

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PETRON CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5531

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 09 1997



X - - - - - X

RESOLUTION

Before Us is a motion to dismiss filed by respondent on July 2, 1997 praying that the petition for review filed by petitioner be dismissed on the ground of failure to comply with the requirement of forum-shopping as prescribed by Administrative Circular No. 04-94 of the Supreme Court, CTA Circular No. 1-94 and now Section 5, Rule 7 of the New Rules of Civil Procedure which took effect on July 1, 1997, which provides:

"Section 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 learn thereafter that the same or similar action or claim has been filed or is pending, he shall

RESOLUTION -
C.T.A. CASE NO. 5531

- 2 -

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 willful 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." (Underscoring supplied)

Petitioner, on his part, pleads for liberal application of the rules. It cites the case of **Leonor Udan vs. Hon. Quirico Amon**, 23 SCRA 837, in contending that "[w]here the rules are merely secondary in importance and are made to override the ends of justice; the technical rules had been misapplied to the prejudice of the substantial right of a party, said rigid application cannot be countenanced."

We disagree.

The foregoing rule states categorically that the failure to comply with the requirement against forum-shopping shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be a cause for the dismissal of the case. This sounds

mandatory and does not admit any exception, hence, must be implemented. The rule unmistakably indicates the intention and determination of the Supreme Court to strictly require the certification against forum-shopping. To allow petitioner to belatedly submit said certification would be tantamount to an amendment of its petition, which act is not permitted by the rule.

It is apropos to stress at this point that the requirement against forum-shopping has long been established and the present 1997 Rules of Civil Procedure merely reiterated and formalized the prohibition and provided the appropriate sanction of dismissal of a case and such other administrative and criminal actions, as the case may be, against would be transgressors.

Forum-shopping has been characterized as an act of malpractice that is prohibited and condemned as trifling with the courts and abusing their processes. It constitutes improper conduct which tends to degrade the administration of justice. It has also been aptly described as deplorable because it adds to the congestion of the already heavily burdened dockets of the courts. (Chemphil Export and Import Corp. vs. Court of Appeals, 251 SCRA 257) For these reasons, the certification against forum-shopping bears paramount importance in curbing said malpractice and constitutes a safeguard in

RESOLUTION -
C.T.A. CASE NO. 5531

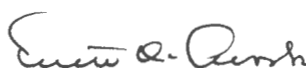
- 4 -

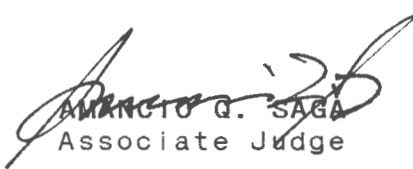
the orderly, expeditious and effective administration of justice.

Answering the question on retroactive application of the New Rules of Civil Procedure, it is submitted that since there are no vested rights in rules of procedure, the same can validly apply to pending actions. It has been held that " a person has no vested right in any particular remedy, and a litigant cannot insist on the application to the trial of his case, whether civil or criminal, of any other than the existing rules of procedure." (Concepcion vs. Garcia, 54 Phil. 81, 83 as cited in Statutory Construction by Agpalo, 2nd ed., p. 269) Besides, it must be noted as discussed above that the rule is basically a reiteration of previous circulars issued way before the filing of the instant case. Hence, there is really no retroactivity to speak of in the first place.

ACCORDINGLY, in view of the foregoing, respondent's motion to dismiss is hereby **GRANTED**. Petition for Review is hereby **DISMISSED** without prejudice.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Judge


RAMONITO Q. SAGA
Associate Judge


RAMON O. DE VEYRA
Associate Judge