted)*

It is truly the professional responsibility of counsels, as part of the management of their assigned cases, to conscientiously keep track of their status. In this regard, the Supreme Court's dictum in the case of *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[12] is apropos:

[12] G.R. No. 168498, June 16, 2006.

> "**The Court has repeatedly admonished lawyers to adopt a system whereby they can always receive promptly judicial notices and pleadings intended for them. Apparently, petitioner's counsel was not only remiss in complying with this admonition but he also failed to check periodically, as an act of prudence and diligence, the status of the pending case before the CTA Second Division.** The fact that counsel allegedly had not renewed the employment of his secretary, thereby making the latter no longer attentive or focused on her work, did not relieve him of his responsibilities to his client. It is a problem personal to him which should not in any manner interfere with his professional commitments." *(Emphasis supplied and citations omitted)*

In view of the foregoing discussion, there is no need to discuss the other arguments raised by petitioner.

WHEREFORE, premises considered, the present Petition for Review is **DISMISSED.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice