REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

LUZON HYDRO CORPORATION, *Petitioner,* - *versus* - **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.*	**CTA CASE NO. 9183** Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** and **RINGPIS-LIBAN,** *JJ.* **Promulgated:** JUN 20 2016 8:28 a.m.

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RESOLUTION

For resolution is petitioner's "Motion for Reconsideration," filed on May 11, 2016, with respondent's "Comment/Opposition (Re: Petitioner's Motion for Reconsideration)" ("Comment"), filed on May 26, 2016.

On November 6, 2015, petitioner, through counsel, filed the instant Petition for Review.

On November 26, 2015, the Court issued a Summons to respondent.

On January 26, 2016, respondent filed her Answer.

On January 28, 2016, the Court issued a Notice of Pre-trial Conference setting the case for Pre-trial on April 12, 2016, which was received by respondent and petitioner on February 5 and 10, 2016, respectively.

On April 6, 2016, respondent filed Respondent's Pre-trial Brief.

On the scheduled Pre-trial Conference on April 12, 2016, only counsel for respondent, Atty. Rowell B. Vicente ("Atty. Vicente"), who presented his Special Power of Attorney, appeared. On motion of Atty. Vicente, the Court dismissed the Petition for Review for failure of petitioner to file its Pre-trial Brief within the period specified in the Notice of Pre-trial Conference and to appear during the Pre-trial Conference, despite notice. This was confirmed in Resolution dated April 18, 2016.

On April 14, 2016, Atty. Ma. Girlie B. Aserit, of Balmeo and Go Law Offices, filed her Entry of Appearance.

On April 20, 2016, Atty. Leonidas F. Balmeo, of Balmeo and Go Law Offices, filed a Motion to File Reply.

On May 6, 2016, Balmeo and Go Law Offices filed a Notice of Withdrawal of Counsel.

On May 11, 2016, Attys. Euney Marie J. Mata-Perez, Richelle Dianne R. Patawaran, and Jan Louenn L. Lumanta from Mata-Perez & Francisco Attorneys-at-Law, filed their Entry of Appearance, together with the instant Motion for Reconsideration.

In its Motion for Reconsideration, counsel for petitioner states that it recently engaged its services as new counsel; that while a client is generally bound by the action of his counsel in the management of a litigation, as well as by the attorney's mistake or negligence in procedural technique, such rule is to serve as an instrument to advance the ends of justice; that given the circumstances of the case, this rule must be relaxed in order to prevent a manifest miscarriage of justice.

It argues that based on prevailing jurisprudence, the rule that the client is bound by the mistakes of his counsel may be set aside when:

a. the reckless or gross negligence of counsel deprives the client of due process of law; or

b. its application will result in outright deprivation of the client's liberty or property; or

c. the interests of justice so require, and accord relief to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence.

It asserts that the former counsel recklessly and grossly neglected its duty to its client when it failed to file a pre-trial brief and to appear before the Court during pre-trial conference for no justifiable reason; that its client was deprived due process of law when its case was dismissed in open court; and that interests of justice require that it should not suffer loss of its property by reason of its former counsel's gross and palpable mistake and negligence.

In her Comment, respondent avers that the dismissal of the present case was proper, pursuant to *Section 6, Rule 18 of the Rules of Court* ("Rules"); that the rules on pre-trial were designed to secure the just, speedy, and inexpensive disposition of an action; that the parties are required to file their respective pre-trial briefs so that the issues for resolution and facts admitted or may be subject of stipulation are laid down; that strict compliance with the Rules has been held mandatory and imperative; that relaxation or suspension of the Rules should only be for persuasive reasons and only for meritorious cases; that based on the record, the case was set for Pre-trial Conference as early as January 2016, thus petitioner had ample time to prepare for the pre-trial conference that was scheduled on April 12, 2016; and that the former counsel filed its withdrawal of appearance only on May 6, 2016 and the present counsel filed its entry of appearance only on May 11, 2016.

The Court will now proceed to resolve petitioner's Motion for Reconsideration.

Sections 4, 5 and 6, Rule 18 of The 1997 Rules of Civil Procedure is instructive, to wit:

> **Sec. 4.** *Appearance of parties.* – It shall be the duty of the parties and their counsel to appear at the pre-trial. <u>The non-appearance of a party may be excused only if a valid cause is</u>

shown therefor[1] or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Sec. 5. *Effect if failure to appear.* - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

Sec. 6. *Pre-trial brief.* - The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

(a) xxxx

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

The provisions above-cited put emphasis on the mandatory nature of filing the pre-trial brief at least three (3) days prior to the pre-trial conference, and of appearing at the pre-trial conference. Admittedly, the rule thus stated admits of exceptions. Thus, in cases where the counsels mistake is so great and serious that the client is prejudiced and denied his day in court or when he is guilty of gross negligence resulting in the clients deprivation of his property without due process of law, the client is not bound by his counsels mistakes and the case may even be reopened in order to give the client another chance to present his case.[2] As such, the test herein is whether their former counsel's negligence deprived the petitioners of due process of law.[3]

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[1] Underscoring ours.
[2] *Juani vs. Alarcon,* G.R. No. 166849, September 5, 2006, 501 SCRA 135.
[3] *Sofio, et al., vs. Valenzuela, et al.,* G.R. No. 157810, February 15, 2012, 666 SCRA 55.

In the instant case, the Court notes that the dismissal of the case was not due to causes attributable to petitioner, but rather to the gross negligence of its former counsel. Records disclose that Notice of the Pre-trial Conference set on April 12, 2016 was received by Balmeo and Go Law Offices on February 10, 2016; and that respondent filed her Pre-trial Brief on April 6, 2016, which was delivered to Balmeo and Go Law Offices on the same date. Thus, it had ample time to prepare the required pre-trial brief, but it did not do so. It did not even offer an explanation why it failed to file the required Pre-trial Brief nor why it failed to appear at the Pre-trial Conference which led to the dismissal of its client's case.

Given the foregoing circumstances, the Court views the actions of petitioner's former counsel to be detrimental to its interests depriving it of the opportunity to present its case.

Section 8[4] *of Republic Act No. 1125*,[5] as amended, provide that proceedings in the Court of Tax Appeals shall not be governed strictly by technical rules of evidence.[6] Moreover, the Supreme Court ruled that technicalities should not be used to defeat substantive rights, especially those that have been established as a matter of fact.[7]

WHEREFORE, in light of the foregoing and in the interest of substantial justice, petitioner's "Motion for Reconsideration" is hereby **GRANTED.** Let a Pre-trial Conference be set on **October 4, 2016, at 9:00 a.m.** As prayed for, petitioner is granted at least three (3) days prior to the scheduled Pre-trial Conference, to file and serve to the other party, its Pre-trial Brief.

SO ORDERED.

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[4] SEC. 8. *Court of Record; seal; proceedings.* – The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceeding shall not be governed strictly by technical rules of evidence.

[5] *An Act Creating the Court of Tax Appeals.*

[6] *Filinvest Development Corporation v. Commissioner of Internal Revenue, et al.*, G.R. No. 146941, August 9, 2007, 529 SCRA 605.

[7] *Id.*

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice