

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

SECOND DIVISION

**PHILIPPINE AIRLINES,
INC.,**

Petitioner,

CTA CASE NO. 10263

Members:

- versus -

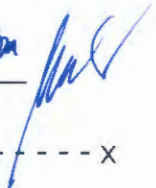
**CASTAÑEDA, JR., Chairperson, and
BACORRO-VILLENA, JJ.**

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

Promulgated:

DEC 18 2020

1:21 pm


x ----- x

RESOLUTION

For resolution of the Court is petitioner's **Motion for Reconsideration**, filed on August 28, 2020, with respondent's **Opposition (Re: Motion for Reconsideration of the Order dated 13 July 2020)**, filed on October 5, 2020.

In the Order dated July 13, 2020 (assailed Order), the Court granted respondent's oral motion for the dismissal of the instant case on the ground that petitioner's counsel failed to file a Pre-Trial Brief and attend the Pre-Trial Conference on even date. Accordingly, the Court dismissed the Petition for Review and closed and terminated the instant case.

In the instant motion, petitioner moves for reconsideration of the assailed Order on the basis that petitioner was not notified on time for the Pre-Trial Conference. Petitioner alleges that the following notices from the Court were only received by petitioner on August 11 and 13, 2020:

1. Notification that Summons have been issued to the Bureau of Internal Revenue, received on August 11, 2020;
2. Notice of Pre-Trial Conference, received on August 11, 2020; and
3. Assailed Order, received on August 13, 2020.

To support this, petitioner attached Certifications from Mr. Carlos Barredo Bruno, Pasay Postmaster, and attested to by Mr. Marc Rolly N. Simplina, Driver/Courier of the Pasay Central Post Office dated August 24, 2020, certifying the delivery and receipt of the notices by petitioner on August 11 and 13, 2020.

Petitioner asserts that, contrary to the assailed Order, petitioner and its counsel were not notified of the Pre-trial Conference scheduled on July 13, 2020. Petitioner argues that this failure on its part is clearly not a want of due diligence in failing to proceed with the case with reasonable aptitude as it was not notified on time of such proceeding. Hence, petitioner prays for the reversal of the assailed Order and to proceed with the Pre-Trial Conference at a date and time most convenient to the Court's calendar schedule.

On the other hand, respondent contends that the reason for petitioner's counsel's failure to appear during pre-trial conference is too flimsy since the status of the case is readily accessible in the CTA website. Respondent stresses that strict compliance with Rules is indispensable for the prevention of needless delays and the promotion of orderly and expeditious dispatch of judicial business. Hence, respondent prays for the denial of petitioner's motion for lack of merit.

The Court finds petitioner's motion with merit.

It must be noted that on August 7, 2020, the Court issued CTA En Banc Resolution No. 9-2020, adopting specific amendatory provisions of 2019 Amendments to the 1997 Revised Rules of Civil Procedure, except to the extent that in the opinion of the Court, their application would not be feasible or would work injustice, in which event the former procedure shall apply. One of the adopted amendatory provisions is Rule 18 of the 1997 Revised Rules of Civil Procedure, as amended.

Section 4, Rule 18 of the Revised Rules of Civil Procedure, as amended, provides that it is the duty of the parties and their counsel to appear at the pre-trial conference. The effect of their failure to appear is provided by Section 5 of the same rule where it states:

SEC. 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.

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.** A similar failure on the part of the defendant and 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. (*Emphasis supplied*)

Furthermore, Section 6 thereof provides:

Section 6. *Pre-trial brief.* -The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three calendar (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

XXX

XXX

XXX

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.
(Emphasis supplied)

From the foregoing, it is clear that the failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then his case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence *ex parte* and the court shall render judgment on the basis thereof. Thus, the plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence.¹

By way of exception, the non-appearance of a party and counsel may be excused due to (1) acts of God or (2) force majeure or (3) duly substantiated physical inability in accordance with Section 4 of the said Rule. However, a reading of Section 5 of Rule 18 can be interpreted as to another exception: when the party is not duly notified.

Records show that the Notice of Pre-Trial Conference dated June 17, 2020 was sent to petitioner through registered mail on even date. Based on the Certification dated August 24, 2020 issued by the Pasay Post Master, which is attached to the instant motion, the notice was delivered to and received by the petitioner on August 11, 2020.

Considering that petitioner is not notified on time of the scheduled pre-trial conference on July 13, 2020 due to the belated receipt of the notice only on August 11, 2020, the Court finds the cause for petitioner and its counsel's non-appearance justifiable.

Further, assuming that only the causes enumerated in Section 4 of Rule 18 of the amended Revised Rules of Civil Procedure allow the non-appearance of a party to be excused, the Court may not apply said amendatory provision if in the opinion of the Court, their application would not be feasible or would work injustice.² In which event, the former procedure shall apply in this case. Thus, the former Section 4 of Rule 18 the Revised Rules of Civil Procedure states:

¹ *Benavidez vs. Salvador*, G.R. No. 173331, December 11, 2013.

² CTA En Banc Resolution No. 9-2020 dated August 7, 2020.

Section 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 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. (*Emphasis supplied*)

In the case of *Clodualda D. Daaco vs. Valeriana Rosaldo Yu*³, the Supreme Court held that in certain instances, the non-appearance of a party during pre-trial may be excused, to wit:

"In certain instances, however, the non-appearance of a party may be excused if a valid cause is shown. What constitutes a valid ground to excuse litigants and their counsels at the pre-trial is subject to the sound discretion of a judge. Unless and until a clear and manifest abuse of discretion is committed by the judge, his appreciation of a party's reasons for his nonappearance will not be disturbed."
(*Emphasis supplied*)

The aforecited provision and Supreme Court case provides that the non-appearance of a party in Pre-Trial may be excused if a valid cause is shown. However, what constitutes a valid cause is subject to the sound discretion of the Court.

In view of the late receipt of the Notice of Pre-Trial Conference, the Court finds petitioner's cause sufficient justification for its failure to appear at the Pre-Trial Conference. Hence, the Court finds a compelling reason to reverse and set aside the Order dated July 13, 2020.

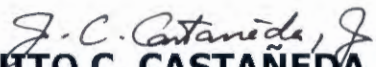
WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **GRANTED**. Thus, the **Order** dated July 13, 2020 is **REVERSED** and **SET ASIDE**.

Accordingly, set this case for the pre-trial conference on February 24, 2021 at 9:00 a.m. Petitioner is ordered to file with the

³ G.R. No. 183398, June 22, 2015.

Court and serve on the adverse party at least three (3) days before the date of the pre-trial its pre-trial brief. Further, pursuant to Section 2 of the Judicial Affidavit Rule (A.M. No. 12-8-8-SC), the parties are ordered to submit the judicial affidavits of their witness not later than five (5) days before the pre-trial.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice