

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

AVALOQ PHILIPPINES
OPERATING HEADQUARTERS,
Petitioner,

CTA CASE NO. 10617

Members:

- versus -

UY, *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, JJ.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 05 2022

10:49 AM

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RESOLUTION

During the Pre-trial Conference on 27 April 2022, only the counsel for respondent Commissioner of Internal Revenue (**respondent**) appeared. Upon motion of respondent, the Court dismissed the case for failure of petitioner Avaloq Philippines Operating Headquarters (**petitioner**) to file its Pre-Trial Brief and the failure of its counsel to attend the pre-trial despite notice.

On 04 May 2022, petitioner, through counsel – Cabrera & Company, received the Order dated 27 April 2022¹, informing the latter that the instant case was dismissed pursuant to Sections 5 and 6 of the 2019 Amendments to the 1997 Rules of Civil Procedure.²

On 10 May 2022, the Court received petitioner's "Motion for Reconsideration with Motion for Leave of Court to Admit Attached Pre-Trial Brief (Re: Order of Dismissal dated 27 April 2022)"³ (**MR**). There, petitioner claimed that its counsel is unaware of the Notice of Pre-Trial Conference (**Notice**) and he or she learned of the setting only from the 27 April 2022 Order dismissing the case.

¹ Division Docket, p. 507.

² A.M. No. 19-10-20-SC.

³ Division Docket, pp. 508-515.

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Petitioner also claimed that the Notice dated 03 March 2022 was received in its mailing room on 10 March 2022. It was endorsed to Mr. Pacifico Toledo, Jr. (**Toledo**), one of the counsel's liaison officers, on 14 March 2022. Allegedly, Toledo failed to endorse the Notice to any of the counsels as he may have lost it. To prove his allegation, petitioner attached the *Sinumpaang Salaysay* (**Salaysay**) of Toledo⁴ to its MR. Petitioner thus pleads that it has no intention to disobey or disrespect any lawful orders of the Court and prays that the Order dated 27 April 2022 be reconsidered in the interest of substantial justice.

On 17 May 2022, the Court issued a Resolution ordering respondent to comment on petitioner's MR within ten (10) days from notice thereof. However, *per* Records Verification dated 16 June 2022, respondent did not file any comment.

We resolve.

Sections 4, 5 and 6 of Rule 18 of the 2019 Amendments to the 1997 Rules of Civil Procedure⁵ (**Revised Rules of Court**) read as follows:

...

Sec. 4. Appearance of Parties. — It shall be the duty of the parties and their counsel to appear at the pre-trial, court-annexed mediation, and judicial dispute resolution, if necessary. The non-appearance of a party and counsel may be excused only for acts of God, force majeure, or duly substantiated physical inability.

A representative may appear on behalf of a party, but shall be 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 documents.

Sec. 5. Effect of failure to appear. — When duly notified, the failure of the plaintiff and counsel to appear without valid cause when so required, pursuant to the next preceding Section, shall cause the 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 and counsel shall be cause to allow the plaintiff to present his or her evidence *ex-parte* within ten (10) calendar days from termination of pre-trial, and the court to render judgment on the basis of the evidence offered.

⁴ Annex "A" to the Motion for Reconsideration, Division Docket, p. 516.

⁵ Supra at note 2.

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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) calendar days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others: ...

...

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.⁶

...

Section 5 of the Revised Rules of the Court of Tax Appeals (RRCTA) also provides:

...

SEC. 5. Procedure in civil cases. — ...

...

Failure to file the pre-trial brief or to comply with its required contents shall have the same effect as failure to appear at the pre-trial.⁷

...

Indubitably, pursuant to the aforequoted provisions, the non-appearance by the plaintiff and his or her counsel in the pre-trial shall cause the dismissal of the case. More so, the failure to file the pre-trial brief shall have the same effect as the non-appearance of the party. However, non-appearance of a duly notified party may be excused if there appears a valid cause.

In the instant case, the failure of the petitioner's counsel to file the pre-trial brief and appear during the pre-trial conference is claimed to have been caused by the counsel's non-receipt of the Notice from the liaison officer (Toledo). To attest the said fact, Toledo has sworn under oath, through his *Sinumpaang Salaysay*, that he indeed failed to endorse the Notice to the counsel concerned. Having sworn under oath to make himself accountable if found lying, the Court is inclined to excuse the absence of petitioner's counsel during the said pre-trial conference and its failure file the pre-trial brief.

⁶ Emphasis supplied.

⁷ Emphasis supplied.

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Moreover, petitioner's intent to pursue the case is apparent. Upon receipt of the Order dismissing the case, it immediately filed this MR and attached its Pre-Trial Brief⁸ to comply with the directives of the Court. Thus, while faithful compliance with the rules aforementioned is undoubtedly desirable, they may be relaxed in cases where their application would frustrate, rather than facilitate, the ends of justice.⁹

In *Bank of the Philippine Islands v. Domingo R. Dando*¹⁰, the Supreme Court ruled:

...

The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.

This is not to say that adherence to the Rules could be dispensed with. However, exigencies and situations might occasionally demand flexibility in their application. In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merit. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as basis of decisions. In that way, the ends of justice would be better served. For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.¹¹

...

Accordingly, in the interest of substantial justice and in order to afford the parties the opportunity to fully ventilate their cases, this Court finds it proper to grant petitioner's MR.

⁸ Division Docket, pp. 519-532.

⁹ *Angelina Chua, et al. v. Spouses Santiago Cheng and Avelina Sihiyon*, G.R. No. 219309, 22 November 2017.

¹⁰ G.R. No. 177456, 04 September 2009.

¹¹ Emphasis supplied.

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WHEREFORE, petitioner's "Motion for Reconsideration with Motion for Leave of Court to Admit Attached Pre-Trial Brief (Re: Order of Dismissal dated 27 April 2022)" is hereby **GRANTED**. Set the pre-trial conference on **03 October 2022 at 1:30 p.m.**

The pre-trial briefs filed by respondent and petitioner dated 15 March 2022 and 06 May 2022, respectively, are **NOTED**.

SO ORDERED.



ERLINDA P. UY
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



LANEE S. CUI-DAVID
Associate Justice