

BPI DATA SYSTEMS CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS, COURT OF TAX APPEALS, AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

G.R. No. 119454. February 22, 1996

Ponente: VITUG, J.

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VITUG, J.:

On 16 April 1990, petitioner filed with the Court of Tax Appeals ("Tax Court") a petition for review, docketed C.T.A. Case No. 4440, seeking the refund of P362,617.00 in allegedly overpaid creditable taxes withheld in 1987.

The Tax Court denied the claim in its decision of 03 March 1994, a copy of which was served on petitioner on 18 March 1994.

On 02 April 1994, the fifteenth day after the receipt of the decision by petitioner, the latter filed on that last day of the reglementary period a motion for reconsideration.

On 04 July 1994, the Tax Court denied the motion for reconsideration; petitioner was served with a copy of the resolution of denial on 12 July 1994.

The next day, 13 July 1994, observing the requirements of Circular No. 1-91, petitioner filed with the Tax Court a notice of appeal and with the Court of Appeals a motion for an extension of fifteen (15) days from 13 July 1994 to file the petition for review.

On 28 July 1994, it filed the petition for review.

By resolution, dated 23 August 1994, the Court of Appeals ruled that the motion for extension of time to file the petition for review was filed one day late; hence, the Court denied the petition. This resolution was served on petitioner on 29 August 1994.

On 31 August 1994, petitioner filed a motion for reconsideration, explaining that its motion for extension to file a petition for review was timely filed following the doctrine laid down in *Mara, Inc., v Court of Appeals, et al.*[1]

In a resolution, dated 15 February 1995, the Court of Appeals denied the motion for reconsideration.

Hence, the instant petition for review raising this sole issue; viz:

"x x x (w)hen a party files a motion for reconsideration of the decision of the Court of Tax Appeals (or of any court, for that matter) on the fifteenth or last day for filing such a motion, and such motion is denied, must the party file his petition for review on the very same day he received the notice of denial, or may he file it the following day?"[2]

We grant the petition.

This Court's pronouncement in *Mara, Inc., vs. Court of Appeals*,[3] reiterating its earlier ruling, is explicit, and

we simply here adopt it -

"The question at issue had been considered and decided by this Supreme Court in the case of *Lloren vs. De Veyra*, 4 SCRA 637, promulgated on 28 March 1962. There, an appeal was rejected as out of time on the ground that, counting the total time elapsed between notice of the decision and the filing of the appeal notice, record and bond, less the time when the motion of new trial had been pending, the difference showed that the appeal was late by one day. The appellant, on the other hand contended that since he filed the motion to reconsider on the fifteenth day, the latter should not be counted, because it had not fully elapsed; hence, appellant argued he was entitled to one more day to perfect his appeal. This Court then ruled:

"After a mature deliberation, where the members of the Court delved once more into the methods of computation discussed in the cases mentioned by counsel for respondent, the Court resolved not to follow the ruling in either of them and to adhere strictly to the rule of computation embodied in Rule 28 of our rules. The idea that prevailed is that since petitioner *Lloren* filed his motion for reconsideration on the 15th day of the period within which he may perfect his appeal, that day should be excluded so that when he received copy of the order denying his motion for reconsideration he had still 1 day within which to perfect his appeal. This period of one day should be computed again in accordance with the rule above cited by excluding the day of receipt and including the next day, which in this case is 17 April 1958. Hence, the Court concluded that the appeal interposed by petitioner *Lloren* was still within the reglementary period.

"The above ruling was embodied in the second paragraph of Section 3, Rule 41, of the Revised Rules of 1964, that reads:

"SEC. 3. How appeal is taken x x x.

"But where such a motion has been filed during office hours of the last day of the period herein provided, the appeal must be perfected within the day following that in which the party appealing received notice of the denial of said motion.

"Petitioner argues that the *Lloren* doctrine and Section 3 of Rule 41 apply only to the computation of periods for appeal, and not to the fixing of the finality of other orders of dismissal. Nothing would be gained, however, by changing the rule, and much confusion would be avoided by applying a uniform method of computing periods under circumstances similar to the *Lloren* case, where motions that stop the running of peremptory periods are filed on the last day thereof. After all, in both the *Lloren* case and the one before us, the question posed is the same: whether the judgment, or the order dismissing the appeal, had acquired finality.

"Petitioner points out that by Section 1, Rule 54, of the old Rules of Court, regarding motions for rehearing or reconsideration, the appellate court was expressly granted (in the last clause of said section) discretion to admit second motions for reconsideration if filed 'within two days from notice of the order denying the first motion'; and that the Revised Rule 52 on the same subject eliminated such saving proviso. We attach no importance to this feature, for the provision quoted had to be eliminated as plainly incompatible with the doctrine of the *Lloren* case that had been incorporated in Revised Rule 41. The suppression, therefore, did not import a departure from the basic doctrine."

While it might be true, as so argued by the Solicitor General in his Comment, that *Mara* was an appeal taken from the decision of the then Court of First Instance to the Court of Appeals through a notice of appeal, printed record on appeal and appeal bond, whereas the instant appeal from the decision of the Court of Tax Appeals was brought up via a petition for review under Circular No. 1-91, there would, however, be no point in not having a common rule for both instances.

WHEREFORE, the instant petition is GRANTED. The questioned resolutions are set aside, and the appellate court is directed to reinstate the petition for review in CA-G.R. SP No. 34578. No costs.

SO ORDERED.

Bellosillo, Kapunan and Hermosisima, Jr., JJ., concur.

Padilla, J., took no part.

[1] 28 SCRA 1075.

[2] Rollo, p. 13.

[3] Supra.

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