

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

CHERRIE MARIE T. CHAN,
Petitioner,

CTA CASE NO. 10240

Members:

- versus -

UY, Chairperson,
BACORRO-VILLENA, and
CUI-DAVID, JJ.

COMMISSIONER OF THE
BUREAU OF INTERNAL
REVENUE,

Promulgated:

Respondent.

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RESOLUTION

For the Court's resolution is petitioner Cherrie Marie T. Chan's (**petitioner's**) "Motion for Reconsideration"¹ (**MR**) of the Order issued on 23 February 2022, filed *via* LBC (a private courier) on 28 March 2022, without respondent Commissioner of Internal Revenue's (**respondent's**) comment despite due notice.²

In her MR, petitioner asks this Court to reconsider and set aside its Order dated 23 February 2022³ (**Second Order of Dismissal**), which dismissed the instant case for the second time for failure of petitioner's counsel to appear at the Pre-Trial Conference scheduled on that hearing date, and set the case anew for Pre-Trial Conference.

The case was first set for Pre-Trial Conference on **26 August 2020**.⁴ On that scheduled hearing date, however, the Court dismissed the instant case for failure of petitioner's counsel to file petitioner's

¹ Division Docket, Volume III, pp. 1538-1543, with annexes.

² *Per* Records Verification dated 05 May 2022, id., p. 1546.

³ Id., p. 1536.

⁴ See Notice of Pre-Trial Conference dated 10 July 2020, id., Volume II, pp. 707-708.

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pre-trial brief and to appear at the pre-trial⁵ (**First Order of Dismissal**), pursuant to Sections 5 and 6⁶, Rule 18 of the Rules of Court, as amended by the 2019 Amendments to the 1997 Rules of Civil Procedure⁷ (**Revised Rules of Court**).

Aggrieved, on 21 December 2020, petitioner filed *via* LBC her MR of this Court's First Order of Dismissal⁸, with respondent's Comment/Opposition⁹ thereto filed *via* registered mail on 18 January 2021.¹⁰

In the Resolution dated 01 March 2021¹¹, the Court recalled and set aside its First Order of Dismissal after finding that petitioner was not duly notified of the scheduled pre-trial, as evidenced by the Registry Return Receipt (**RRR**) attached to the records of this case showing that petitioner received the Notice of Pre-Trial Conference¹² only on **13 October 2020**, or more than a month after the scheduled hearing date. In the same Resolution, the Court re-scheduled the Pre-Trial Conference to **05 April 2021**.

However, due to the physical closure of courts from 05 April 2021 to 14 May 2021¹³, on 17 May 2021, the Court reset the Pre-Trial Conference to **07 July 2021**.¹⁴

Then, on 30 June 2021, petitioner filed *via* LBC (a private courier) her "Motion to Conduct Hearing Through Video Conference" (**Motion for Videoconferencing**), which the Court granted in the

⁵ See Minutes of the Hearing and Order, both dated 26 August 2020, *id.*, pp. 749 and 750, respectively.

⁶ 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.

Sec. 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 (3) calendar days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

...
Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial. (Italics and underscoring in the original text)

⁷ A.M. No. 19-10-20-SC.

⁸ Division Docket, Volume II, pp. 778-781.

⁹ *Id.*, pp. 787-794.

¹⁰ Received by the Court on 26 January 2021.

¹¹ Division Docket, Volume II, pp. 805-812.

¹² *Supra* at note 4.

¹³ See Supreme Court Administrative Circular (AC) Nos. 15-2021, 21-2021, 22-2021 and 29-2021.

¹⁴ See Notice of Resetting dated 17 May 2021, Division Docket, Volume III, p. 1488.

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Resolution dated 07 July 2021.¹⁵ Accordingly, the Pre-Trial Conference was again reset to **12 July 2021** and was to be conducted *via* videoconferencing.

During the Pre-Trial Conference *via* videoconferencing held on 12 July 2021, the parties agreed to refer the case to mediation. Hence, the Court ordered the parties to appear personally or through their authorized representatives at the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) on **13 September 2021**.¹⁶

However, on 01 December 2021, the PMC-CTA submitted a “**Back to Court**” report stating that petitioner refused mediation.¹⁷ Thus, in the Resolution dated 09 December 2021¹⁸, the Court set the case anew for Pre-Trial Conference on **23 February 2022**. The records show that petitioner received the said Resolution on 20 December 2021.¹⁹

Thus, on 23 February 2022, this Court issued its Second Order of Dismissal²⁰ for failure of petitioner’s counsel to appear at the Pre-Trial Conference scheduled on that date, pursuant to Section 5²¹, Rule 18 of the Revised Rules of Court.

In support of her present MR, petitioner explains that the only reason why she and her counsel were absent during the 23 February 2022 Pre-Trial Conference was because they were “unaware of the said schedule” therefor. She adds that they only received the Court’s 09 December 2021 Resolution on **08 March 2022**, or thirteen (13) days after the scheduled hearing date.

Petitioner points out that in the dorsal portion of the envelope containing the Court’s 09 December 2021 Resolution, a date inscription was made, *i.e.*, “March 3, 2022”, which suggests that the said envelope was received at the Butuan City Post Office only on **03 March 2022**. A photocopy of the envelope bearing such inscription is attached to petitioner’s MR as Annex “A”. Petitioner likewise attached as Annex “B” a photocopy of the Certification dated 21 March 2022 issued by the Butuan City Post Office, attesting to the

¹⁵ Id., pp. 1498-1501.

¹⁶ See Order dated 12 July 2021, *id.*, p. 1507.

¹⁷ Id., pp. 1511-1512.

¹⁸ Id., p. 1514.

¹⁹ See Notice of Resolution dated 09 December 2021, *id.*, p. 1513.

²⁰ Supra at note 3.

²¹ Supra at note 6.

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fact that it received the said mail only on **03 March 2022** and that a certain Mylene M. Sy, Secretary of petitioner's counsel, received the same on **08 March 2022**.

Once again, petitioner pled for leniency stating that technical rules of procedure must yield to the higher interest of justice.

We resolve.

Notwithstanding that Section 5²², Rule 18 of the Revised Rules of Court ordains the dismissal of a case for failure of plaintiff and counsel to appear without a valid cause when so required, the dismissal of herein case may not be the proper sanction it appearing that there is a justifiable reason for such omission to appear at the scheduled pre-trial.

Similar to the Court's disquisition in its 01 March 2021 Resolution as regards its First Order of Dismissal, a closer scrutiny of the records reveals that petitioner was also not duly notified of the schedule for the Pre-Trial Conference. The RRR attached to the records of this case shows that petitioner received the Court's 09 December 2021 Resolution only on **08 March 2022**, or thirteen (13) days after the scheduled hearing date.

Further, considering that this is the second time that the Court will have to recall and set aside its order of dismissal for the same reason that petitioner was not duly notified of the scheduled pre-trial due to the belated delivery of the mail sent *via* registered mail to petitioner's counsel's address in Butuan City²³, this Resolution shall also be electronically served to petitioner's counsel²⁴ pursuant to Section 18²⁵, Rule 13 of the Revised Rules of Court. This is to ensure timely receipt by petitioner's counsel and avoid further delay of the Court's proceedings.

²² Supra at note 6.

²³ Registered Mail No. RE 512 229 681 ZZ, posted on 20 December 2021, was delivered to and received by petitioner's counsel only on 08 March 2022, *i.e.*, more than two (2) months from posting.

²⁴ The email address of petitioner's counsel is attyssjcpas@yahoo.com.

²⁵ Sec. 18. Court-issued orders and other documents. – The court may electronically serve orders and other documents to all the parties in the case which shall have the same effect and validity as provided herein. A paper copy of the order or other document electronically served shall be retained and attached to the record of the case. (Italics and underscoring in the original text)

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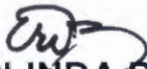
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WHEREFORE, in the interest of substantial justice, and if only to give petitioner the final opportunity to be heard on her allegations and claims, petitioner's Motion for Reconsideration, filed on 28 March 2022, is hereby **GRANTED**. The Order dated 23 February 2022 dismissing the case is hereby **RECALLED** and **SET ASIDE**.

Accordingly, **SET** the case for Pre-Trial Conference on **01 March 2023 at 9:00 a.m.** The parties are reminded to file their respective pre-trial briefs and the judicial affidavits of their witnesses.

In addition to service by registered mail, the Clerk of Court is hereby **ORDERED** to **ELECTRONICALLY SERVE** this Resolution to petitioner's counsel.

SO ORDERED.



ERLINDA P. UY
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



LANEE S. CUI-DAVID
Associate Justice