

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

PURECHEM CORPORATION,

Petitioner,

CTA Case No. 9653

Members:

-versus-

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**

Promulgated:

Respondent.

APR 18 2018

9:45 AM / *[Signature]*

X- - - - - X

R E S O L U T I O N

MANAHAN, J.:

To be resolved is petitioner's **Motion for Reconsideration**¹ without respondent's comment² despite due notice.³ Said motion prays for the reconsideration and setting aside of this Court's Order dated February 1, 2018 which dismissed the instant case for failure of petitioner's counsel to appear at the scheduled pre-trial and for its failure to file the required pre-trial brief.⁴

Petitioner also prays that this Court grant its Leave of Court allowing it to file its Pre-Trial Brief attached as Annex A and, to reopen and continue the case for further proceedings and conduct trial on the merits.⁵

Petitioner explains that the failure of petitioner's counsel to file the pre-trial brief and attend the scheduled pre-trial conference was through mere inadvertence and excusable because the Associate of the then counsel (Lapinid & Lapinid *[Signature]*

¹ Docket, CTA Case No. 9653, pp. 109-116.

² *Id.*, Records Verification dated March 26, 2018, p. 126.

³ *Id.*, Notice of Resolution dated March 2, 2018, p. 124; Resolution dated March 2, 2018, p. 125.

⁴ *Id.* at 108.

⁵ *Id.* at 115.

Law Offices) of the petitioner, Atty. Marites S. Candido, who was signing the pleadings in this case had been appointed as Board Member of the Movie and Television Review and Classification Board (MTRCB) on October 23, 2017 and assumed office on November 6, 2017. The only remaining practicing lawyer of the then petitioner's counsel was unable to sign pleadings due to lacking requirements in Mandatory Continuing Legal Education. Thus, it was constrained to belatedly look for another legal counsel or law firm to represent it before this Court.

Petitioner asserted that the delay by petitioner's then legal counsel in informing it of such circumstance as well as the difficulty in looking for a legal counsel or law firm specializing in taxation practice and BIR cases contributed to the delay or non-filing of the pre-trial brief and non-appearance during the pre-trial conference.

We deny the motion.

The records of the case reveal that the pre-trial conference was scheduled twice, namely, on January 18, 2018⁶ and February 1, 2018.⁷ On both scheduled dates, petitioner did not appear nor submit any written manifestation informing this Court of the alleged circumstances despite due notice. Hence, the dismissal of the instant case.

In the case of *Ireneo M. Santos v. Manuel S. Rustia*,⁸ for the alleged lapses or negligence to be considered excusable, the one who alleged such should have observed the standard care required under the prevailing circumstances, to wit:

Corpus Juris, Vol. 45, section 852 has to say the following, applicable a *fortiori* to excusable negligence:

Negligence, that is, a failure to comply with some duty of care owed by one to another, is a mixed question of law and fact, of standards of care and compliance therewith, involving the preliminary question as to whether defendant owed any duty of care to plaintiff, and leaving it for the jury to decide the ultimate facts of negligence, subject to the exceptions hereinafter stated. Where the standard of care is fixed and *dm*

⁶ Docket, Notice of Pre-Trial Conference dated December 4, 2017, pp. 96-97.

⁷ *Id.*, Order dated January 18, 2018, p. 104.

⁸ G.R. No. L-4917-R dated October 31, 1951

the measure of duty is defined by the law and is the same under all circumstances, and where compliance therewith is proved or disproved by uncontradicted evidence or undisputed facts from which only one inference can reasonably be made, the court may declare defendant to be guilty or not guilty of negligence as matter of law. Cases, where the standard of care is fixed, go to the jury only where the evidence of compliance rests on contradictory evidence or upon disputed facts. But where the standard of duty is not fixed, but variable, shifting with the circumstances, as is generally the case, it is for the jury to determine, under instructions, what the standard of care required in a particular case is, and whether there has been a compliance with such requirements

In the case at hand, the petitioner through its counsel has the duty to inform this Court of petitioner's predicament prior to the scheduling of the pre-trial conference considering that the signing counsel of the law firm had already assumed office on November 6, 2017, almost a month before the notice of pre-trial conference was issued on December 4, 2017.

However, petitioner's counsel still failed to perform its duty to its client and to this Court despite the two re-scheduled dates of the pre-trial. Hence, such failure was due to petitioner counsel's inexcusable negligence and such negligence bounded the petitioner as pronounced in the case of *Rogelio Guevarra et al. v. Spouses Bautista et al.*,⁹ to wit:

Unfortunately for the petitioners, negligence, to be excusable, must be such that ordinary diligence and prudence could not have guarded against it. Their counsels oversight can hardly be characterized as excusable, much less unavoidable. **It is settled that clients are bound by the mistakes, negligence and omission of their counsel ...** (*Emphasis supplied*)

Petitioner should be aware that the non-appearance in the pre-trial conference as well as non-submission of the pre-trial brief is fatal to its case. Sections 5 and 6, Rule 18 of the Rules of Court provide that:

Section 5. Effect of failure to appear. — The failure of the plaintiff to appear when so required pursuant to the *am*

⁹ G.R. No. 148435 dated November 28, 2008.

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.

Section 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:

XXX XXX XXX

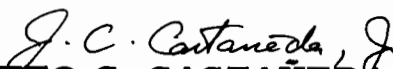
Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.
(*Emphasis supplied*)

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** is hereby **DENIED** for lack of merit. Accordingly, the assailed Order promulgated on February 1, 2018 is hereby **AFFIRMED**.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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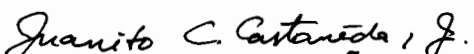
Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.
(*Emphasis supplied*)

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit. Accordingly, the assailed Order promulgated on February 1, 2018 is hereby **AFFIRMED**.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice