Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

DIAGEO PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 896
(CTA Case Nos. 7846 & 7865)

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

Promulgated:
JUL 3 1 2012
3:28 pm

x--x

R E S O L U T I O N

MINDARO-GRULLA, J.:

This resolves the Petition for Review before the Court *En Banc* posted on April 18, 2012 and received by this Court on April 25, 2012.

A careful perusal of the records reveals that petitioner failed to attach a duplicate original or certified true copy of the Decision appealed from in violation of *Section 2, Rule 6 of the Revised Rules of the CTA, as amended.* Moreover, petitioner failed to attach a Secretary's Certificate or Board Resolution to prove that Mr. Emer M. Aceron, its Tax Manager, was authorized to file the instant Petition for Review before this Court as required under *Section 2, Rule 6 of the Revised Rules of the CTA, as amended,*[1] in

[1] RULE 6. Revised Rules of the Court of Tax Appeals

relation to *Section 3, Rule 46*[2] *and Section 5, Rule 7*[3] *of the Revised Rules of Civil Procedure.*

SEC. 2. *Petition for review; contents.* – The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition.

[2] RULE 46. Revised Rules of Civil Procedure
SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* –

xxx

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the cleark of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

[3] RULE 7. Revised Rules of Civil Procedure
SEC. 5. *Certification against forum shopping.* –

The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute wilful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

On June 3, 2012, however, petitioner filed a Manifestation, attaching therein a Secretary's Certificate dated April 27, 2012, which reads:

> "2. At a special meeting of the Board of Directors of the Corporation held on **26 April 2012**, during which a quorum was present throughout, the following resolutions were adopted:
>
> RESOLVED, that **Ms. Amalia Donasco** or **Mr. Christopher Chitrajan Tissainayagam**, acting singly, be authorized as they are hereby authorized to represent the Corporation in all court proceedings and to initiate and/or cause to be prepared and filed for and on behalf of the Corporation all pleadings, motion and other papers with respect to the Petition for Review En Banc with the Court of Tax Appeals entitled, Diageo Philippines, Inc. vs. The Commissioner of Internal Revenue docketed as CTA Case No. 7865.
>
> xxx"[4]

Based on the foregoing, it is clear that Mr. Emer M. Aceron, petitioner's Tax Manager who signed the verification and certification against forum shopping attached in the petition for review, was not authorized by petitioner's Board of Directors to file said petition. Instead, the Board of Directors authorized Ms. Amalia Donasco or Mr. Christopher Chitrajan Tissainayagam to file the instant petition before the Court *En Banc*. Notably, petitioner's Board of Directors adopted the foregoing Board Resolution on April 26, 2012 or eight (8) days after the filing of the instant petition.

Under Section 5, Rule 7 of the Rules of Civil Procedure, the certification against forum shopping must be executed or certified under oath by the plaintiff or principal party. Considering that the petitioner in this case is a corporation, it necessarily follows that the certification must be executed by an officer or member of the board of directors or by one who is duly

---

[4] Emphasis supplied.

authorized by a resolution of the board of directors; otherwise, the petition will have to be dismissed.[5]

It is axiomatic that a corporation has no power except those expressly conferred on it by the Corporation Code and those that are implied or incidental to its existence.[6] Thus, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents.[7] Hence, the power of the corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers.[8] In turn, physical acts of the corporation, like signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[9]

In ***Shipside Incorporated v. Court of Appeals, et al.,***[10] the Supreme Court discussed the rationale and effects of lack of verification and certification against forum shopping in this wise:

> "The Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional (*Uy v. LandBank*, G.R. No. 136100, July 24, 2000). Such requirement is simply a condition affecting the form of the pleading, non-compliance with which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order

---

[5] See *Tamondong v. Court of Appeals, et al.,* G.R. No. 158397, November 26, 2004.
[6] *Shipside Incorporated v. Court of Appeals, et al.,* G.R. No. 143377, February 20, 2001.
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] G.R. No. 143377, February 20, 2001.

> that the ends of justice may thereby be served.
>
> On the other hand, the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition. Section 5, Rule 45 of the 1997 Rules of Civil Procedure provides that the failure of the petitioner to submit the required documents that should accompany the petition, including the certification against forum shopping, shall be sufficient ground for the dismissal thereof. The same rule applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation." [Emphasis supplied.]

It can therefore be deduced from the foregoing that while the requirement regarding verification of a pleading is merely formal and not jurisdictional in nature; the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition, and shall be sufficient ground for the dismissal thereof. More importantly, the Supreme Court emphasized that the rule on certification against forum shopping is equally applicable to cases signed by a person on behalf of a corporation without any proof that said signatory is authorized to file a petition on behalf of the corporation.

Moreover, in ***Negros Merchants Enterprises, Inc. v. China Banking Corporation***,[11] the Supreme Court held that "the requirement to file a certificate of non-forum shopping is mandatory and that the failure to comply with this requirement cannot be excused. The certification is a peculiar and personal responsibility of the party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action. In a case where the plaintiff is a private

---

[11] G.R. No. 150918, August 17, 2007.

corporation, the certification may be signed, for and on behalf of the said corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents."

Thus, in *Tamondong v. Court of Appeals*,[12] the Supreme Court held that if a complaint is filed for and in behalf of a plaintiff who is not authorized to do so, the complaint is not deemed filed. An unauthorized complaint does not produce any legal effect; hence, the court should dismiss the complaint on the ground that it has no jurisdiction over the complaint and the plaintiff.

Applying the foregoing precepts in this case, in view of absence of authority on the part of Mr. Emer M. Aceron to file the instant petition for and in behalf of petitioner, this Court has no recourse but to dismiss the petition as the same is not deemed filed by the proper party in interest and should therefore be dismissed.

Time and again, while this Court has consistently ruled that proceedings before the Court of Tax Appeals shall not be governed strictly by technical rules of evidence[13] as the rules of procedure are only used to help secure and not frustrate the ends of justice, nevertheless, rules of procedure must be faithfully followed. It is only for persuasive and weighty reasons that

---

[12] *Supra* note 5.
[13] Section 8 of R.A. No. 1125 or otherwise known as "An Act Creating the Court of Tax Appeals", as amended by R.A. Nos. 9282 and 9503.

said rules may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure.[14]

WHEREFORE, petitioner's Petition for Review is hereby DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

---

[14] *Far Corporation vs. Magdaluyo*, G.R. No. 148739, November 19, 2004.