REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2773** *(CTA Case No. 9946)*
	Present:
-versus-	**DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
PROCTER & GAMBLE (PHILIPPINES), INC. [AS THE ASSIGNEE OF PROCTER & GAMBLE DISTRIBUTING (PHILIPPINES), INC.], *Respondent.*	Promulgated: AUG 14 2024

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a *Petition for Certiorari* under Rule 65 ("Petition"), filed on June 26, 2023,[1] with respondent's *Comment (Re: Respondent's [sic] Petition for Certiorari under Rule 65 filed on June 26, 2023)*, filed on August 10, 2023.[2] The Petition assails the January 3, 2023 Resolution[3] of the Court's Second Division, which denied his Petition for

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1 *Rollo*, pp. 1-22.
2 *Id.* at 42-53.
3 Division Docket, Vol. II, pp. 764-767.

Relief from Judgment, as well as the April 20, 2023 Resolution[4] denying his Motion for Reconsideration.

The Parties

Petitioner is the Commissioner of the BIR, vested with the authority to decide, approve, and grant tax refunds pursuant to *Section 112 (C) of the National Internal Revenue Code of 1997, as amended* ("Tax Code"). He may be served with summons and other Court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

On the other hand, respondent is a domestic corporation dealing with various consumer products, with principal office at 17th Floor, 6750 Ayala Avenue, Makati City.[6]

The Facts

The case began on October 11, 2018 when respondent filed its Petition for Review seeking a refund of its excess and unutilized Creditable Withholding Taxes amounting to ₱105,367,282.00 for fiscal year ending June 30, 2016.[7]

Notably, the Court in Division declared petitioner in default for failure to timely file an Answer in a Resolution, dated February 26, 2019.[8] This finding of default was upheld in a May 30, 2019 Resolution[9] denying his Motion for Reconsideration. These Resolutions were brought up on Certiorari to the Supreme Court, which dismissed said Petition for Certiorari via its August 28, 2019 Resolution.[10] Petitioner's subsequent Motion for Reconsideration before the High Court was denied with finality in the February 10, 2021 Resolution,[11] which also ordered that an entry of final judgment be issued immediately.

Returning to the proceedings before the Court *a quo*, following trial, the Court, acting through its Second Division, issued a Decision on July 22, 2021,[12] partially granting the Petition and ordering the petitioner herein to refund to herein respondent or issue a tax credit certificate in the amount of

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4 *Id.* at 790-793.
5 See Petition for Review, p. 2; Division Docket, Vol. I, p. 11.
6 *Id.* at pp. 1-2; pp. 10-11.
7 *Id.* at 10-62.
8 Division Docket, Vol. II, pp. 114-119.
9 *Id.* at 142-145.
10 *Id.* at 554.
11 *Id.* at 682.
12 *Id.* at 641-658.

P84,365,905.33 representing its excess and unutilized Creditable Withholding Taxes for fiscal year July 1, 2015 to June, 2016.

With no Motion for Reconsideration filed by petitioner, respondent filed a Motion for Issuance of Writ of Execution on July 7, 2022.[13] This was granted in the August 16, 2022 Resolution[14] of the Court, with a directive for an Entry of Judgment to be issued. The corresponding Entry of Judgment[15] was then issued by the Second Division Clerk of Court.

On October 17, 2022, respondent filed another Motion for Writ of Execution[16], anchored on the Entry of Judgment previously issued. This was granted in the Court's November 21, 2022 Resolution[17].

Also on November 21, 2022, petitioner filed a Petition for Relief from Judgment[18] seeking to set aside the September 2022 Entry of Judgment and for him to be allowed to file his Motion for Reconsideration against the July 22, 2021 Decision in the case.

On January 3, 2023, the Court issued the assailed Resolution denying the Petition for Relief. Petitioner filed his Motion for Reconsideration against this Resolution on January 20, 2023. Respondent filed its Comment thereto on February 6, 2023. Finally, on April 20, 2023, the assailed Resolution was issued, denying petitioner's Motion for Reconsideration.

Having received said Resolution on April 26, 2023, petitioner filed the instant Petition for Certiorari on June 26, 2023 before the Court *En Banc*.

The Court *En Banc* then issued a Resolution, dated July 18, 2023, ordering respondent to file its Comment to the Petition within 10 days from notice.[19] On August 10, 2023, respondent filed its Comment (Re: Respondent's [sic] Petition for Certiorari under Rule 65 filed on June 26, 2023).[20]

On September 13, 2023, this Court *En Banc* issued a Resolution submitting the instant case for Decision.[21]

Hence, this Decision.

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13 *Id.* at 692-695.
14 *Id.* at 698.
15 *Id.* at 699.
16 *Id.* at 703-726.
17 *Id.* at 729.
18 *Id.* at 730-761.
19 *Rollo*, at 41.
20 *Id.* at 42-53.
21 *Id.* at 54.

The Issue

The sole issue for this Court's resolution is whether denial of the Petition for Relief from Judgment before the Court in Division was proper.

Arguments of the Parties

Petitioner's Arguments

Petitioner insists that there was a valid reason why he failed to file a Motion for Reconsideration before the Court in Division. According to petitioner, the lawyer handling the case was still reporting for work when the Decision was received, and his cessation of action was gradual. Petitioner holds out that the one-year delay in discovering the failure to file a Motion for Reconsideration was justified by such circumstances. He banks upon jurisprudence citing exceptions to the rule that negligence of counsel binds the client.

Petitioner also claims to have a meritorious defense in that respondent failed to fully substantiate its claim for refund.

Respondent's Counter-Arguments

Respondent first stresses that the Petition for Relief from Judgment was filed more than nine months beyond the prescribed period.

It also points out that the attending negligence in not filing a Motion for Reconsideration was not excusable, there being three other lawyers appearing in the case aside from the admittedly negligent Atty. Marion Philbee M. Tejada (Atty. Tejada). Respondent also faults petitioner with not clearly providing the timeline for Atty. Tejada's cessation of work as to lay down the conclusion that this was instrumental in the failure to file the Motion for Reconsideration. It also accentuates the failure of respondent to ordinary prudence and diligence in supervising said Atty. Tejada.

Finally, respondent cites the Decision of the Court in Division finding that it did comply with the requirements for claims of refund for CWT, quashing petitioner's arguments thereon.

The Ruling of the Court

The Petition must be denied.

To begin with, a reading of the allegations in the instant Petition for Certiorari would show that the allegations contained in the section on Arguments/Discussion are exactly the same allegations contained in the Discussion portion of both the Petition for Relief from Judgment and the Motion for Reconsideration petitioner filed before the Court in Division.

These arguments were already met and discussed in both the January 3, 2023 and April 20, 2023 Resolutions of the Court in Division denying the Petition and Motion. In fact, the April 20, 2023 Resolution even stressed that "respondent (petitioner herein) again raises similar arguments contained in its Petition for Relief from Judgment and considered in the Court's Resolution dated 03 January 2023." In effect, this would be the third time these very same set of arguments are brought before the Court.

On this score, alone, the Petition already fails.

Nevertheless, We shall afford the Petition yet another chance to understand the futility of its appeal.

The failure to file a Motion for Reconsideration was not due to excusable negligence

It cannot be denied that Atty. Tejada was not the only counsel of record of petitioner. Indeed, the records would readily show that Attys. Felix Paul R. Velasco III, Sylvia R. Alma Jose, and Rowell B. Vicente also represented petitioner before the Court in Division. The failure to file a Motion for Reconsideration could not have been attributable to Atty. Tejada alone, given the presence of said other senior counsels.

To reiterate, petitioner had previously been declared in default by the Court in Division, a declaration upheld by the Supreme Court. Given the finding of default and the already demonstrated failure of Atty. Tejada to observe prescription periods, it behooved petitioner and its phalanx of lawyers to exercise more caution in its treatment of the case. Certainly, it was already put on notice of the mistake committed by Atty. Tejada as it did file Certiorari proceedings before the Supreme Court against the default order.

Under the circumstances, that he still failed to file the Motion for Reconsideration against the Decision issued by the Court in Division can find no excuse. That this was discovered more than a year after, as respondent himself admits, underscores the lack of supervision and monitoring by petitioner and his counsels over the handling of the case.

Given the foregoing, the Court agrees with the denial by the Court in Division of the Petition for Relief from Judgment filed by petitioner. In so ruling, we are guided by the clear disquisition in *Marcopper Mining Corp. v. De Luna*,[22] as follows –

> Relief from judgment is a remedy provided by law to any person against whom a decision or order is entered through fraud, accident, mistake, or excusable negligence. It is a remedy, equitable in character, that is allowed only in exceptional cases when there is no other available or adequate remedy. When a party has another remedy available to him, which may either be a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake, or excusable negligence from filing such motion or taking such appeal, he cannot avail of the remedy of petition for relief.
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> Here, Marcopper alleged that it was prevented from moving for the reconsideration of or appealing the CA's Decision, dated March 31, 2016, by the excusable negligence of its counsel. It alleged that on April 7, 2016, its counsel, Quasha Ancheta Peña and Nolasco Law Office, received the CA's March 31, 2016 Decision. However, the same was not forwarded to the principal handling lawyer, Atty. Cirilo E. Doronila, who only learned about the adverse decision when he received the CA's Resolution, dated August 3, 2016, directing the issuance of an entry of judgment, on August 11, 2016. This, according to Marcopper, was a clear case of excusable negligence on the part of its counsel, warranting relief from judgment.
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> The Court is not persuaded.
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> *It is settled that negligence to be excusable must be one that ordinary diligence and prudence could not have guarded against.* The Court rules that the negligence of Marcopper's counsel could hardly be characterized as excusable, much less unavoidable. There is no showing that the negligence could not have been prevented through ordinary diligence and prudence. As such, Marcopper is thus bound by its counsel's negligence.
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> Time and again, the Court has held that relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own (or that of his counsel's) negligence; otherwise, the petition for relief can be used to revive the right to appeal which had been lost through inexcusable negligence. Public interest demands an end to every litigation and a belated effort to reopen a case that has already attained finality will serve no purpose other than to delay the administration of justice.
> (Emphasis, ours; citations removed)

[22] G.R. No. 232509 (Notice), August 2, 2023.

Echoing the ruling above, the negligence of petitioner's counsel could hardly be characterized as excusable, much less unavoidable. Certainly, ordinary diligence and prudence could have prevented the neglect to file his Motion for Reconsideration. Finally, the Supreme Court has already held that the "failure to interpose a timely appeal or motion for reconsideration does not constitute gross negligence."[23]

The Decision shows the merits of respondent's claim for refund, debunking petitioner's claim of a meritorious defense

While the Decision of the Court in Division was rendered following an *ex parte* presentation of evidence by respondent, it still exhaustively discussed why respondent's claim for refund was meritorious and how it complied with all the requirements for the grant of the same. It also assiduously went through the ICPA Report and recommendations and, with its own assessment of the evidence, went on to grant not the total refund amount of ₱105,367,282.00 prayed for but only the reduced amount of ₱84,365,905.35.

Petitioner's alleged meritorious defense that respondent failed to fully substantiate its claim for refund fails in light of the exhaustive discussion of the Court in Division respecting the claim of respondent.

The Petition for Relief from Judgment was filed out of time

Finally, yet another ground exists making petitioner's cause fatal. The Court agrees with the observation of respondent that petitioner did not file its Petition for Relief from Judgment on time.

Section 3, Rule 38 of the Rules of Court provides the period for filing such a Petition, to wit –

> Section 3. *Time for filing petition; contents and verification.* — A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken, and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

[23] Cay-an v. Guan, G.R. No. 228117 (Notice), November 22, 2023.

The twin-period is mandatory, jurisdictional, and must be strictly complied with; otherwise, the petition may be dismissed outright.[24]

What is crucial in this case is the six month period after the Decision was entered.

A copy of the July 22, 2021 Decision was received by petitioner on July 23, 2021.[25] It thus had 15 days, or until August 7, 2021, within which to file a Motion for Reconsideration from such receipt. With no such Motion for Reconsideration filed, the Motion for Issuance of Entry of Judgment was granted by the Court in Division in its August 16, 2022 Resolution, and the corresponding Entry of Judgment was issued by the Second Division Clerk of Court on September 20, 2022. It is of note that the Entry of Judgment expressly states that the Decision "has, on August 7, 2021, became final and executory and is hereby recorded in the Book of Entries of Judgment."[26]

It cannot be denied that the Petition for Relief from Judgment was only filed on November 21, 2022. While petitioner specifically holds out its compliance with the first period of 60 days after he learned of the judgment – stating that he received a copy of the Entry of Judgment on September 22, 2022 and had until November 21, 2022 within which to file the Petition – he is oddly silent on the second period of "not more than six months after such judgment or final order was entered."

Section 2, Rule 36 of the Rules of Court is clear –

> Section 2. *Entry of judgments and final orders.* — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. *The date of finality of the judgment or final order shall be deemed to be the date of its entry.* The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, within a certificate that such judgment or final order has become final and executory.
> (Emphasis, ours)

Indeed, jurisprudence has consistently clarified that the date of entry, in turn, is the same as the date of finality of judgment[27] and that by operation of law, the date when the subject Decision or Resolution became final and

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[24] Bernardo v. Court of Appeals, G.R. No. 189077, November 16, 2016.
[25] See Notice of Decision, Docket, Vol. II, p. 640.
[26] Docket, Vol. II, p. 699.
[27] Villareal, Jr. v. Metropolitan Waterworks and Sewerage System, G.R. No. 232202, February 28, 2018, citing Section 2, Rule 36 of the Rules of Court.

executory is likewise the date of entry of judgment[28].

Accordingly, the date of entry of judgment in this case is August 7, 2021, the date of finality of the subject Decision, as expressly stated in the Entry of Judgment itself.

Thus, petitioner had only 6 months from August 7, 2021, or until February 7, 2022, within which to file a Petition for Relief from Judgment under the second period. Obviously, the Petition it filed on November 22, 2022 was already 9 months belatedly filed, making it filed out of time.

There lies no good ground to grant the Petition for Certiorari

All told, with the Court's finding that the failure of petitioner to file a Motion for Reconsideration was not due to excusable negligence, that the Decision shows the merits of respondent's claim for refund, debunking petitioner's claim of a meritorious defense, and that the Petition for Relief from Judgment was filed out of time, the instant Petition for Certiorari must fail.

Given the demonstrated solid Resolutions of the Court in Division *vis a vis* the equally manifested errors committed by petitioner, the final and executory judgment here can and should no longer be disturbed, least of all by certiorari. We look upon the words of the Supreme Court in *Cay-an v. Guan*,[29] this time, to wit -

> All told, the May 4, 2012 Decision is a final and executory judgment. The time-honored doctrine of immutability and unalterability of final judgments, a solid cornerstone in the dispensation of justice by the courts, applies with force. In *Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Co.*, the Court expounded on the two-fold purpose of the rule on immutability of judgments:
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> > The doctrine of immutability and unalterability serves a two-fold purpose, namely: (a) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest

[28] Philippine Veterans Bank v. Solid Homes, Inc., G.R. No. 170126, June 9, 2009.
[29] See Footnote 23.

> court of the land. As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

While there are exceptions to the doctrine of immutability of final judgments, none obtain in this case. Lest it be misunderstood, the application of the doctrine is not stubborn adherence thereto. It is a just application of a time-honored principle of law.

Against this background, the Court concludes that the CA did not err in finding that the RTC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction. It is well to remind petitioners that grave abuse of discretion refers to an arbitrary or despotic manner of exercising the court's jurisdiction, *viz.*:

> By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

The records are woefully absent of such capricious and whimsical exercise of judgment as to amount to a lack of jurisdiction on the part of the RTC. The RTC clearly did not exercise its discretion in an arbitrary or despotic manner, but merely applied well-known principles of law. As such, no grave abuse of discretion can be ascribed to the RTC's conduct, as correctly found by the CA.
(Citations omitted)

FOR THESE REASONS, the Petition for Certiorari, filed on June 26, 2023, is hereby **DENIED** for lack of merit. The Assailed Resolutions of the Court in Division, dated January 3, 2023 and April 20, 2023 are hereby **AFFIRMED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON OFFICIAL BUSINESS
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 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