

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

SECOND DIVISION

**LAPANDAY HOLDINGS
CORPORATION,**

Petitioner,

- versus -

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

CTA CASE NO. 8932

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUL 23 2015

10:45 AM



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RESOLUTION

For resolution are:

1. Petitioner's **Motion for Reconsideration**, filed on May 11, 2015, with respondent's **Comment/Opposition (To Petitioner's Motion for Reconsideration)**, filed through registered mail on June 11, 2015 and received by the Court on June 25, 2015, and **Petitioner's Reply to the Comment/Opposition of the Respondent**, filed on June 29, 2015; and
2. Respondent's **Motion for Extension of Time to File Comment**, filed through registered mail on June 1, 2015 and received by the Court on June 15, 2015.

Acting on respondent's Motion for Extension of Time to File Comment, the Court **GRANTS** the same for reasons stated in the said motion. Accordingly, respondent's Comment/Opposition (To Petitioner's Motion for Reconsideration) is **ADMITTED**.

We now resolve petitioner's Motion for Reconsideration of the Court's Resolution dated April 16, 2015 dismissing the case for failure of petitioner's counsel to appear during pre-trial, despite notice, and for failure of petitioner to file its pre-trial brief.

On March 11, 2015, respondent filed an Urgent Ex Parte Motion to Reset Pre-Trial Conference¹, with a prayer to reset the pre-trial conference, previously scheduled on March 19, 2015, into a later date of April 23, 2015. On March 12, 2015, the Court issued an Order² granting respondent's motion, and the pre-trial conference was reset to April 16, 2015, at 1:30 p.m. On the same day, petitioner filed its Motion to Reset Schedule of Pre-Trial³, praying that the pre-trial conference be moved from March 19, 2015 to May 28, 2015. On March 16, 2015, the Court issued an Order⁴, granting petitioner's motion, and restating that the pre-trial conference is reset to April 16, 2015, at 1:30 p.m.

On April 14, 2015, petitioner filed a Very Urgent Manifestation with Prayer to Grant Original Motion⁵, reiterating its previous prayer to reset the schedule of the pre-trial to May 28, 2015, at 1:30 p.m. During the hearing on April 16, 2015, only counsel for respondent appeared, while counsel for petitioner failed to appear despite notice. For failure of petitioner's counsel to appear, despite notice, and for failure of petitioner to file its pre-trial brief, counsel for respondent moved for the dismissal of this case. Finding merit in the motion, the Court granted the same in open court and was confirmed in the Court's Resolution⁶ dated April 16, 2015.

Hence, this Motion for Reconsideration.

Petitioner, in its motion, claims that it was only on April 10, 2015 that the counsel for petitioner received the Order granting the Motion to Reset Schedule of Pre-Trial. Petitioner further contends that the notices received from the Court are usually rush and short notices considering the location of petitioner's counsel, which is in Davao City.

¹ Docket, pp. 165-166

² Docket, p. 167.

³ Docket, pp. 168-171.

⁴ Docket, p. 173.

⁵ Docket, pp. 179-186.

⁶ Docket, p. 198.

Respondent, on the other hand, opposes petitioner's motion for being self-serving, misplaced, unfounded and bereft of factual and legal basis. According to respondent, petitioner clearly violated the mandatory rules under Sections 4, 5, and 6, Rule 18 of the Rules of Court in relation to Sections 2 and 5, Rule 11 of the Revised Rules of the Court of Tax Appeals.

We reconsider the assailed Resolution.

The Court is convinced that petitioner's counsel was not entirely unmindful of the Court's orders. Upon examination of the records, petitioner filed on April 14, 2015, or two days prior to the scheduled pre-trial, a Very Urgent Manifestation with Prayer to Grant Original Motion, manifesting that she is currently loaded with other cases filed by and against the subsidiaries of the petitioner, which she must attend to, and that the documents to support the case are so voluminous, which would require ample time to prepare. Considering also the location of petitioner's counsel which is in Davao City, We find petitioner's explanation acceptable.

Moreover, it can be gleaned from records that petitioner demonstrated its interest to pursue this case through the submission of *Pre-Trial Brief for the Petitioner*⁷ filed on May 11, 2015, and subsequently followed by the filing on May 18, 2015 of the *Judicial Affidavit* of its witness.

In the case of *Anson Trade Center, Inc. et al. v. Pacific Banking Corporation, Represented by Its Liquidator, the President of the Philippine Deposit Insurance Corporation*⁸, the Supreme Court upheld the ruling of the Court of Appeals which resuscitated a civil case despite the failure of the party to attend the pre-trial conference. It held:

"Pertinent provisions of Rule 18 of the Revised Rules of Court on Pre-Trial read:

SEC. 4. *Appearance of parties.* - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative

⁷ Docket, pp. 199-205.

⁸ G.R. No. 179999, March 17, 2009.

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 of 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.

Pursuant to the afore-quoted provisions, non-appearance by the plaintiff in the pre-trial shall be cause for dismissal of the action. However, every rule is not without an exception. In fact, Section 4, Rule 18 of the Revised Rules of Court explicitly provides that the non-appearance of a party may be excused if a valid cause is shown therefor. We find such a valid cause extant in the case at bar.

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In *Bank of the Philippine Islands v. Court of Appeals*, we ruled that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules, courts should decide to dispense rather than wield their authority to dismiss.⁹ (underscoring ours)

Here, petitioner did not show a pattern or scheme to delay the disposition of the case. It is to be noted that "unless the conduct of the party is so negligent, irresponsible, contumacious, or dilatory as for non-appearance to provide substantial grounds for dismissal, the courts should consider lesser sanctions which would still achieve the desired end. xxx In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court."¹⁰

⁹ *Ibid.*

¹⁰ *Linda M. Chan Kent v. Dionesio C. Micarez, et al.*, G.R. No. 185758, March 9, 2011.

In addition, the purpose of technical rules is to serve the interests of justice, and thus, its rigid application may be dispensed with when substantial justice and fair play would be obstructed. In the case of *Go vs. Tan*¹¹, the Supreme Court held:

"The fundamental purpose of procedural rules is to afford each litigant every opportunity to present evidence on his behalf in order that substantial justice is achieved. Court litigations are primarily for the search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out such truth. The dispensation of justice and vindication of legitimate grievances should not be barred by technicalities."

Thus, "what should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities."¹² In light of the foregoing, the Court deems it proper to give petitioner the fullest opportunity to establish the merits of its case.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **GRANTED**. Accordingly, set the pre-trial conference on September 3, 2015 at 1:30 p.m.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

¹¹ *Go v. Tan*, G.R. No. 130330, September 26, 2003.

¹² *Hacienda Cataywa/Manuel Villanueva, et al. v. Rosario Lorezo*, G.R. No. 179640, March 18, 2015 citing *Obut v. Court of Appeals*, G.R. No. L-40535, April 30, 1976.