

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

SECOND DIVISION

XEPIL PACKAGING
represented by SUAT TEE D.
POA,

Petitioner,

-versus-

**BUREAU OF INTERNAL
REVENUE, REGION 7A,
QUEZON CITY,**

Respondent.

CTA CASE NO. 10701

Members:

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

Promulgated:

AUG 18 2022

8:00 AM

X- - - - - X

RESOLUTION

Before this Court are petitioner's **Motion for Reconsideration** (Motion) filed on July 1, 2022, with respondent's **Comment/Opposition to Petitioner's Motion for Reconsideration** attached to the *Manifestation* filed on July 20, 2022; and petitioner's **Reply** filed on July 27, 2022.

Petitioner moves that the Order dated June 6, 2022, dismissing the case due to its failure, as well as its counsel, to appear during the pre-trial conference despite due notice be reconsidered and set aside on the ground of counsel's unexpected ailment on the said date as shown by his attached medical certificate.¹ Petitioner also alleges that it only received a copy of the records on June 1, 2022, so it was constrained to ask for an extension of time to file the memorandum and the pre-trial brief. Petitioner avers that substantial justice should not be sacrificed in the sheer altar of technicality and that cases should be decided on the merits.

Respondent opposes that under Section 5,² Rule 11 of the Revised Rules of the Court of Tax Appeals (RRCTA), in relation

¹ Annex "A" of the Motion for Reconsideration.

² SEC. 5. *Procedure in civil cases.* – In civil cases, the parties shall submit, at least three days before the pre-trial, their respective pre-trial briefs containing the following:

RESOLUTION

CTA Case No. 10701

Xepil Packaging represented by Suat Tee D. Poa vs. Bureau of Internal Revenue, Region 7A, Quezon City

Page **2** of **8**

X-----X

to Section 5, Rule 18³ of the Revised Rules of Court, failure to appear at the pre-trial and to file the pre-trial brief when so required shall cause the dismissal of the action. Respondent, citing *Dy Teban Trading Inc. vs. Dy et al.*,⁴ adds that “when courts set trial dates and a lawyer finds that he or she may not be able to attend the hearing, the proper course of action is to move for the court to set the hearing at another date. However, even when a motion for postponement is filed before the court, there is never an obligation for the court to grant it. Far from being a right, the grant of a motion for postponement is a privilege addressed to the court’s sound discretion.”

Based on the records, below is the timeline of the events leading to the dismissal of this case:

December 10, 2021	Petitioner filed its Petition for Review with Prayer for Preliminary Mandatory Injunction.
January 3, 2022	The Court issued Summons to Respondent.
March 2, 2022	The hearing date of petitioner’s Prayer for Preliminary Mandatory Injunction. Petitioner and its counsel failed to appear; only respondent’s counsels appeared. The Court granted petitioner 20 days and respondent 30 days therefrom to file their respective memoranda. After receipt of the memoranda or lapse of the period given, petitioner’s Motion for Mandatory Injunction shall be submitted for resolution.
March 7, 2022	Respondent filed his Entry of Appearance with Motion for Extension of Time to File Answer to Petition for Review.
March 9, 2022	The Court granted respondent’s Motion for Extension of Time to File Answer to Petition for Review. It gave respondent a non-extendible period of thirty (30) days from March 10, 2022, or until April 9, 2022, to file his Answer.
March 28, 2022	- Petitioner filed a Motion for Extension to submit its Memorandum. - Respondent filed his Memorandum.
April 6, 2022	The Court granted petitioner’s Motion for Extension and gave petitioner fifteen (15) days from notice of transmittal of the BIR Records to the Court to file its memorandum.
April 11, 2022	Respondent filed his Answer with Special and Affirmative Defenses.
April 12, 2022	The Court issued a Notice of Pre-Trial Conference setting the same on June 6, 2022. The said Notice was

The consequence on the party at fault shall be the same as the effect of failure to appear.

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. (Emphasis supplied)

³ 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. ... (Emphasis supplied)

⁴ G.R. No. 185647, July 26, 2017.

RESOLUTION

CTA Case No. 10701

Xepil Packaging represented by Suat Tee D. Poa vs. Bureau of Internal Revenue, Region 7A, Quezon City

Page 3 of 8

X-----X

	received by petitioner on April 21, 2022, and by respondent on April 22, 2022.
April 19, 2022	Respondent filed a Motion for Extension of Time to Elevate BIR Records.
April 20, 2022	The Court granted respondent's Motion for Extension of Time to Elevate BIR Records. It gave respondent a non-extendible period of 30 days from April 21, 2022, or until May 21, 2022, to transmit to the Court the BIR Records of this case.
May 23, 2022	Respondent filed his Compliance submitting the original BIR records of this case, which was served through a licensed courier to petitioner.
May 24, 2022	The Court noted respondent's submission of the entire BIR Records of this case, which petitioner received on May 27, 2022. Counting 15 days from May 27, 2022, petitioner had until June 11, 2022 (Saturday), or until the next working day, June 13, 2022 (Monday) to file its memorandum.
May 31, 2022	Records Verification Report stating that petitioner failed to file its memorandum.
June 3, 2022	Respondent filed his Pre-Trial Brief.
June 6, 2022	Date of pre-trial conference. Petitioner failed to file its pre-trial brief and to appear despite due notice. Only counsels for respondent appeared. Upon respondent's motion, the Court issued an Order dismissing the case.
June 7, 2022	- The Court received petitioner's Manifestation dated June 2, 2022 filed through e-mail on June 4, 2022 (Saturday)⁵ at 9:41 a.m. stating that the pre-trial conference is set on June 6, 2022 at 9:00 a.m. and it just received on June 1, 2022 the BIR records; hence, it prayed for a 15-day extension from June 1, 2022, or until June 16, 2022 to submit <i>only</i> its pre-trial brief. - Petitioner filed a hard copy of the said Manifestation at 2:30 p.m.
June 17, 2022	The Court received petitioner's Manifestation dated June 16, 2022, filed through e-mail on June 16, 2022 at 6:40 p.m. ⁶ praying for an additional 5-day extension from June 16, 2022, or until June 21, 2022 to submit its <i>memorandum</i> and pre-trial brief.
June 21, 2022	Petitioner filed the following: (1) hard copy of the Manifestation dated June 16, 2022; (2) Pre-trial brief; and (3) Memorandum.
June 23, 2022	The Court noted without action petitioner's Manifestations filed on June 7 and 21, 2022, Pre-Trial brief and Memorandum in view of the dismissal of the case as per Order dated June 6, 2022.

⁵ Deemed filed on June 6, 2022 as per CTA EB Resolution No. 4-2021, Pleadings, Motions and Other Court Submissions Filed by Email, February 24, 2021.

...

2. The cut-off time for pleadings, motions, and other court submissions filed by email shall be at 4:30 p.m. which is the same cut-off time for the physical filing of pleadings, motions, and other court submissions. Pleadings, motions, and other court submissions filed by email after the 4:30 p.m. cut-off time shall be considered as filed on the next working day.

⁶ Deemed filed on June 17, 2022 as per CTA EB Resolution No. 4-2021, *id.*

RESOLUTION

CTA Case No. 10701

Xepil Packaging represented by Suat Tee D. Poa vs. Bureau of Internal Revenue, Region 7A, Quezon City

Page 4 of 8

X-----X

The Motion lacks merit.

At the outset, the Motion did not contain a statement of material date as to when petitioner received the Order dated June 6, 2022.⁷ Hence, the Court cannot ascertain whether the Motion is timely filed.

Notwithstanding the fatal defect of the Motion, the RRCTA and the Revised Rules of Court on Pre-Trial,⁸ adopted by the Court in its *En Banc* Resolution 9-2020,⁹ are clear that the failure of petitioner and its counsel to appear during the pre-trial conference and to file a pre-trial brief without a valid cause shall warrant the dismissal of the case.¹⁰ What constitutes a valid cause is subject to the Court's sound discretion and the exercise of such discretion shall not be disturbed except in cases of clear and manifest abuse.¹¹

It then behooves the Court to closely examine the reason propounded by petitioner for its failure to appear at pre-trial. Petitioner, in its Motion, alleged for the first time, that its counsel failed to appear during the pre-trial due to an "unexpected ailment," as evidenced by its counsel's medical certificate dated May 30, 2022, upon consultation with his doctor.

The factual circumstances surrounding this case point to an inescapable conclusion that petitioner's reason is a mere afterthought because if he was sick, he could have brought this matter to the attention of the Court at the first instance seeing as his medical certificate is dated May 30, 2022, which means that the "unexpected ailment" took place seven (7) days before the pre-trial on June 6, 2022.

Only when he filed this Motion on July 1, 2022, or 32 days after he allegedly consulted his doctor did he inform the Court of the reason for his non-compliance. His illness was belatedly alleged in this Motion after the Court's dismissal of the case due to petitioner's failure to appear at the hearing of its Motion for Mandatory Injunction and Pre-Trial Conference despite due

⁷ SEC. 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. **He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question.** (*Emphasis supplied*)

⁸ Rule 18.

⁹ August 7, 2020.

¹⁰ *Supra*, notes 2 and 3.

¹¹ *Philippine Steel Coating Corp. v. Quinones*, G.R. No. 194533, April 19, 2017, citing *Daaco v. Yu*, G.R. No. 183398, June 22, 2015.

RESOLUTION

CTA Case No. 10701

Xepil Packaging represented by Suat Tee D. Poa vs. Bureau of Internal Revenue, Region 7A, Quezon City

Page 5 of 8

X-----X

notice. Petitioner's repeated absences, without giving prior notice to the Court, indicate his scant regard for his duty to appear in court.

In *The Philippine American Life & General Insurance Company v. Enario*,¹² it has been held "that pre-trial cannot be taken for granted. It is more than a simple marking of evidence. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation, and expedition of the trial, if not indeed its dispensation."¹³ It follows then that the pre-trial should not be ignored, as petitioner had.

As a lawyer who must know the mandatory nature of a pre-trial and the adverse consequences of the failure of a party to appear thereat, petitioner's counsel had every opportunity and could have informed the Court of his illness before the scheduled pre-trial, had there been truth to his allegation. He did not. Instead, petitioner's counsel electronically filed his Manifestation on June 4, 2022, Saturday (First Manifestation),¹⁴ which merely asked for a 15-day extension to file petitioner's pre-trial brief without giving *any* justifiable cause, let alone notice, for his non-appearance at the scheduled June 6, 2022 pre-trial, despite referring it at his Manifestation. He did not move to postpone the pre-trial, nor did he mention his illness therein.

Further, petitioner's subsequent Manifestation that was electronically filed on the evening of June 16, 2022¹⁵ (Second Manifestation), which asked for another extension of time to file its pre-trial brief and memorandum, also failed to allege petitioner's counsel's illness, and was likewise filed out of time.

Hence, even if the claim of illness was true, the Court is perplexed as to why petitioner's counsel did not append said medical certificate to his First Manifestation. More, petitioner's counsel failed to give any plausible reason as to why he could not have submitted his medical certificate or filed a motion for postponement seasonably before the pre-trial conference, considering that he was able to file a Manifestation two (2) days before the scheduled pre-trial.

¹² G.R. No. 182075, September 15, 2010.

¹³ *Daaco v. Yu*, G.R. No. 183398, June 22, 2015.

¹⁴ Deemed filed on June 6, 2022 (Monday) as per CTA EB Resolution No. 4-2021, *supra*, note 5.

¹⁵ Deemed filed on June 17, 2022 as per CTA EB Resolution No. 4-2021, *supra*, note 6.

RESOLUTION

CTA Case No. 10701

Xepil Packaging represented by Suat Tee D. Poa vs. Bureau of Internal Revenue, Region 7A, Quezon City

Page 6 of 8

X-----X

In addition, the Court observes that petitioner's First Manifestation,¹⁶ with a sole prayer for a 15-day extension to submit its pre-trial brief, is filed late considering that the deadline for filing the same was on June 3, 2022, or three (3) days before the pre-trial conference.¹⁷ Thereafter, petitioner's Second Manifestation¹⁸ praying for an additional five (5) days to file not only its pre-trial brief but also its memorandum, the deadline of which already lapsed on June 13, 2022,¹⁹ cannot be acted upon since the case was already dismissed as early as June 6, 2022.

Also, it has not escaped the Court's attention that in its Second Manifestation, petitioner claims that it had requested in its First Manifestation, a 15-day extension to submit its memorandum. To the contrary, petitioner's First Manifestation only asked for a 15-day extension to submit its pre-trial brief, nothing more.

These foregoing acts show petitioner's counsel deliberate intent to mislead the Court, his manifest failure to keep track of the case he is handling, and his tendency to assume that the Court would grant his requests for extension²⁰ without checking with the Court as to the outcome of his previous appeal,²¹ and foremost, despite the dismissal of the case.

Surely, judicial action must be guided by the principle that a party-litigant must be given the fullest opportunity to establish the merits of his case.²² However, rules of procedure have their own reasons for their existence: they ensure prompt, speedy, and orderly dispensation of justice.²³ When procedural rules are at the point of being abused, such as when the litigant fails to establish a valid cause to postpone the proceedings,

¹⁶ Deemed filed on June 6, 2022 (Monday) as per CTA EB Resolution No. 4-2021, *supra*, note 5.

¹⁷ *Supra*, note 2. Sec. 5, Rule 11, RRCTA: SEC. 5. *Procedure in civil cases.* – In civil cases, the parties shall submit, at least three days before the pre-trial, their respective pre-trial briefs ...

¹⁸ Deemed filed on June 17, 2022 as per CTA EB Resolution No. 4-2021, *supra*, note 6.

¹⁹ The Court's Resolution dated April 6, 2022 granted petitioner's "Motion for Extension" to file Memorandum and gave petitioner fifteen (15) days from notice of the transmittal of the BIR Records to this Court to file a memorandum. On May 27, 2022, petitioner received the Court's Minute Resolution noting respondent's "Compliance" submitting to the Court the entire BIR Records of this case. Counting 15 days from May 27, 2022, petitioner had until June 11, 2022 (Saturday), or until the next working day, June 13, 2022 (Monday) to file its memorandum.

²⁰ See *Sarmiento v. Zaratan*, G.R. No. 167471, February 5, 2007, where the Supreme Court held that "parties and counsel should not assume that courts are bound to grant the time they pray for. A motion that is not acted upon in due time is deemed denied (*Orosa vs. Court of Appeals*, 261 SCRA 376 [1996])."

²¹ See *King v. Joe and Corro*, G.R. No. L-23617, August 26, 1967, citing *Bello v. Fernando*, G.R. No. L-16970, January 30, 1962.

²² *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*, G.R. No. 170488, December 10, 2012.

²³ *Vergara, et al. v. Otadoy, Jr.*, G.R. No. 192320, April 4, 2016.

RESOLUTION

CTA Case No. 10701

Xepil Packaging represented by Suat Tee D. Poa vs. Bureau of Internal Revenue, Region 7A, Quezon City

Page 7 of 8

X-----X

coupled with belated filing of its pleadings, procedural rules cannot and must not be brushed aside.²⁴

It is clear from the records that petitioner, without any valid cause, failed to appear at the hearing of its Motion for Preliminary Injunction and at the scheduled pre-trial conference; failed to file the mandatory pre-trial brief within the given period and failed to file its motions for extension of time to file pre-trial brief and memorandum on time. The repeated lapses on petitioner's part should not be rewarded with the liberal application of the rules.

Anent petitioner's Reply filed on July 27, 2022, petitioner alleges the same arguments in its Motion, *i.e.*, that the failure of the petitioner and counsel to appear during the pre-trial of this case on June 6, 2022 was due to ailment of its counsel; that illness of a party or counsel is a recognized ground for continuance or postponement, and that the policy of the courts is to try and decide cases on the merits not on technicalities and procedural imperfections. Hence, petitioner prays that this case be set for pre-trial.

Section 10, Rule 6 of the Revised Rules of Court provides:

Section 10. Reply. — All new matters alleged in the answer are deemed controverted. If the plaintiff wishes to interpose any claims arising out of the new matters so alleged, such claims shall be set forth in an amended or supplemental complaint. However, **the plaintiff may file a reply only if the defending party attaches an actionable document to his or her answer.** (*Emphasis added*)

Considering that respondent did not attach any actionable document to her Comment/Opposition to Petitioner's Motion for Reconsideration, nor to her Answer with Special and Affirmative Defenses, the filing of a reply is not proper. Besides, the filing of a reply to the Answer had long lapsed under Section 6, Rule 11²⁵ of the Revised Rules of Court when petitioner received the Answer on April 12, 2022.²⁶

Given the foregoing, the Court finds no compelling reason to relax the application of the rules. Petitioner failed to offer

²⁴ *Id.*

²⁵ SEC. 6. *Reply.* — A reply, if allowed under Section 10, Rule 6 hereof, may be filed within fifteen (15) calendar days from service of the pleading responded to.

²⁶ Verified from LBC tracking number 127102616021.

RESOLUTION

CTA Case No. 10701

Xepil Packaging represented by Suat Tee D. Poa vs. Bureau of Internal Revenue, Region 7A, Quezon City

Page **8** of **8**

X-----X

sufficient justification for his failure to appear at the pre-trial conference and his failure to file a pre-trial brief on time. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least *promptly* explain its failure to comply with the rules.²⁷ Petitioner's obstinate disregard of the rules cannot be rationalized by willy-nilly invoking a liberal construction.²⁸ Liberally applying the rules to suit petitioner's benefit is unjustified as "it would be rewarding an act of negligence with undeserved tolerance."²⁹

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit. Petitioner's Reply is **EXPUNGED** from the records for being a prohibited pleading.

SO ORDERED.


ERLINDA P. UY
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

²⁷ *Suico Industrial Corp. v. Honorable Lagura-Yap*, G.R. No. 177711, September 5, 2012, citing *Lapid v. Judge Laurea*, G.R. No. 139607, October 28, 2002.

²⁸ *Id.*, citing *Santos v. Court of Appeals*, G.R. No. 141947, July 5, 2001.

²⁹ *Commissioner of Internal Revenue v. A. Soriano Corporation, et al.*, G.R. No. 113703, January 31, 1997.