

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF
INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1601
(CTA Case No. 8502)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JL*.

- versus -

MACARIO LIM GAW, JR.,
Respondent.

Promulgated:

JUL 03 2019

[Signature]
3:26 p.m.

X-----X

RESOLUTION

RINGPIS-LIBAN, *JL*:

For Resolution is petitioner's "Motion for Reconsideration with Leave to Submit Attached Compliant Verification and Certification of Non-Forum Shopping (Re: Decision promulgated on 20 September 2018)", filed through registered mail on October 11, 2018, which the Court received on October 16, 2018, with respondent's "Opposition (Re: Motion for Reconsideration dated 11 October 2018)" filed on December 21, 2018, after being granted an extension by the Court.

In its motion, petitioner asks the Court *en banc* to reconsider its Decision dated September 20, 2018, the dispositive portion of which reads, as follows:

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

[Signature]

SO ORDERED."

Petitioner argues that strict compliance with the rules may be dispensed with so that the ends of justice may be served and that the case may be decided on the merits; and that the instant case requires the attention of the Court considering the significant amount involved.

Attached to the motion is a compliant Verification and Certification of Non-Forum Shopping signed by Commissioner Caesar R. Dulay certifying, among others, that the verification and certification attached to the Petition for Review filed by the Bureau of Internal Revenue last March 13, 2017 is for the above-captioned case and not for the case entitled *Commissioner of Internal Revenue vs. G&W Architects, Engineers and Project Consultants*, docketed as CTA EB No. 1572.

On October 26, 2018, petitioner filed his "Compliance (Re: Decision promulgated on 20 September 2018)" which included a Sworn Statement of Atty. Bernardino Paul R. Somera, Jr. (Atty. Somera), former handling lawyer of the above-captioned case and currently holding the position of OIC-Chief of the Regional Investigation Division of Revenue Region (RR) No. 13, Cebu City. Atty. Somera stated therein that he reported for duty at the Regional Investigation Division, RR No. 9B on March 14, 2018 and only got wind that the case was dismissed for lack of jurisdiction on October 10, 2018. He also stated due to his reassignment, he was unable to immediately rectify the defect.

Furthermore, Atty. Somera attested that during the execution of the said Verification and Certification of Non-forum Shopping, it was made clear to former Legal Group Deputy Commissioner Jesus Clint B. Aranas during revalidation thereof that he was attesting to the facts relevant to the above-captioned case as can be inferred from the heading and pagination in the verification page which is a continuation of the Petition for Review.

Acting on the prayer of petitioner in his Compliance to admit the Sworn Statement of Atty. Somera as part of the records of the case and that it be considered in the resolution of his Motion for Reconsideration, the same is **GRANTED**.

On December 18, 2018, respondent filed his "Motion for Extension" asking for an additional period of five (5) days within which to file Comment. 

On December 21, 2018, respondent filed his "Opposition (Re: Motion for Reconsideration dated 11 October 2018).

We resolve, as follows:

After considering the arguments of the parties, *We* find that despite the subsequent submission of the CIR of a compliant Verification and Certification of Non-forum Shopping, coupled with the Sworn Statement of the previous handling counsel, Atty. Somera, there has neither been substantial compliance with the requirement nor the presence of special circumstances and/or compelling reasons for the Court *en banc* to reconsider its Decision.

In *Navarra vs. People of the Philippines*¹, the Supreme Court shed light on the matter, thus:

"As a general rule, petitions that lack or have a defective certificate of non-forum shopping cannot be cured by its subsequent submission or correction, unless there is a reasonable need to relax the rules on the ground of substantial compliance or presence of special circumstances or compelling reasons."² The court has the discretion to dismiss or not to dismiss an appellant's appeal but said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the unique circumstances obtaining in each case."

In ruling to dismiss the case for lack of jurisdiction in *Our* Decision dated September 20, 2018, *We* made the following observation:

"Records show that the faulty verification and certification was brought to the attention of the CIR in Lim Gaw's Comment to the Petition **as early as May 31, 2017** when it was served its copy thereof. From the time it was given notice of the error **until August 29, 2017**, the time the CIR filed its Memorandum, the CIR did not even attempt to rectify the same by filing the correct verification and certification against forum shopping pertaining to this case. Neither did the CIR address this in his Memorandum."



¹ G.R. No. 203750, June 06, 2016.

² Fernandez v. Villegas, G.R. No. 200191, August 20, 2014.

However, this was not even addressed and no explanation was offered for this glaring neglect in petitioner's Motion for Reconsideration. Considering that respondent devoted eight (8) pages discussing the defective Verification and Certification of Non-forum Shopping in his Comment, it could hardly be missed.

Atty. Somera's Sworn Statement does nothing to explain why petitioner overlooked a jurisdictional requirement that was required for the perfection of petitioner's appeal for months on end. At most, it states that he reported for duty at his new assignment on **March 14, 2018**, and that he endeavored to finish all pending pleadings of the cases he handles to ease the burden of the lawyers that would subsequently handle his cases.

A perusal of the Memorandum of petitioner, however, filed on **August 29, 2017**, shows that it was already signed by another handling lawyer, Atty. Rowell B. Vicente, who presumably read and studied respondent's Comment to the Petition prior to preparing petitioner's Memorandum, and yet, said or did nothing to address the defect that was already brought to their attention.

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights.³ Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.⁴

Petitioner's belated efforts to remedy his fatal mistake and gross negligence cannot be countenanced under the guise of a liberal application of the rules.

We reiterate the following discussion in the Decision for emphasis, thus:

"In *Shipside Incorporated v. Court of Appeals, et al.*,⁵ 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. 

³ *Philippine Savings Bank vs. Papa*, G.R. No. 200469, January 15, 2018.

⁴ *Limpot vs. Court of Appeals*, G.R. No. L-44642, February 20, 1989.

⁵ G.R. No. 143377, February 20, 2001.

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 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.'

From the foregoing, it follows 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.

It is well-settled that the right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege and may be exercised only in the manner and in accordance with the provisions of law.⁶ In *Macapagal vs. People*,⁷ the

⁶ *Fenequito v. Vergara Jr.*, G.R. No. 172829, July 18, 2012, 677 SCRA 113, 117.

⁷ 717 SCRA 425, 433-434 (2014).

Supreme Court ruled that the perfection of an appeal in the manner laid down by law is mandatory and jurisdictional, to wit:

'It is the duty of counsel to make sure of the nature of the errors he proposes to assign, to determine which court has appellate jurisdiction, and to follow the requisites for appeal. **Any error in compliance may be fatal to the client's cause. It should be stressed that the right to appeal is neither a natural right nor a part of due process. It is merely a procedural remedy of statutory origin and may be exercised only in the manner prescribed by the provisions of law authorizing its exercise.** The requirements of the rules on appeal cannot be considered as merely harmless and trivial technicalities that can be discarded at whim. In these times when court dockets are clogged with numerous litigations, parties have to abide by these rules with greater fidelity in order to facilitate the orderly and expeditious disposition of cases.' (Emphasis supplied)''

Corollarily, the right to appeal is forfeited by the litigant who does not comply with the manner prescribed by the Rules.⁸ The perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and noncompliance with such legal requirements is fatal and has the effect of rendering final and executory the judgment of the court below⁹ and deprives the appellate court of jurisdiction to entertain the appeal.¹⁰

As held by the Supreme Court in a long line of cases:

"[T]he bare invocation of the interest of substantial justice is not some magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction."¹¹

⁸ *Bejarasco, Jr. vs. People*, 641 SCRA 328 (2011).

⁹ *Alto Soles Corp. vs. IAC*, 197 SCRA 618 (1991); *Laza vs. Court of Appeals*, 269 SCRA 654 (1997); *Cabellan vs. Court of Appeals*, 304 SCRA 119 (1999); *Yalong vs. People*, 704 SCRA 195 (2013).

¹⁰ *Cadena vs. Civil Service Commission*, 663 SCRA 160 (2012).

¹¹ *Daikoku Electronics Phils., Inc. vs. Raza*, G.R. No. 181688, June 5, 2009.

WHEREFORE, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

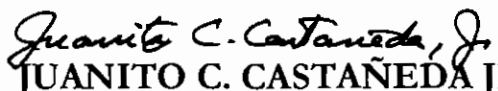


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(Inhibited)

ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTAÑEDA JR.
Associate Justice


ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


CATHERINE T. MANAHAN
Associate Justice