

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

EN BANC

CARLO J. CAPARAS,

Petitioner,

CTA EB CRIM NO. 041

(CTA Crim. Case Nos.
O-321, O-322, O-323
and O-324)

Present:

-versus-

**DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.**

**COURT OF TAX APPEALS (3rd Div.),
PEOPLE OF THE PHILIPPINES, and
COMMISSIONER OF INTERNAL
REVENUE,**

Promulgated:

Respondent.

SEP 22 2017 1:29 p.m.

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R E S O L U T I O N

On August 23, 2017, petitioner, through his counsel, filed a Motion to Admit Petition for Certiorari, praying that the attached petition for certiorari be admitted in the interest of fair play and substantial justice and to help petitioner's counsel maintain his job during trying period with family.

As cited in the said motion, petitioner received the CTA Third Division's Resolution on January 12, 2017 which denied his Demurrer to Respondent's Evidence. Thus, he moved for reconsideration of said resolution on January 30, 2017.

Again, respondent Court denied the said motion under Resolution dated June 2, 2017 which was received by the petitioner on June 13, 2017.

On August 23, 2017, petitioner filed the petition for certiorari nine days after the deadline of its filing. Hence, the instant motion to admit said petition.

Section 4, Rule 65 of the Rules of Court provides:

SEC. 4. *When and where to file the petition.* - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. **In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of said motion.**

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction. (*Emphasis supplied*)

As shown above, petitioner received the denial of its motion for reconsideration on the ruling of the respondent court on his demurrer of evidence on June 13, 2017. Pursuant to the above-cited provision of the Revised Rules of Court, he had until August 12, 2017 to file the said petition.

However, since the said date falls on a Saturday, he had actually until August 14, 2017 to file said pleading but he failed to do so, instead, he filed it on August 23, 2017.

Petitioner's counsel reasoned out that the late filing of said pleading was caused by the death of his mother on August 8, 2017 which required his full attention in arranging the funeral services and post-burial obligations. Hence, he cited excusable negligence as the cause for the late filing of the petition for certiorari.

In *Santos v. Rustia*,¹ the Supreme Court explains what constitute excusable negligence and its nature, to wit:

Corpus Juris, Vol. 45, section 852 has to say the following, applicable a *fortiori* to excusable negligence:

Negligence, that is, a failure to comply with some duty of care owed by one to another, is a mixed question of law and fact, of standards of care and compliance therewith, involving the preliminary question as to whether defendant owed any duty of care to plaintiff, and leaving it for the jury to decide the ultimate facts of negligence, subject to the exceptions hereinafter stated. Where the standard of care is fixed and the measure of duty is defined by the law and is the same under all circumstances, and where compliance therewith is proved or disproved by uncontradicted evidence or undisputed facts from which only one inference can reasonably be made, the court may declare defendant to be guilty or not guilty of negligence as matter of law. Cases, where the standard of care is fixed, go to the jury only where the evidence of compliance rests on contradictory evidence or upon disputed facts. But where the standard of duty is not fixed, but variable, shifting with the circumstances, as is generally the case, it is for the jury to determine, under instructions, what the standard of care required in a particular case is, and whether there has been a compliance with such requirements.

Also in *Guevarra et al. v. Spouses Bautista et al.*,² the high court ruled that:

Unfortunately for the petitioners, negligence, **to be excusable, must be such that ordinary diligence and prudence could not have guarded against it.** Their counsels oversight can hardly be characterized as excusable, much less unavoidable. It is settled that clients are bound by the mistakes, negligence and omission of their counsel. While, exceptionally, the client may be excused from the failure of counsel, the circumstances obtaining in the present case do not convince this Court to take exception. (*Emphasis supplied*)

As discussed in the abovementioned cases, the negligence will only be excusable if even with the observance of

¹ G.R. No. L-4917-R, October 31, 1951.

² G.R. No. 148435, November 28, 2008.

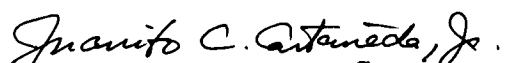
the standard of due diligence of a good father of a family, the non-filing of said pleading cannot be avoided.

Contrariwise, petitioner's counsel is not a solo practitioner but a law firm. Thus, ordinary diligence dictates that he could have asked the partners in said law firm to assign another lawyer to file it on his behalf since, as he alleged, he already finished said pleading.³ He had more than a week to delegate the task of filing to his colleagues which was sufficient enough considering that the law firm's address is only in Makati City.

WHEREFORE, premises considered, the said motion to admit petition for certiorari is hereby **DENIED** for lack of merit. Accordingly, the petition for certiorari is also **DENIED** for being filed out of time.

SO ORDERED.

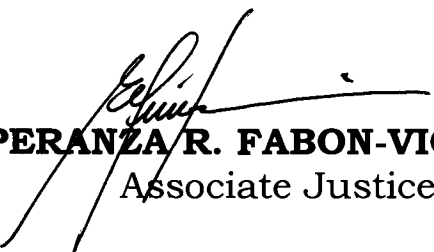

ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

³ Rollo, CTA EB Crim. No. O-041, Motion to Admit Petition for Certiorari, p. 2.

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice