REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

LICOMCEN, INC., Petitioner,	**C.T.A. E.B. NO. 424 (C.T.A. CASE NO. 7023)**
- versus -	Present: **ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
HON. COMMISSIONER GUILLERMO T. PARAYNO, and HON. LEONARDO Q. SACAMOS, CESO IV, REGIONAL DIRECTOR, REVENUE REGION NO. 10, Respondents.	**Promulgated:** APR 2 4 2009 2:30 p.m.

x- -x

DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed through registered mail on October 20, 2008 and duly received by this Court on October 29, 2008 under Republic Act No. 1125, as amended by Republic Act No. 9282, and Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, seeking a review of the Resolutions by the First Division of this Court (Court in Division)[1] which dismissed CTA Case No. 7023, entitled "Licomcen, Inc., petitioner, vs. Hon. Commissioner Guillermo T.

[1] Chaired by Presiding Justice Ernesto D. Acosta, with Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova as members.

Parayno, and Hon. Leonardo Q. Sacamos, CESO IV, Regional Director, Revenue Region No. 10, respondents", to wit:

1) Resolution promulgated on June 18, 2008[2] dismissing the case for failure of petitioner to prosecute its case for an unreasonable length of time pursuant to Section 3, Rule 17 of the Revised Rules of Court, as amended, and considering the repeated postponements by petitioner's counsel and the failure to appear in the last hearing scheduled on June 5, 2008 at 9:00 a.m. despite notice given to counsel; and

2) Resolution promulgated on September 12, 2008[3] denying herein petitioner's Motion for Reconsideration of the aforesaid Resolution for lack of merit; hence, affirming the said dismissal.

THE FACTS

Based on the records and as stipulated by the parties, the factual antecedents of the case are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at Felix Plaso Street, Naga City. Respondents, on the other hand, are Hon. Guillermo T. Parayno, Jr., duly appointed Commissioner of Internal Revenue, and Hon. Leonardo Q. Sacamos, Regional Director of Revenue Region No. 10.[4]

On March 31, 2001, petitioner received the Preliminary Assessment Notice (PAN) assessing it of deficiency taxes in the aggregate amount of P13,805,270.83. Petitioner disputed said PAN through a letter dated April 26,

---

[2] Docket, p. 330.
[3] Docket, pp. 346-348.
[4] Paragraphs 1 to 3, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Records, p. 316, CTA Case No. 7023.

2001 addressed to the Revenue District Officer, Revenue District No. 65, Naga City.[5]

On July 6, 2001, a modified PAN was issued by Revenue Region No. 10, Legaspi City, showing the amounts of P483,749.40 as deficiency income taxes plus interests, and P518,975.10 as deficiency value-added taxes plus interests, of petitioner for the taxable year 1999. On July 18, 2001, petitioner protested the said PAN, requesting for a breakdown of the disallowed input taxes which respondents denied in a letter dated August 24, 2001.[6]

Subsequently, an extension of time to submit the required documents was requested by petitioner. In a letter dated April 16, 2002, respondents denied petitioner's contention on the propriety of the disallowed rental expenses, however, a reduction on the amount of disallowed input taxes was made.[7]

On August 2, 2002, a letter reiterating the explanation on the deficiency income and value-added taxes was sent by petitioner. Again, in a letter dated August 14, 2002, respondents reiterated their stand on the denial, but reduced the assessment amount to P993,030.09.[8]

On February 10, 2003, petitioner received the Formal Letter of Demand and Final Notice Before Seizure dated February 7, 2003 issued by the Revenue Region No. 65.[9]

On February 17, 2003, petitioner wrote to the Revenue District Chief of Revenue Region No. 65, Rafaelito Ante, requesting for the cancellation of the

[5] Paragraphs 4 and 5, Stipulation of Facts, JSFI, Records, p. 316, CTA Case No. 7023.
[6] Paragraphs 6 to 8, Stipulation of Facts, JSFI, Records, p. 317, CTA Case No. 7023.
[7] Paragraphs 9 and 10, Stipulation of Facts, JSFI, Records, p. 317, CTA Case No. 7023.
[8] Paragraphs 11 and 12, Stipulation of Facts, JSFI, Records, p. 317, CTA Case No. 7023.
[9] Paragraph 13, Stipulation of Facts, JSFI, Records, p. 317, CTA Case No. 7023.

said notices considering that both parties are still in the process of clarifying certain issues subject of the assessment. However, in a letter dated February 28, 2003, the Revenue District Officer of Revenue District No. 65 denied petitioner's request.[10]

In a letter dated March 5, 2003, petitioner requested that said letter be considered as its formal protest on the subject assessment and, likewise, reiterated that the assessment had already been formally protested, and that numerous requests for an informal conference to tackle the subject issues of the protest have already been made but no meeting has yet been scheduled.

On March 19, 2003, petitioner, once again, reiterated its desire to have an informal conference which respondents subsequently denied on the ground that petitioner's right to formally protest had already lapsed pursuant to Section 3.1.5 of Revenue Regulations No. 12-99.[11]

However, on March 31, 2003, an informal conference was held at the office of the Revenue Region No. 10, Legaspi City, of which petitioner attended to. Afterwards, respondent Hon. Leonardo Sacamos was properly informed of such conference through a letter dated April 10, 2003.

A Final Notice Before Seizure dated October 22, 2003 was received by petitioner on November 3, 2003. On November 5, 2003, petitioner wrote to the respondents requesting for the cancellation of the said notice on the ground that respondents still has to present their basis for the disallowance of petitioner's rental expenses.[12]

[10] Paragraphs 14 and 15, Stipulation of Facts, JSFI, Records, pp. 317-318, CTA Case No. 7023.
[11] Paragraphs 17 and 18, Stipulation of Facts, JSFI, Records, p. 318, CTA Case No. 7023.
[12] Paragraphs 21 and 22, Stipulation of Facts, JSFI, Records, p. 318, CTA Case No. 7023.

Finally, on November 28, 2003, petitioner was served with the Warrant of Distraint and/or Levy No. 65-120-03.[13]

On December 3, 2003, a Motion for Reconsideration to the said Warrant of Distraint and/or Levy was subsequently filed by petitioner.[14] However, respondents failed to act on the aforesaid Motion.

On July 9, 2004, petitioner filed a Petition for Review before the Court in Division praying that: (a) the denial of the protest of petitioner on the deficiency income tax and value-added tax assessments by the respondents be set aside and/or reconsidered; (b) the disallowed rental expense for taxable year 1999 in the amount of P1,200,000.00 be reconsidered; and (c) the substantiation of input taxes already presented to the Assessment Division of Revenue Region No. 10, in the amount of P147,792.74, be taken into consideration in determining the VAT payable/creditable of the petitioner; and consequently, finding petitioner with excess creditable input taxes for taxable year 1999 instead of deficiency value-added tax. Consequently, on September 3, 2004, respondents filed an Answer[15] thereto.

On November 5, 2004, pre-trial conference was conducted and the parties were ordered to file their joint stipulation of facts and issues within fifteen (15) days thereof.

However, respondents filed on July 5, 2005 a Motion to Dismiss on the ground of finality of the assailed assessments for failure of petitioner to protest the same within the period prescribed by law. Initially, said Motion to Dismiss

[13] Paragraph 23, Stipulation of Facts, JSFI, Records, p. 318, CTA Case No. 7023.
[14] Paragraph 24, Stipulation of Facts, JSFI, Records, p. 319, CTA Case No. 7023.
[15] Records, pp. 123-135, CTA Case No. 7023.

was granted by the Court in Division in a Resolution dated November 14, 2005,[16] but was eventually reconsidered in the Resolution dated March 10, 2006,[17] which effectively reinstated the Petition for Review in CTA Case No. 7023.

On June 26, 2006, the parties filed their Joint Stipulation of Facts and Issues,[18] which was approved by the Court in Division in the Resolution dated January 8, 2007.[19] Accordingly, the Pre-trial conference was terminated and the initial presentation of petitioner's evidence was set on February 20, 2007 at 9:00 a.m.

On February 20, 2007, petitioner moved for the resetting of said scheduled hearing by reason of the absence of its witness, which was granted by the Court in Division and reset the same on April 10, 2007.[20]

On April 10, 2007, petitioner filed a Manifestation[21] and moved for the resetting of said scheduled hearing on the ground that petitioner allegedly availed of the abatement program of the Bureau of Internal Revenue (BIR) and paid in full the basic income tax and value-added taxes due for the taxable year 1999. The Court in Division noted[22] said Manifestation and granted the requested resetting, pending submission of proof of payment of the subject deficiency assessments, which was scheduled on June 5, 2005.[23]

[16] Records, pp. 243-251, CTA Case No. 7023.
[17] Records, pp. 271-275, CTA Case No. 7023.
[18] Records, pp. 316-320, CTA Case No. 7023.
[19] Records, p. 330, CTA Case No. 7023.
[20] Minutes of the hearing held on February 20, 2007, Records, p. 334, CTA Case No. 7023.
[21] Records, pp. 336-345, CTA Case No. 7023.
[22] Minute Resolution dated April 16, 2007, Records, p. 347, CTA Case No. 7023.
[23] Minutes of the hearing held on April 10, 2007, Records, p. 346, CTA Case No. 7023.

On June 5, 2005, petitioner again moved for the resetting of the hearing considering that its application for abatement program is still pending before the BIR, which was granted and accordingly the Court in Division reset the initial presentation of petitioner's evidence on July 26, 2007.[24]

On July 26, 2007, counsel for petitioner manifested that the counsel originally handling the case, Atty, Cesare Napolione S. Sta. Romana, has already resigned; hence, the request for another resetting of the hearing was granted and rescheduled on August 30, 2007.[25]

However, due to the seminar workshop of the Justices and Clerks of Court of this Court, the scheduled hearing on August 30, 2007 was cancelled and reset to October 4, 2007.[26]

On October 4, 2007, petitioner, now represented by its counsel, Atty. Ryan R. Besid, manifested that considering its application for tax abatement was allegedly approved in the regional level and indorsed to the BIR National Office for the final approval; that 100% of the basic tax subject of the case has already been paid; and that counsel for petitioner will no longer present any witness, the case should be archived. The Court in Division denied said move to archive the case and instead reset the scheduled hearing on December 4, 2007.[27]

On December 4, 2007, counsel for petitioner, Atty. Ryan R. Besid, again moved for the resetting of the hearing for the same reason of its

[24] Minutes of the hearing held on June 5, 2007, Records, p. 348, CTA Case No. 7023.
[25] Minutes of the hearing held on July 26, 2007, Records, p. 350, CTA Case No. 7023.
[26] Notice of Hearing dated August 24, 2007, Records, p. 353, CTA Case No. 7023.
[27] Minutes of the hearing held on October 4, 2007, Records, p. 355, CTA Case No. 7023.

pending application for the availment of the abatement program, which was granted and rescheduled on February 21, 2008.[28]

However, due to the strategic planning workshop of the Justices and employees of this Court, the scheduled hearing on February 21, 2008 was cancelled and reset to April 1, 2008.[29]

On April 1, 2008, counsel for petitioner, Atty. Ryan R. Besid, again requested for the final resetting of the hearing considering that the processing of its application for tax abatement with the BIR National/Central Office has not been completed. In addition, counsel for petitioner assured the Court in Division that the aforesaid application for tax abatement shall be processed before the next hearing. Said request was approved and the hearing was reset on June 5, 2008, but with final warning to the petitioner.[30]

On June 5, 2008, counsel for petitioner failed to appear before the Court in Division without any explanation; hence, the case was dismissed.[31] Correspondingly, a confirming Resolution dated June 18, 2008[32] was issued dismissing the case for petitioner's failure to prosecute its case for an unreasonable length of time pursuant to Section 3, Rule 17 of the Rules of Court, as amended, and for the repeated postponements by petitioner's counsel and failure to appear in the last hearing scheduled.

On July 10, 2008, petitioner timely posted its Motion for Reconsideration to the said Resolution, but the Court in Division considered

---

[28] Minutes of the hearing held on December 4, 2007, Records, p. 358, CTA Case No. 7023.
[29] Notice of Hearing dated February 12, 2008, Records, p. 360, CTA Case No. 7023.
[30] Minutes of the hearing held on April 1, 2008, Records, p. 361, CTA Case No. 7023.
[31] Minutes of the hearing held on June 5, 2008, Records, p. 367, CTA Case No. 7023; As contained in the Resolution dated June 18, 2008, Records, p. 369, CTA Case No. 7023.
[32] Docket, p. 330.

the motion as a mere scrap of paper for failure of petitioner's counsel to indicate the notice of hearing in violation of Section 5, Rule 15 of the Rules of Court, as amended, in a Minute Resolution dated July 23, 2008.[33]

However, the Court in Division reconsidered the said Minute Resolution but denied petitioner's Motion for Reconsideration dated July 10, 2008, in a Resolution dated September 12, 2008,[34] the dispositive portion of which is quoted hereunder as follows:

> "**WHEREFORE,** premises considered, petitioner's **'MOTION FOR RECONSIDERATION (RE: MINUTE RESOLUTION DATED 23 JULY 2008)'** is hereby **GRANTED, however,** its **'MOTION FOR RECONSIDERATION (Re: 18 June 2008 Resolution)** is **DENIED** for lack of merit. Accordingly, this Court's Resolution promulgated on June 18, 2008, dismissing this instant case, is hereby **AFFIRMED** in all respects.
>
> **SO ORDERED.**"

Hence, this recourse before the Court *En Banc* praying that the assailed Resolutions dated June 18, 2008 and September 12, 2008 of the Court in Division be reversed and set aside, and that the assessments, as well as the Warrant of Distraint and/or Levy served on petitioner on November 28, 2003 be declared null and void.

On December 12, 2008, this Court issued a Resolution[35] requiring respondents to file a Comment to the instant Petition for Review. Upon submission of respondents' Comment on January 6, 2009,[36] the Court issued

---

[33] Records, p. 388, CTA Case No. 7023.
[34] Docket, pp. 346-348.
[35] Docket, pp. 573-574.
[36] Docket, pp. 580-589.

a Resolution dated January 30, 2009[37] requiring both parties to submit their memoranda within the period of thirty (30) days from notice.

After both parties filed their respective Memorandum on March 6, 2009[38] and March 9, 2009,[39] this case was deemed submitted for decision in a Resolution dated March 23, 2009.

Hence, this Decision.

THE ISSUES

The issues raised by petitioner in the instant petition are as follows:

> A. Whether the rental expense paid in 1998, which only accrued in 1999, should be rightfully considered as a deductible business expense for the taxable year 1999;
>
> B. Whether or not respondent Sacamos erred in failing to consider the substantiated input taxes in computing the deficiency value-added tax of petitioner; and
>
> C. Whether or not the Court in Division committed reversible error when it dismissed the Petition for Review in CTA Case No. 7023 for failure to prosecute, despite the fact that the substantial issues raised before it are clearly meritorious.

THE COURT EN BANC'S RULING

The Court finds it necessary to resolve first the issue on the legality of the dismissal of the petition in CTA Case No. 7023 by the Court in Division.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review readily reveals that the grounds relied upon, more particularly on the issue of the dismissal of the case by reason of petitioner's failure to prosecute for an unreasonable length of time, pursuant

---

37 Docket, pp. 592-593.
38 Docket, pp. 594-611.
39 Docket, pp. 662-707.

to Section 3, Rule 17 of the Rules of Court, as amended, are mere restatements of petitioner's previous arguments raised before the Court in Division which had already been exhaustively discussed and passed upon by it in the assailed Resolution dated September 12, 2008. We thus adhere to the factual and legal findings of the Court in Division, to wit:

> "The Court herein notes that on April 10, 2007, petitioner manifested that it had availed of the abatement program of the Bureau of Internal Revenue (BIR). Subsequently, in a number of instances, petitioner have asked this Court for the resetting of the scheduled hearings on this case–the last of which was made on April 1, 2008, on the ground that the BIR has still to come up with the approval of its application for abatement.
>
> It must be emphasized that the authority of the Commissioner of Internal Revenue (CIR) to abate a tax liability involves the exercise of discretion and thus, would depend on the CIR's own judgment. Hence, petitioner should not anticipate that its application for abatement would be approved by its mere filing of the same. This especially holds true since more than one (1) year had already elapsed from the filing of such application, *i.e.*, on March 29, 2007.
>
> Moreover, at this stage, the subject assessment of the BIR is presumed correct and made good faith. The taxpayer, petitioner herein, has the duty of proving otherwise. Thus, petitioner, notwithstanding its application for abatement of its tax liability, is expected to prosecute the instant Petition for Review without unnecessary delay.
>
> As regards the resignation of the handling lawyer, Atty. Ryan R. Besid, on May 31, 2008 from the firm of the counsel for petitioner, this Court cannot consider that as a valid excuse. If it is true that Atty. Besid indeed did in fact resign on the said date, then petitioner still had four (4) days before the next scheduled hearing, *i.e.*, on June 5, 2008, to inform this Court of such fact of resignation of the handling lawyer, and accordingly, move for a continuance thereof to a more convenient but nearer date.

> There is therefore no genuine indication that petitioner's requests for postponement, which were previously granted by this Court, were never intended to delay the proceedings."[40]

Apparently, from the foregoing conclusion judiciously arrived at by the Court in Division, herein petitioner was remiss in its duty to prosecute its claim/action for an unreasonable length of time; and therefore, the dismissal of the case becomes proper, pursuant to Section 3, Rule 17 of the Rules of Court, as amended, which provides:

> "**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 evidence in chief on the complaint, or to prosecute his 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 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."

Petitioner, in its frail attempt to convince this Court that the repeated postponements of the case were never intended to delay the proceedings, argues that the same were necessitated by the pending tax abatement application before the BIR; that despite diligent efforts in following up the status of such application, the BIR has failed to expedite the resolution/approval of the same; and that failure to attend the scheduled hearing last June 5, 2008 was due to the resignation of the handling lawyer, Atty. Ryan R. Besid, on May 31, 2008, and that it was unfortunate that there was no other lawyer from the firm representing petitioner who is available to take over the case. Consequently, petitioner seeks the liberality of this Court

[40] Docket, pp. 347-348.

by relaxing the applicable Rules of Procedure and citing that Section 8 of Republic Act No. 1125, as amended, creating the Court of Tax Appeals, expressly provides that it shall not be governed strictly by technical rules of evidence.

However, records reveal that petitioner has requested for numerous postponements of its initial presentation of evidence since February 20, 2007, primarily on the ground of petitioner's pending application for tax abatement before the BIR, detailed as follows:

Scheduled Hearing	Reason for Postponement of scheduled hearing	Rescheduled Hearing/Action taken
February 20, 2007	Petitioner's witness unavailable	April 10, 2007
April 10, 2007	**Petitioner's pending application for tax abatement**	**June 5, 2007**
June 5, 2007	**Petitioner's pending application for tax abatement**	**July 26, 2007**
July 26, 2007	Petitioner's handling lawyer, Atty. Cesare Napolione S. Sta. Romana, has resigned	August 30, 2007
August 30, 2007	Cancelled and reset due to CTA's official business	October 4, 2007
October 4, 2007	**Petitioner's pending application for tax abatement**[41]	**December 4, 2007**
December 4, 2007	**Petitioner's pending application for tax abatement**	**February 21, 2008**
February 21, 2008	Cancelled and reset due to CTA's official business	April 1, 2008
April 1, 2008	**Petitioner's pending application for tax abatement**[42]	**June 5, 2008**
June 5, 2008	**Failure of the counsel for petitioner to attend the said hearing without explanation despite final warning from the Court in Division**	**Case dismissed for failure to prosecute for an unreasonable length of time**

[41] Petitioner's motion to archive the case was denied.

[42] Counsel for petitioner, Atty. Ryan R. Besid, requested for the final resetting of the hearing and assured the Court in Division that the aforesaid application for tax abatement shall be processed before the next hearing. The Court in Division granted the last resetting with final warning to petitioner.

Clearly from the foregoing, the Court in Division accorded petitioner a wide latitude of opportunities to prosecute its claim through the timely presentation of its evidence, yet petitioner failed to do so. The several resettings allowed by the Court in Division for the initial presentation of petitioner's evidence transpired in a span of more than one (1) year, which would readily explain why the Court in Division had to dismiss CTA Case No. 7023 due to petitioner's failure to prosecute said case for an unreasonable length of time. This is procedurally allowed under Section 3 of Rule 17 of the 1997 Rules of Civil Procedure, which provides:

> **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 evidence in chief on the complaint, or **to prosecute his 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 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 *(Emphasis supplied)*.

The aforequoted Rule contemplates of three (3) instances whereby a trial court may dismiss an action on its own volition for failure to prosecute, namely: (1) where the plaintiff fails to appear at the time of the trial; **(2) where he fails to prosecute his action for an unreasonable length of time;** and, (3) when he fails to comply with these rules or any order of the court.[43] The herein appealed case refers to the second situation.

As to what constitutes an "unreasonable length of time", within the purview of the quoted provision, it has been ruled that it depends upon the

[43] Goldloop Properties, Inc. vs. Court of Appeals, G.R. 99431, August 11, 1992, 212 SCRA 498.

nb

circumstances of each particular case; that "the sound discretion of the court" in the determination of said question "will not be disturbed, in the absence of patent abuse;" and that "the burden of showing abuse of judicial discretion is upon appellant (herein petitioner), since every presumption is in favor of the correctness of the court's action."[44]

Thus, this Court shall not disturb the Court in Division's assailed order of dismissal due to petitioner's continued failure to present its evidence. This was brought about by several postponements of petitioner's supposed initial presentation of its evidence, the last of which was during the scheduled hearing on June 5, 2008, wherein counsel for petitioner's non-appearance was without any explanation, despite the final warning given by the Court in Division during the hearing held on April 1, 2008, to wit:

> "EXECUTIVE CLERK:
> Licomcen, Inc. v. Hon. Commissioner Guillermo T. Parayno, Hon. Leonardo Q. Sacamos. 7023.
>
> ATTY. BESID:
> Good morning, your Honors, Atty. Ryan Besid respectfully appearing for the petitioner. Your Honors, I have been following up the application for the tax abatement with the BIR Central Office but unfortunately the processing has not yet been completed. I would like to apologize for the delay however the delay is not attributable to our fault. **Your Honors, we would like to request for one last re-setting and we'll make sure that the application for tax abatement will be processed before the next hearing**.
>
> JUSTICE ACOSTA:
> All right, re-set. **One last re-setting. One last warning to the petitioner**.
>
> EXECUTIVE CLERK:
> Hearing before this Court has been set on June 5, 2008.

---

[44] Montejo vs. Urotia, No. L-27187, July 22, 1971, 40 SCRA 41.

ATTY. BESID:
Permission to leave, your Honors. *(Emphasis Ours)*"[45]

As mentioned earlier, despite the Court in Division's warning that the resetting of the initial presentation of petitioner's evidence was for the last time on June 5, 2008, nevertheless, petitioner's counsel adamantly failed to appear during the hearing scheduled on said date. Hence, the action may be dismissed upon the Court's own motion for failure to prosecute in accordance with Section 3 of Rule 17 of the 1997 Rules of Civil Procedure. And procedurally speaking, since the dismissal by the Court in Division was unqualified, it had the effect of adjudication on the merits.[46]

Considering now that the dismissal of CTA Case No. 7023 on June 5, 2008, as confirmed in the Resolution dated June 18, 2008, was unqualified, it has the effect of adjudication on the merits. Consequently, this Court finds it unnecessary to discuss the other issues raised relative to the merits of the case.

It must be emphasized that procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[47]

---

[45] Transcript of Stenographic Notes, Hearing on April 1, 2008, pp. 2-3.
[46] Olivares vs. Gonzales, et al., L-34500, March 18, 1988; Peninsula Construction, Inc. vs. Hon. Eisma, et al., G.R. No. 84098, March 9, 1991.
[47] Spouses Galang vs. Court of Appeals, G.R. No. 76221 July 29, 1991.

Correspondingly, the Court *En Banc* finds no reversible error committed by the Court in Division that would merit a reversal of its assailed Resolutions dated June 18, 2008 and September 12, 2008.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice