

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

**EN BANC**

**XEPIL PACKAGING  
represented by SUAT TEE  
D. POA,**

Petitioner,

**CTA EB NO. 2684  
(CTA Case No. 10701)**

*Present:*

- versus -

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

Respondent.

**DEL ROSARIO, P.J.,  
RINGPIS-LIBAN,  
MANAHAN,  
BACORRO-VILLENA,  
MODESTO-SAN PEDRO,  
REYES-FAJARDO,  
CUI-DAVID,  
FERRER-FLORES, and  
ANGELES, JJ.**

Promulgated:

**OCT 07 2024**

x ----- x

**DECISION**

***FERRER-FLORES, J.:***

Before this Court is a **Petition** filed on September 13, 2022 by **Xepil Packaging, represented by Suat Tee D. Poa (Xepil/petitioner)** against the **Bureau of Internal Revenue Revenue Region 7A Quezon City (BIR/respondent)** assailing the *Order* dated June 6, 2022 (**assailed Order**)<sup>1</sup> and the *Resolution* dated August 18, 2022 (**assailed Resolution**)<sup>2</sup> rendered by the Second Division of the Court of Tax Appeals (CTA).

<sup>1</sup> *Rollo*, p. 9. Signed by (Ret.) Associate Justice Juanito C. Castañeda, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Laree S. Cui-David.

<sup>2</sup> *Id.* at 11 to 18. Signed by (Ret.) Associate Justice Erlinda P. Uy, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Laree S. Cui-David.

## DECISION

*XEPIL PACKAGING represented by Suat Tee D. Poa vs. BUREAU OF INTERNAL REVENUE  
REVENUE REGION 7A, QUEZON CITY  
CTA EB No. 2684 (CTA Case No. 10701)  
Page 2 of 11*

The dispositive portions of the assailed Order and the assailed Resolution read as follows:

*assailed Order:*

Upon motion of respondent's counsel and considering the absence of petitioner's counsel as well as its failure to file a Pre-Trial Brief, the instant Petition for Review is hereby **DISMISSED**. This case is considered **CLOSED** and **TERMINATED**.

**SO ORDERED.**

*assailed Resolution:*

**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.**

## THE PARTIES<sup>3</sup>

Xepil is also the petitioner in CTA Case No. 10701 and with postal address at 16 Economia Street, Bagumbayan, Quezon City.

BIR is the respondent in CTA Case No. 10701 with postal address at Revenue Region 7A Quezon City, 5<sup>th</sup> Floor, Fisher Mall, Quezon Avenue corner Roosevelt Junction, Quezon City.

## THE ANTECEDENT FACTS

Petitioner filed a *Petition* on December 10, 2021, docketed as CTA Case No. 10701 and raffled to the Second Division.<sup>4</sup>

The Notice of Pre-Trial Conference issued by the Court on April 12, 2022, setting the case for Pre-Trial Conference on June 6, 2022, was received by petitioner on April 21, 2022.<sup>5</sup> Despite notice, however, petitioner failed to appear at the scheduled Pre-Trial Conference.<sup>6</sup> Upon motion of respondent during the scheduled Pre-Trial Conference, the Court issued an open order

<sup>3</sup> *The Parties, Petition, Rollo*, p. 2.

<sup>4</sup> Division Docket, pp. 7 to 11.

<sup>5</sup> *Id.* at 104 to 105.

<sup>6</sup> Minutes of the hearing and Order dated June 6, 2022, Division Docket, pp. 121 to 122.

## DECISION

*XEPIL PACKAGING represented by Suat Tee D. Poa vs. BUREAU OF INTERNAL REVENUE  
REVENUE REGION 7A, QUEZON CITY*

CTA EB No. 2684 (CTA Case No. 10701)

Page 3 of 11

dismissing the case for failure of petitioner to appear and file its Pre-Trial Brief.

Petitioner filed a *Manifestation*, through e-mail on June 4, 2022,<sup>7</sup> stating that it received the BIR records only on June 1, 2022 and requesting that it be given additional fifteen (15) days from June 1, 2022, or until June 16, 2022, to submit the Pre-Trial Brief.<sup>8</sup> The hard copy of the *Manifestation* was filed on June 7, 2022.<sup>9</sup>

Petitioner filed another *Manifestation* on June 16, 2022 (*second Manifestation*), via e-mail at 6:40 p.m., praying for an additional five (5) days to submit its Pre-trial Brief.<sup>10</sup> The hard copy of the *second Manifestation* was filed on June 21, 2022.<sup>11</sup> On June 21, 2022, Xepil filed, together with its *Memorandum for Petitioner*, its *Pre-Trial Brief for Petitioner*,<sup>12</sup> which were noted by the Court but without action, in view of the dismissal of the case.<sup>13</sup>

On July 1, 2022, petitioner filed a *Motion for Reconsideration*.<sup>14</sup> Respondent, on the other hand, filed his *Comment/Opposition to Petitioner's Motion for Reconsideration* on July 20, 2022.<sup>15</sup> Petitioner filed a *Reply* on July 27, 2022.<sup>16</sup> The Court in the assailed Resolution denied petitioner's *Motion for Reconsideration* for lack of merit and expunged its *Reply* from the records of the case for being a prohibited pleading.<sup>17</sup>

Hence, the instant *Petition*.

## THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On September 13, 2022, petitioner filed the *Petition*.<sup>18</sup>

The Court *En Banc* ordered petitioner to submit, within ten (10) days from notice, proof of authority of Mr. Suat Tee D. Poa to sign the Verification and Certification of Non-Forum Shopping, proof of authority of Atty. Manuel

<sup>7</sup> June 4, 2022 is a Saturday.

<sup>8</sup> Division Docket, pp. 127 to 130.

<sup>9</sup> *Id.* at 123 to 124.

<sup>10</sup> *Id.* at 131 to 134.

<sup>11</sup> *Id.* at 155 to 156.

<sup>12</sup> *Id.* at 135 to 139.

<sup>13</sup> Resolution dated June 23, 2022, Division Docket, pp. 159 to 160.

<sup>14</sup> Division Docket, pp. 164 to 166.

<sup>15</sup> *Id.* at 177 to 181.

<sup>16</sup> *Id.* at 183 to 185.

<sup>17</sup> *Id.* at 187 to 194.

<sup>18</sup> *Id.* pp. 1 to 6.

## DECISION

XEPIL PACKAGING represented by Suat Tee D. Poa vs. BUREAU OF INTERNAL REVENUE  
REVENUE REGION 7A, QUEZON CITY  
CTA EB No. 2684 (CTA Case No. 10701)  
Page 4 of 11

A. Dalucapas to sign the Petition for Review and a compliant Amended Verification and Certification of Non-Forum Shopping.<sup>19</sup> The order to comply was reiterated in the Resolution dated December 19, 2022.<sup>20</sup>

On December 29, 2022, petitioner filed, via email, an *Ex-Parte Motion to Admit Compliance with Leave of Court*, with attached *Compliance, Amended Verification and Certification of Non-Forum Shopping, Entry of Appearance of Atty. Wilfredo Avila* and the attached corresponding Death Certificate of Atty. Manuel A. Dalucapas and Affidavit of Service.<sup>21</sup> Petitioner filed an *Additional Compliance* on January 6, 2023 via registered mail, which was received by the Court on January 17, 2023 submitting seven (7) copies of the *Compliance, Entry of Appearance and Affidavit of Service*.<sup>22</sup> Hard copies of the foregoing were filed through registered mail on December 29, 2022 and were received by the Court on January 26, 2023.<sup>23</sup>

The Court issued the Resolution dated July 13, 2023 granting petitioner's *Ex-Parte Motion to Admit Compliance with Leave of Court*, admitting the attached *Compliance* and noting its compliance with the Court's Resolution dated October 10, 2022 and December 19, 2022. Moreover, the Court noted the *Entry of Appearance* of Atty. Avila and ordered that all issuances regarding this case be sent to him in his declared address. Petitioner's *Additional Compliance* was likewise noted by the Court. Finally, respondent was directed to file its Comment on the Petition within ten (10) days from notice.<sup>24</sup>

Respondent filed its *Comment (on Petitioner's Petition for Review)* on July 31, 2023.<sup>25</sup> Thereafter, this Court submitted the case for decision on August 22, 2023.<sup>26</sup>

## THE ISSUE

In the *Petition*, the sole assignment of error raised by petitioner is that the Second Division erred in dismissing the *Petition* and denying the petitioner's motion for reconsideration of the dismissal of the *Petition*.

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<sup>19</sup> Resolution dated October 10, 2022, *Rollo*, pp. 20 to 21.

<sup>20</sup> *Rollo* at. 24 to 25.

<sup>21</sup> *Id.* at. 23 to 37.

<sup>22</sup> *Id.* at. 38 to 60.

<sup>23</sup> *Id.* at. 61 to 74.

<sup>24</sup> *Id.* at. 77 to 78.

<sup>25</sup> *Id.* at. 79 to 82.

<sup>26</sup> Minute Resolution, *Rollo*, p. 84.

## DECISION

*XEPIL PACKAGING represented by Suat Tee D. Poa vs. BUREAU OF INTERNAL REVENUE  
REVENUE REGION 7A, QUEZON CITY*

CTA EB No. 2684 (CTA Case No. 10701)

Page 5 of 11

## THE ARGUMENTS

### *Petitioner's arguments*

Petitioner insists that its counsel's failure to appear during the pre-trial on June 6, 2022 was due to his ailment. It maintains that it was his first failure to appear in a Pre-Trial. Petitioner avers that, before the Pre-Trial, its counsel filed a *Manifestation* dated June 2, 2022 requesting for additional time to submit Pre-Trial Brief and the Memorandum. Its counsel, however, was not able to file a motion for postponement of the Pre-Trial due to his illness.

### *Respondent's arguments*

Respondent posits that the *Petition* filed by petitioner did not raise any new factual or legal issues which have not been thoroughly discussed and threshed out before the Court. As appearance in the Pre-Trial is mandatory, respondent claims that petitioner failed to provide a valid cause or explanation for its non-appearance. As petitioner's counsel also failed to previously appear during the hearing of Motion for Mandatory Injunction, respondent contends that its repeated lapses should not be rewarded with leniency in applying the rules.

## THE RULING OF THE COURT *EN BANC*

The Petition for Review is meritorious.

### ***The instant Petition was timely filed.***

Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

Sec. 3. Who may appeal; period to file petition. — xxx xxx xxx

- (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not

## DECISION

*XEPIL PACKAGING represented by Suat Tee D. Poa vs. BUREAU OF INTERNAL REVENUE  
REVENUE REGION 7A, QUEZON CITY*

CTA EB No. 2684 (CTA Case No. 10701)

Page 6 of 11

exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

Based on the foregoing, petitioner had fifteen (15) days from receipt of the assailed Resolution within which to file its Petition.

Records show that the assailed Resolution of the Court in Division was served on petitioner on September 1, 2022.<sup>27</sup> Petitioner, thus, had fifteen (15) days from such receipt, or until **September 16, 2022**, to file its *Petition for Review*.

The instant *Petition* was, thus, timely filed on September 13, 2022.<sup>28</sup>

***Petitioner gave sufficient justification  
for its counsel's failure to appear at  
the Pre-Trial Conference.***

In light of the circumstances of petitioner's previous counsel, the Court is inclined to grant the instant *Petition*.

Section 4 of Rule 18 of the Rules of Civil Procedure mandates parties and their counsel to appear at the pre-trial and the non-appearance of a party or counsel may be excused only for acts of God, *force majeure*, or duly substantiated physical inability.<sup>29</sup>

On the other hand, Section 5 of Rule 18 of the Rules of Civil Procedure provides for the effect of the failure of the parties to appear, *viz*:

Section 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

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<sup>27</sup> *Rollo*, p. 10.

<sup>28</sup> *Id.* at p. 1 to 6.

<sup>29</sup> Section 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 must 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.

## DECISION

*XEPIL PACKAGING represented by Suat Tee D. Poa vs. BUREAU OF INTERNAL REVENUE  
REVENUE REGION 7A, QUEZON CITY*

CTA EB No. 2684 (CTA Case No. 10701)

Page 7 of 11

counsel shall be cause to allow the plaintiff to present his or her evidence *ex parte* within ten (10) calendar days from termination of the pre-trial, and the court to render judgment on the basis of the evidence offered.

Based on the foregoing, if a party or the counsel failed to appear during the Pre-Trial Conference without a valid cause, the action shall be dismissed with prejudice, unless otherwise ordered by the Court.

In the instant case, petitioner's counsel failed to appear during the Pre-Trial Conference on June 6, 2022 allegedly due to his illness. Prior to the scheduled Pre-Trial Conference, petitioner claims that it filed through e-mail, a *Manifestation* stating that its counsel just received the BIR Records from respondent on June 1, 2022 and that it requested for an additional fifteen (15) days from June 1, 2022 to file the Pre-Trial Brief. Petitioner, however, filed the said *Manifestation* dated June 2, 2022 via e-mail on June 4, 2022, which was a Saturday. Accordingly, the filing of the *Manifestation* shall be deemed to have been made on June 6, 2022,<sup>30</sup> pursuant to En Banc Resolution No. 4-2021, which provides:

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.

The *Manifestation* filed on June 6, 2022 never mentioned the medical condition of petitioner's counsel. The Court was informed of Atty. Dalucapas' medical condition only when petitioner filed its *Motion for Reconsideration* on July 1, 2022, with attached the duly notarized medical certificate of its counsel requiring him to be on bed rest for seven (7) to ten (10) days from May 30, 2022. Despite receiving medical treatment with advise from his doctor for him to be on bed rest on May 30, 2022 and the awareness of petitioner's counsel that the duration of his bed rest will affect the date of the scheduled Pre-Trial Conference, petitioner did not request for the postponement of the Pre-Trial Conference.

The Court in Division, in the assailed Resolution, pointed out that petitioner's reason is a mere afterthought, to wit:<sup>31</sup>

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

<sup>30</sup> The next working day.

<sup>31</sup> *Rollo*, p. 14.

## DECISION

*XEPIL PACKAGING represented by Suat Tee D. Poa vs. BUREAU OF INTERNAL REVENUE  
REVENUE REGION 7A, QUEZON CITY*

CTA EB No. 2684 (CTA Case No. 10701)

Page 8 of 11

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 scheduled Pre-trial Conference on June 6, 2022.

It was further highlighted that petitioner filed two (2) *Manifestations* after May 30, 2022, i.e. *Manifestation* filed on June 7, 2022<sup>32</sup> and the *second Manifestation* filed on June 21, 2022,<sup>33</sup> viz:<sup>34</sup>

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.

Nevertheless, the order of dismissal was received by petitioner’s counsel only on June 22, 2022; hence, at the time of the filing of the two (2) *Manifestations*, petitioner’s counsel was not yet aware of the dismissal.

With the death of Atty. Dalucapas on September 28, 2022, the Court *En Banc* now finds justification in his failure to appear during the Pre-Trial Conference and to file petitioner’s Pre-Trial Brief that would be sufficient to reverse the resolution of the Court in Division.

In the case of *Ultra Mar Aqua Resource, Inc. vs. Fermida Construction Services (Ultra Mar case)*,<sup>35</sup> citing the case of *Daaco vs. Yu*,<sup>36</sup> the Supreme Court held that the non-appearance of a party during the Pre-Trial may be excused if a valid cause is shown and what constitutes a valid ground to excuse litigants and their counsels at the pre-trial is subject to the sound discretion of a judge, viz:

Hence, the failure of a party to appear at pre-trial has adverse consequences: if the absent party is the plaintiff then he may be declared non-suited and his case is dismissed; if the absent party is the defendant, then the plaintiff may be allowed to present his evidence *ex parte* and the court to render judgment on the basis thereof.

**By way of exception, the non-appearance of a party and counsel may be excused if (1) a valid cause is shown; or (2) there is an appearance of a representative on behalf of a party fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute**

<sup>32</sup> Date of filing of the hard copy. Filed via e-mail and officially received on June 6, 2022.

<sup>33</sup> Date of filing of the hard copy. Filed via e-mail on officially received on June 17, 2022.

<sup>34</sup> *Rollo*, p. 15.

<sup>35</sup> G.R. No. 191353, April 17, 2017.

<sup>36</sup> G.R. No. 183398, June 22, 2015.



## DECISION

*XEPIL PACKAGING represented by Suat Tee D. Poa vs. BUREAU OF INTERNAL REVENUE  
REVENUE REGION 7A, QUEZON CITY*

CTA EB No. 2684 (CTA Case No. 10701)

Page 9 of 11

resolution, and to enter into stipulations or admissions of facts and of documents. 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. (Emphasis ours)

Based on the foregoing, non-appearance of a party may be excused in two (2) instances. First, if a valid cause is shown, and second, if there is an appearance on behalf of a party fully authorized in writing to enter into amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

While the second instance was not complied with as no representative appeared on behalf of petitioner during the scheduled Pre-Trial Conference, the Court *En Banc* finds that the non-appearance of petitioner's counsel may be excused. Atty. Dalucapas' duly substantiated physical inability is a valid cause for his non-appearance and should not warrant the dismissal of petitioner's case, pursuant to Section 4 of Rule 18 of the Rules of Civil Procedure.

Applying the *Ultra Mar* case, the determination of the Court in Division on whether the excuse for non-appearance of a party during the Pre-Trial is valid depends on the sound discretion of the Court. Once exercised, such will not be disturbed except in cases of clear and manifest abuse. Although there is no manifest and clear abuse in the dismissal of the case by the Court in Division, the Court *En Banc* finds justification in the non-appearance of petitioner's counsel given the events that occurred after the dismissal.

While it would have been more prudent for Atty. Dalucapas to inform the Court about his medical condition, the seriousness of his illness could be presumed considering his death three (3) months after, or on September 28, 2022, due to Acute Myocardial Infarction. This clearly shows that the alleged medical condition was not an afterthought to serve as excuse for counsel's failure to appear at the Pre-Trial Conference but rather confirms the existence of a severe illness justifying such non-appearance.

Accordingly, the supervening circumstance warrants the reversal of the findings of the Court in Division, as in the instant case and remand the case to the Court in Division.

**WHEREFORE**, premises considered, the instant **Petition** is **GRANTED**. The assailed *Order* dated June 6, 2022 and the assailed *Resolution* dated August 18, 2022 rendered by the Second Division of this

**DECISION**

*XEPIL PACKAGING represented by Suat Tee D. Poa vs. BUREAU OF INTERNAL REVENUE  
REVENUE REGION 7A, QUEZON CITY  
CTA EB No. 2684 (CTA Case No. 10701)  
Page 10 of 11*

Court in CTA Case No. 10701 are **RECALLED** and **SET ASIDE**. The instant case is **REMANDED** to the Court in Division.

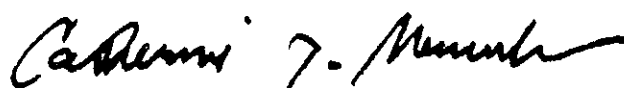
**SO ORDERED.**

  
**CORAZON G. FERRER-FLORES**  
Associate Justice

**WE CONCUR:**

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice

  
**CATHERINE T. MANAHAN**  
Associate Justice

(On Official Business)  
**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice

(On Official Business)  
**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice

**DECISION**

*XEPIL PACKAGING represented by Suat Tee D. Poa vs. BUREAU OF INTERNAL REVENUE  
REVENUE REGION 7A, QUEZON CITY  
CTA EB No. 2684 (CTA Case No. 10701)  
Page 11 of 11*

  
**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice

  
**LANEE S. CUI-DAVID**  
Associate Justice

  
**HENRY S. ANGELES**  
Associate Justice

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice