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Tax Blunders

MILLIONS even billions of pesos are lost because taxpayers do not appreciate that the deadlines as well as the appeal procedures set forth in the Tax Code are crucial in the defense of a tax assessment and are even fatal. It is frustrating to know, for example, that a city in Metro Manila is being asked to pay by the Court of Tax Appeals (CTA), a staggering P1 billion because of a technicality.

In that case, the Final Decision on Disputed Assessment (FDDA) that was issued by the regional director of the Bureau of Internal Revenue (BIR) was not immediately elevated to the CTA. The city filed a motion for reconsideration (MR) of the FDDA with the regional director before it went to the CTA. The CTA, in its decision, said the FDDA that was issued by the regional director of the BIR is directly appealable to the CTA within 30 days after it is received. If the city opts to file a MR on the FDDA issued by the regional director, it should have filed the MR with the Commissioner of Internal Revenue (CIR), instead, and not with the office of the regional director.

By following the wrong procedure in the filing of the MR, the period within which the city may elevate the case to the CTA had lapsed, i.e., 30 days from receipt of the FDDA issued by the regional director.

In what could be seen as a desperate attempt to rectify a fatal mistake, the BIR issued an order for the reopening/reinvestigation of the case. But the CTA ruled that the subsequent reopening/reinvestigation of the assessment did not in any way reverse the finality of the FDDA. It is only the CIR who has the power to reverse, revoke or modify any existing ruling of the BIR, and such power cannot be delegated. In this case, the reopening/reinvestigation was initiated by a mere revenue officer and approved by a deputy CIR. The city was ordered to pay a total of P1, 264,691,185.74 (CTA EB 641).

The foregoing case is not the only one that lost because of technicalities. One case was dismissed by the CTA for failure to pay the filing fees (CTA Case 7780). A bank's petition was dismissed because it filed its petition with the CTA en banc 44 days beyond the extended period granted it to file such petition; without attaching to the petition the duplicate original or certified true copy of the CTA Division's decision and resolution as well as an affidavit of service.

The petition was dismissed for failure to observe three procedural rules under the Rules of Court. A pleading filed by ordinary mail or by a private messenger service is deemed filed on the day it is actually received by the court, and not on the day it was mailed or delivered. Attaching duplicate originals or certified true copies of the assailed decision to a petition is mandatory. (GR. 172458, December 14, 2011) But if a petition is filed through registered mail, the petition would be considered to have been filed at the time the petition is mailed in the post office.

Another technicality that taxpayers should be wary of is estoppel. The SC ruled that if a taxpayer paid a portion of a tax assessment in an assessment notice by the BIR, e.g., a taxpayer paid the income-tax assessment but not the VAT, the taxpayer is estopped from questioning the validity of the waivers of defense of prescription (GR 170257).

It is alright to pay an alleged tax assessment if the courts have found that the taxpayer is liable for the same, based on the merits. Being asked to pay a billion pesos just because a taxpayer followed the wrong procedure is heartbreaking. A taxpayer should not simply sweep its technical blunders under the rag hoping that the taxman will not see it. It should make the proper precautions and actions before it is too late.

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