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

*G.R. No. 167606. August 11, 2010*

Ponente: MENDOZA, J.

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**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).
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> 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).
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> 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


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> 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.
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> 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
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> 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.
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> 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 OT 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.

The then applicable rule, Rule 43 of the Rules of Court,[21] provided:

> SECTION 1. Scope.--This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657,

> Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (n)
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> SEC. 3. Where to appeal.--An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law. (n)
>
> SEC. 4. Period of appeal.--The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (n)"

The right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[22]

The failure to timely perfect an appeal cannot simply be dismissed as a mere technicality, for it is jurisdictional.[23] Thus:

> Nor can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem as it deprives the appellate court of jurisdiction over the appeal. The failure to file the notice of appeal within the reglementary period is akin to the failure to pay the appeal fee within the prescribed period. In both cases, the appeal is not perfected in due time.[24] [Emphases supplied]

As to the claim that the government would suffer loss of substantial amount if not allowed to recover the tax refund in the amount of more than P15M, the Court is of the view that said problem has been caused by petitioner's own doing or undoing.While We understand its counsel's predicament of being burdened with a heavy case load, We cannot always rule in favor of the Government. In this case, petitioner even failed to sufficiently explain its failure to observe the Rules.

Petitioner merely pointed out that due to plain oversight, the motions for extension of time and the petition for review that it filed were erroneously titled as "Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue" when it should have been "Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation;"[25] that "on the assumption that it was respondent which filed the motion, the Court of Appeals, in its Resolution dated January 29, 2002, denied the motion for extension of time to file petition for review on the ground of failure to pay docket and other legal fees;"[26] that respondent filed a manifestation stating that the case was incorrectly titled as it was not the one who appealed the CTA decision to the CA;[27] and that in order to rectify the error, petitioner filed an Amended Petition for Review.[28] To recognize the foregoing statements would render the mandatory rule on appeals meaningless and nugatory.

The point of reference of Our discussion is not the CA's Resolution dated January 29, 2002 but its January 27,

2003 Resolution. Records bear out that the assailed January 27, 2003 Resolution reiterated the dismissal of the petition for review and thus denied the admission of the amended petition but NOT on the basis of the earlier (January 29, 2002) resolution dismissing the petition for non-payment of docket and other legal fees as there was clearly an error in the designation of FBDC as petitioner in the first motion for extension of time filed by the CIR. Indeed, the CIR is exempted from payment of docket and other legal fees, as a government official representing the BIR.

It bears emphasizing that the dismissal of the petition for review and the denial of the amended petition were premised rather on: (1) the late filing of the original petition for review by the CIR; (2) the absence of a motion for reconsideration of the January 29, 2002 Resolution; and (3) 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 petitioner CIR.[29]

It has been ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.

Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite time fixed by law. Such rules are necessary incidents to the proper, efficient and orderly discharge of judicial functions. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the fruits of his victory. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal.[30] Undeniably, there are exceptions to this rule. Petitioner, however, did not present any circumstances that would justify the relaxation of said rule.

It need not be overemphasized that it is the responsibility of the counsel to check and keep track of the period of time left to file an appeal. He cannot escape from the inflexible observance of this rule which is jurisdictional. The rules, particularly on the statutory requirementfor perfecting an appeal within the reglementary period provided, must be strictly followed. If an appeal is not taken within the period prescribed therefor, the judgment becomes final and the court loses all jurisdictionover the case.

WHEREFORE, the petition is DENIED.

**SO ORDERED.**

Carpio (Chairperson), Peralta, Abad, and Perez,[*] JJ., concur.

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[*] Designated as additional member in lieu of Justice Antonio Eduardo B. Nachura per raffle dated August 9, 2010.

[1] Rollo, pp. 17-23. Penned by Associate Justice Bienvenido L. Reyes with Associate Justice Romeo A. Brawner and Associate Justice Danilo B. Pine, concurring.

[2] Id. at 11-16.

[3] Id. at 210-229.

[4] CA rollo, pp. 1-2.

[5] Rollo, p. 18, cited in CA Resolution dated January 23, 2003.


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[6] CA rollo, pp. 5-6.

[7] Rollo, p. 18.

[8] CA rollo, pp. 7-11.

[9] Id. at 75-78.

[10] Id. at 79-95.

[11] Id. at 96-100.

[12] Id. at 12-30.

[13] Id. at 98-99.

[14] Rollo, pp. 154-155; By mere oversight however, the CA, in its January 27, 2003 Resolution, mentioned January 7, 2002 (Rollo, p. 20).

[15] Citing G.R. No. 144942, June 28, 2001 (the date of the citation should have been July 4, 2002).

[16] CA rollo, pp. 138-147.

[17] Id. at 155-160.

[18] Rollo, p. 39.

[19] Id. at 275-276.

[20] Id. at 289-352, 422-460.

[21] Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.

[22] Neypes v. Court of Appeals, 506 Phil. 613, 621 (2005).

[23] Nuñez v. GSIS Family Bank, G.R. No. 163988, November 17, 2005, 475 SCRA 305, 320.

[24] Supra note 22, citing Republic v. Court of Appeals, 379 Phil. 92, 100-101 (2000).

[25] Rollo, p. 35.

[26] Id. at 36.

[27] Id.

[28] Id.

[29] Id. at 20.

[30] In the matter of the Heirship (Intestate Estates) of the late Hermogenes Rodriquez v. Robles, G.R. No. 182645, December 4, 2009, 607 SCRA 770.


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