CTA Form No. 8 (For DCC)

20-000004-0064

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10240

CHERRIE MARIE T. CHAN,
Petitioner,

- versus -

COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA GUILING-MATANOG
ATTY. MICHAEL KEVIN P. BAYONA
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

LIBRES+ZULIETA+JALAD+COLON LAW OFFICES
The SITUS, Sampaguita St., St. Joseph Subdvision
Brgy.Villa Kananga, Butuan City 8600

GREETINGS:

You are hereby notified by these presents that on **July 29, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 30, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

CHERIE MARIE T. CHAN,
Petitioner,

- versus -

COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10240**

Members:

DEL ROSARIO, *P.J.*, *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
JUL 29 2024 3:50PM

x - x

RESOLUTION

For the Court's resolution is petitioner Cherie Marie T. Chan's (**petitioner**'s/**Chan**'s) "Motion for Reconsideration"[1] (**MR**) on the Order dated 24 January 2024[2] (**assailed Third Order of Dismissal**), filed *via* registered mail on 05 March 2024[3], without respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) comment despite due notice, as *per* Records Verification dated 02 May 2024.

In the assailed Third Order of Dismissal, this Court dismissed the instant case for the third time for failure to prosecute pursuant to Rule 17[4], Section 3[5] of the Rules of Court (**ROC**), as amended[6], due to the repeated failure of petitioner and her counsel, Atty. Simon Peter S. Jalad, to appear without justifiable cause.

---

1 Division Docket, Volume III, pp. 1635-1639, with Annex "A".
2 Id., pp. 1627-1628.
3 Received by the Court on 25 March 2024.
4 Dismissal of Actions.
5 **Sec. 3**. *Dismissal due to fault of Plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his or her evidence in chief on the complaint, or to prosecute his or her action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his or her counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.
6 2019 Amendments to the 1997 Rules of Civil Procedure (A.M. No. 19-10-20-SC).

The instant case had previously been dismissed twice for failure to prosecute, and yet petitioner and her counsel failed to appear a third time for the scheduled presentation of petitioner herself, despite due notice. Consequently, the Court was constrained to dismiss the case anew upon the motion of respondent's counsel, Atty. Michael Kevin P. Bayona.

In her MR, petitioner asks this Court to reconsider and set aside its Third Order of Dismissal and to set the case anew for the presentation of her testimony. She explained that her failure to appear was due to an honest and genuine belief that the initial presentation of evidence scheduled for 24 January 2024, was cancelled. This belief stemmed from the understanding that the hearing was postponed for purposes of accommodating the Commissioner's Hearing for the comparison and marking of the parties' documentary exhibits, which had not yet been done. This understanding was based on the Court's Notice of Resetting dated 11 January 2024, which stated:

> . . .
> Pursuant to Office Order No. 140-2023 dated November 16, 2023, authorizing the Office of the First Division to attend the *2023 First Division Strategic Planning Activity*, the Commissioner's Hearing set on **November 21, 2023, at 2:30 p.m.**, for the marking of petitioner's exhibits and at **3:00 p.m.** for respondent's marking of exhibits, are hereby **CANCELLED** and **RESET** to **January 24, 2024**, at **1:30 p.m.** and **2:00 p.m.**, respectively.
> . . .

According to petitioner, her honest belief that the hearing for the initial presentation of evidence was cancelled by the issuance of the Notice of Resetting is reinforced by her reliance on the customary practices observed by most courts and the procedural guidelines outlined in the ROC, as amended. These guidelines indicate that the comparison and marking of exhibits, which is still part of pre-trial, typically precede the presentation of witnesses. In this regard, she notes that under Rule 11[7], Section 5[8] of the Revised Rules of the Court of Tax Appeals (**RRCTA**), the comparison and marking of exhibits are conducted before the presentation of witnesses.

---

[7] Pre-Trial.

[8] **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:

. . .

(d) The documents or exhibits to be presented, stating their purpose. No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been pre-marked and identified, unless allowed by the Court to prevent manifest injustice[.]

Petitioner asserts that the logic behind holding the Commissioner's Hearing prior to witness presentation is to ensure that exhibits are identified and authenticated before the witness testifies. This process ensures that exhibits have been compared or stipulated as original copies and marked accordingly, facilitating a smooth process during the presentation of the witness. Moreover, scheduling the Commissioner's Hearing beforehand allows the transcript of stenographic notes (**TSN**) to reflect the finalized sequencing of exhibits. This prevents confusion in the TSN that may arise if the marking occurs after the witness has identified the exhibits without their markings.

Petitioner insists that the aforesaid considerations collectively contributed to her honest belief that the 24 January 2024 hearing was cancelled to give way to the Commissioner's Hearing rescheduled for that same date. Acting in complete good faith, she genuinely believed that the 24 January 2024 hearing was necessarily cancelled. Therefore, there was no deliberate intention on her part to delay or postpone the presentation of her testimony. Instead, her actions demonstrate an effort to observe the procedures laid down in the RRCTA.

Moreover, petitioner notes that she should not be held accountable for the previous dismissals of the case, as they were not attributable to any fault on her part. If fact, in both the Resolution dated 01 March 2021[9] (**Second Order of Dismissal**) and Resolution dated 21 October 2022[10] (**Resolution Granting Petitioner's MR on the First Order of Dismissal**), this Court ruled that she had not been duly notified of the scheduled Pre-Trial Conference. Therefore, according to her, these prior dismissals should not be attributed to her or construed as a repeated failure on her part to appear before this Court.

Lastly, petitioner stresses that in all instances where she was duly notified, she has diligently attended the hearings in this case. This consistent attendance underscores her earnest commitment to substantiating her meritorious allegations and claims against respondent, as outlined in her *Petition for Review*. She argues that the interest of justice would not be served if she is made to pay the unjust tax assessment without being given a chance to be heard on her allegations and claims.

---

9 Division Docket, Volume II, pp. 805-812.
10 Id., Volume III, pp. 1553-1557.

To save the case from being dismissed, petitioner manifests that she and her counsel are prepared to accept any sanctions imposed by this Court for any oversight on their part. She is also willing to reimburse respondent for any expenses incurred due to their absence during the 24 January 2024 hearing.

We resolve.

After a careful review of the petitioner's arguments and the circumstances surrounding the case, this Court finds merit in the petitioner's MR.

Under Rule 1[11], Section 6[12] of the ROC, as amended, procedural rules should be liberally construed to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding.

In the case of *Ma. Ligaya B. Santos v. Litton Mills, Incorporated and/or Atty. Rodolfo Mariño*[13], the Supreme Court held "that the technical rules of procedure should be used to promote, not frustrate, the cause of justice. While the swift unclogging of court dockets is a laudable aim, the just resolution of cases on their merits, however, cannot be sacrificed merely in order to achieve that objective. Rules of procedure are tools designed not to thwart but to facilitate the attainment of justice; thus, their strict and rigid application may, for good and deserving reasons, have to give way to, and be subordinated by, the need to aptly dispense substantial justice in the normal course".

In this case, while the petitioner's explanations (as to why she presumed that the 24 January 2024 hearing was necessarily cancelled due to the rescheduling of the Commissioner's Hearing for the comparison and marking of the parties' documentary exhibits) offer a coherent rationale based on procedural norms and good faith, this Court must weigh these against the procedural requirements and previous instances of non-appearance. The Court should consider whether the petitioner's belief was reasonable under the circumstances and whether her actions align with the overarching goal of securing a just, speedy, and inexpensive disposition of the case.

---

11 General Provisions.

12 **SEC. 6.** *Construction.* — These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

13 G.R. No. 170646, 22 June 2011.

As regards petitioner's mistaken belief that the 24 January 2024 hearing was necessarily cancelled due to the rescheduling of the Commissioner's Hearing for the comparison and marking of the parties' documentary exhibits, this Court acknowledges that it is not unreasonable for her to entertain such a presumption. Indeed, the Commissioner's Hearing is typically scheduled prior to the hearing on the initial presentation of petitioner's evidence.

However, petitioner could have easily clarified this matter with the Court ahead of the scheduled hearing to avoid wasting the Court's and respondent's time and resources. This proactive step would have ensured that all parties were aligned on the hearing schedule and avoided any misunderstandings.

Notably, knowing fully well that a hearing had been scheduled and that the Court did not issue any notice resetting it, the prudent approach would have been not to presume that the hearing was cancelled. Instead, petitioner should have contacted the Court to confirm the hearing schedule. This would have prevented her unjustified absence during the hearing and the consequent dismissal of the case for failure to prosecute.

Given that the case had already been dismissed twice for failure to prosecute, petitioner should have been more circumspect in her actions and mindful of the consequences of her absence during court proceedings. Instead of merely presuming that the hearing was cancelled, she should have clarified the matter with the Court itself and asked for a resetting of the hearing considering that the Commissioner's Hearing had not yet been conducted. Therefore, it cannot be denied that petitioner's lack of prudence under the circumstances caused the dismissal of the instant case.

However, this Court finds it more prudent to err on the side of caution by not dismissing the case based on a technicality. Jurisprudence has consistently held that procedural rules should not be applied rigidly and technically, as they are designed to secure substantial justice, not to override it.

Considering that petitioner demonstrated there was no deliberate intention on her part to delay or postpone the presentation of her testimony and expressed her willingness to comply with the procedures laid down by the Court, as well as to compensate respondent for any incurred expenses, this Court deems it just to grant the instant MR.

WHEREFORE, petitioner's "Motion for Reconsideration" filed on 05 March 2024 is hereby **GRANTED**. Accordingly, let a hearing for the presentation of petitioner's testimony be scheduled on **17 September 2024, at 9:00 am.**

As a penalty for their absence during the previously scheduled hearing, which was primarily due to their lack of prudence under the circumstances, petitioner and her counsel, Atty. Simon Peter S. Jalad, are hereby **ORDERED** to pay a fine in the amount of **₱5,000.00** each. Petitioner is also **STERNLY WARNED** that any unjustified absences that will result in undue delay will merit the necessary sanctions.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice