

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

**HI-STAKES GAMING,
INCORPORATED,**

Petitioner,

-versus-

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

CTA EB NO. 2413
(CTA Case No. 10211)

Present:
DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.

Promulgated:

JAN 25 2023

X ----- X

RESOLUTION

MODESTO-SAN PEDRO, J.:

For the Court's resolution is respondent's Motion for Entry of Judgment ("Motion"), which was included in his Comment, filed on 24 May 2021,¹ with petitioner's Comment (To the Motion for Entry of Judgment) ("Comment"), filed on 10 May 2022.²

In the Motion, respondent prays for the dismissal of the present Petition for Review ("Petition"), considering that petitioner failed to timely file the same within the reglementary period. Respondent stresses that, on 15 December 2020, petitioner received a copy of the Resolution, dated 11 December 2020, which denied petitioner's Motion for Reconsideration of the Court in Division's Order, dated 12 March 2020, which, in turn, dismissed the case for failure of petitioner to file a Pre-Trial Brief and be present during the Pre-Trial Conference. Accordingly, per respondent, petitioner had until 30 December 2020 within which to file an appeal with this Court *En Banc*. Since petitioner only filed the Petition on 26 January 2021, respondent argues that

¹ Records, pp. 229-249.

² *Id.*, pp. 298-301

the instant case is already final and executory, rendering this Court with no jurisdiction over the case.

Even assuming that the Petition was timely filed, respondent posits that the Court in Division already ruled that petitioner's Motion for Reconsideration of the Order, dated 12 March 2020, was belatedly filed. Hence, respondent alleges that the instant case has already become final and executory.

On the contrary, petitioner, in its Comment, alleges that the instant Motion violates this Court *En Banc*'s Resolution, dated 15 March 2021, which required respondent to file a comment, "not a motion to dismiss." Further, petitioner alleges that the Motion is premature as it delves into the merit of the case itself and a resolution thereof would necessarily resolve the very issues raised in the main case. Likewise, per petitioner, the Motion is presenting new factual allegations (*i.e.*, the receipt of the Resolution, dated 11 December 2020) that require an examination of evidence. As such, petitioner posits that a trial on the merits should first be conducted before the said Motion is resolved. Be that as it may, petitioner argues that it was able to prove that its receipt of the Resolution, dated 11 December 2020, was on 12 January 2021.

Basic is the rule that the right to appeal is a statutory right and the party who seeks to appeal an adverse judgment must comply with the requisites provided by statute for appeals.³

In *Labao v. Flores, et al.*,⁴ the Supreme Court stressed the importance of timeliness of appeals, *viz.*:

"Time and again, we have stressed that **procedural rules do not exist for the convenience of the litigants; the rules were established primarily to provide order to, and enhance the efficiency of, our judicial system.** While procedural rules are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business. **The timeliness of filing a pleading is a jurisdictional caveat that even this Court cannot trifle with.**

Viewed in this light, procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights; like all rules, they are required to be followed.

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Needless to stress, a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous

³ Magat, et al. v. Tantrade Corporation and Pablo S. Borja, Jr., G.R. No. 205483, 23 August 2017.

⁴ G.R. No. 187984, 15 November 2010.

conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. All the issues between the parties are deemed resolved and laid to rest once a judgment becomes final and executory; execution of the decision proceeds as a matter of right as vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case. **After all, a denial of a petition for being time-barred is tantamount to a decision on the merits. Otherwise, there will be no end to litigation, and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.”**
(Emphasis and underscoring, Ours)

In the case at bar, respondent points out that per Court Records, the Resolution, dated 11 December 2020, was properly served upon petitioner’s counsel on 15 December 2020. Accordingly, petitioner only had until 30 December 2020 within which to file the Petition before the Court *En Banc*.

Meanwhile, petitioner counter-argues that it timely filed the Petition. Pursuant to petitioner’s Compliance, dated 10 May 2022,⁵ petitioner alleged that it received a copy of the Resolution, dated 11 December 2020, on 12 January 2021. In support of this, petitioner presented copies of the logbook of Security Guard Neljhon Ople and a transmittal e-mail to prove that petitioner’s counsel, Atty. Leonardo C. Aguilar, Jr., only received a copy of the Resolution, dated 11 December 2020, on 12 January 2021. As such, per petitioner, it had until 27 January 2021 within which to file the Petition. Hence, when the Petition was filed on 26 January 2021, the same was timely filed.

This Court *En Banc* agrees with respondent.

Section 3 (b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (“RRCTA”) delineates the rules for appealing an adverse judgment to this Court *En Banc*. The said provision provides that “[a] party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.”

A perusal of the Notice of Resolution, dated 11 December 2020, appearing in the Court’s records, would clearly show that Security Guard Ople received the said copy on “12/15/20” or 15 December 2020.⁶ This copy was addressed and sent to petitioner’s counsel at his address of record.

⁵ Records, pp, 293-297.

⁶ Division Records, p. 136.

In *Land Bank of the Philippines v. Heirs of Fernando Alsua*,⁷ the Supreme Court ruled that receipt by the security guard manning the counsel's office is deemed receipt by the counsel. Accordingly, the date of receipt of a court process or notice by such security guard is likewise deemed the date of receipt of such correspondence by the counsel. The High Court ruled as follows:

“Petitioner seeks the remand of the case to the Special Agrarian Court for determination of just compensation.

Pleading for the liberal construction of procedural rules, particularly on the service of the order of dismissal, petitioner contends the fifteen-day period for the filing of its motion for reconsideration should be reckoned from the actual receipt by petitioner's counsel of the order of dismissal and not from the delivery thereof to the security guard.

In support of this theory, petitioner cites the ruling in *Lawin Security Services, Inc. v. NLRC*, where the Court declared invalid the service of the National Labor Relations Commission resolution on the security guard of the building where counsel for the respondent was holding office. In said case, the Court held that ‘service of papers should be delivered personally to the attorney or by leaving [them] at his office with his clerk or with a person having charge thereof.’

The Court of Appeals cited Rule 13, Section 86 and Section 107 of the Rules of Court in disregarding petitioner's proposition that the fifteen-day period for filing the motion for reconsideration should be reckoned from its counsel's actual receipt of the order of dismissal. It explained that the purpose of this rule on service by registered mail is ‘to place the date of receipt of pleadings, judgments and processes beyond the power of the party being served to determine at his pleasure.’

The petition has no merit.

All that the rules of procedure require in regard to service by registered mail is to have the postmaster deliver the same to the addressee himself or to a person of sufficient discretion to receive the same.

Thus, in prior cases, a housemaid, or a bookkeeper of the company, or a clerk who was not even authorized to receive the papers on behalf of its employer, was considered within the scope of ‘a person of sufficient discretion to receive the registered mail.’ The paramount consideration is that the registered mail is delivered to the recipient's address and received by a person who would be able to appreciate the importance of the papers delivered to him, even if that person is not a subordinate or employee of the recipient or authorized by a special power of attorney.

In the instant case, the receipt by the security guard of the order of dismissal should be deemed receipt by petitioner's counsel as well.

Petitioner's admission that there were instances in the past when the security guard received notices for petitioner LBP only underscores the fact that the security guard who received the order of dismissal fully realized his

⁷ G.R. No. 167361, 2 April 2007.

responsibility to deliver the mails to the intended recipient. Noteworthy also is the fact that the security guard did not delay in handing over the order of dismissal and immediately forwarded the same to petitioner's counsel the following day. Petitioner has only itself to blame if the security guard took it upon himself to receive notices in behalf of petitioner and its counsel despite lack of proper guidelines, as alleged by petitioner. In *NIA Consult, Inc. v. NLRC*, the Court pointed out that **it was the responsibility of petitioners and their counsel to devise a system for the receipt of mail intended for them. The finality of a decision is a jurisdictional event which cannot be made to depend on the convenience of a party.**

Petitioner's reliance on the pronouncement in *Lawin Security* is misplaced. In said case, there was no showing that the security guard who received the copy of the subject resolution was charged with such responsibility and that the counsel actually received said copy. In the instant case, as admitted by petitioner, the security guard who received the copy of the order of dismissal had been accustomed to the responsibility of receiving papers on behalf of petitioner and of actually delivering them to the intended recipient.

As correctly pointed out by the Court of Appeals, petitioner had only itself to blame for its failure to inquire exactly when the order was received or to assume that service of the same was effected on the day it was handed over to petitioner's counsel.

Petitioner is correct in pointing out that the Court has ample powers to relax the rules of procedure in the interest of substantial justice and in order to allow a litigant to be given the fullest opportunity to establish the merits of his complaint. However, concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain its failure to comply with the rules. Said rules may be relaxed only in exceptionally meritorious cases.”
(Emphasis and underscoring, Ours)

Following *Landbank*, above, “the receipt by the security guard of the [Resolution] should be deemed receipt by petitioner's counsel as well.” What is more, when petitioner argued that a copy of the Resolution, dated 11 December 2020, was only received on 12 January 2021, as shown by the logbook of Security Guard Ople, petitioner impliedly admitted that Security Guard Ople is authorized to receive court process or notices on behalf of petitioner's counsel, Atty. Aguilar. Accordingly, receipt by Security Guard Ople is deemed receipt by petitioner's counsel, Atty. Aguilar, and correspondingly, by petitioner.

It is noteworthy that the Resolution, dated 11 December 2020, denied petitioner's Motion for Reconsideration of the Court in Division's Order, dated 12 March 2020, which, in turn, dismissed the case for failure of petitioner to file a Pre-Trial Brief and be present during the Pre-Trial Conference. As such, this is the Resolution of the Court in Division which triggered the running of the fifteen (15) day period to file an appeal before the Court *En Banc*.

Since petitioner clearly received the copy of the Resolution, dated 11 December 2020, on 15 December 2020, it only had until 30 December 2020, or the last day of the fifteen (15) day period, to file an appeal before the Court *En Banc*. As petitioner only filed the instant Petition on 26 January 2021, the same was clearly filed out of time.

Finally, since the timely perfection of an appeal is jurisdictional, the Court *En Banc* has lost its authority to act on the instant Petition.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

Meanwhile, there being no appeal or motion for reconsideration or new trial filed within the time provided in the **RRCTA**, let the Clerk of Court enter the judgment or final resolution for this case in the book of judgment, as per **Section 6 of Rule 14 of the RRCTA**.

SO ORDERED.



ROMAN G. DEL ROSARIO
Presiding Justice



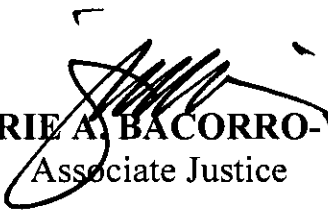
ERLINDA P. UY
Associate Justice



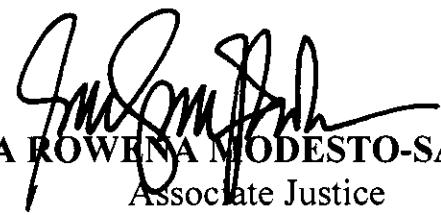
MA. BELEN M. RINGPIS-LIBAN
Associate Justice



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