

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

EN BANC

ASIAN ASSETS, INC.,

Petitioner,

C.T.A. E.B. NO. 41

(C.T.A. CASE NO. 6835)

Present:

-versus-

ACOSTA, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

THE COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

Promulgated:

FEB 22 2005

W. Palanca

X ----- X

DECISION

PALANCA-ENRIQUEZ, J.:

This is a Petition for Review filed by Asian Assets, Inc. (hererafter
“petitioner”) under *Section 11 of Republic Act No. 9282 (An Act*
Expanding the Jurisdiction of the Court of Tax Appeals), in relation to

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Rule 43 of the 1997 Rules of Civil Procedure, as amended, of the Resolution of the Division of this Court, dated June 8, 2004, dismissing petitioner's Petition For Review, and the Resolution dated October 6, 2004, denying petitioner's Motion For Reconsideration and Motion To Admit Amended Petition For Review.

THE FACTS

The facts are:

On December 15, 2003, petitioner filed a Petition For Review of the decision of the Commissioner of Internal Revenue (hereafter "respondent") on the disputed assessment for deficiency income taxes, docketed as C.T.A. Case No. 6835.

On January 22, 2004, respondent filed a "Motion For Extension of Time To File Answer" praying for thirty (30) days from January 23, 2004 within which to file his Answer, which the Division of this Court granted in its Order of February 6, 2004.

On February 20, 2004, respondent filed a "Motion For Second Extension of Time To File Answer" praying for thirty (30) days from

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February 20, 2004 or until March 21, 2004 within which to file his Answer, which the Division granted in its Order dated March 11, 2004.

On March 24, 2004, respondent filed a "Motion To Admit Answer", which was set for hearing on May 14, 2004.

At the scheduled hearing on May 14, 2004, counsel for respondent verbally moved to dismiss the case on the ground that the petition lacks verification and certification against forum shopping, which the Division granted. The Resolution of June 8, 2004 reads as follows:

"RESOLUTION

Confirming the order of this court on May 14, 2004, respondent's oral motion to dismiss this case due to lack of verification and certification against forum shopping in violation of Sections 4 and 5 of Rule 7 of the Rules of Court is hereby **GRANTED**.

ACCORDINGLY, this case is considered **DISMISSED** pursuant to Sections 4 and 5 of Rule 7 of the Rules of Court.

SO ORDERED."



On June 29, 2004, petitioner filed a “Motion For Reconsideration and Motion To Admit Amended Petition For Review”.

In the Resolution of August 10, 2004, respondent was granted ten (10) days from August 6, 2004 to file his comment.

On August 16, 2004, respondent filed his “Comment/Opposition (to Petitioner’s Motion For Reconsideration)”.

On October 6, 2004, the Division denied petitioner’s “Motion For Reconsideration and Motion To Admit Amended Petition For Review” for lack of merit.

THE ASSIGNED ERRORS

Hence, this Petition For Review raising the following errors committed by the Division of this Court:

A

THE FIRST DIVISION COMMITTED SERIOUS ERROR OF LAW AMOUNTING TO GRAVE ABUSE OF DISCRETION IN DISMISSING THE PETITION FOR REVIEW ON TECHNICAL GROUNDS AS THE SAME WILL DEPRIVE PETITIONER OF THE RIGHT TO PROCEDURAL DUE PROCESS.



B

THE FIRST DIVISION COMMITTED SERIOUS ERROR OF LAW AMOUNTING TO GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION.

C

THE FIRST DIVISION COMMITTED SERIOUS ERROR OF LAW AMOUNTING TO GRAVE ABUSE OF DISCRETION IN REFUSING TO ADMIT PETITIONER'S MOTION TO ADMIT AMENDED PETITION FOR REVIEW.

D

THE FIRST DIVISION COMMITTED SERIOUS ERROR OF LAW AMOUNTING TO GRAVE ABUSE OF DISCRETION IN RECKONING THE PERIOD TO FILE A MOTION FOR RECONSIDERATION FROM THE VERBAL ORDER OF DISMISSAL OF PETITIONER'S PETITION FOR REVIEW.

THE ISSUE

The principal issue in this instant case is whether or not the Division of this Court erred in dismissing the Petition For Review for lack of certification against forum shopping.



THE COURT EN BANC'S RULING

Being interrelated, the first, second and third assigned errors will be discussed jointly.

Petitioner contends that the fact that a Verification and Certification of Non-Forum was made and notarized prior to the filing of petitioner's Petition For Review with the First Division of this Court is substantial compliance with the requirement of the Rules of Court.

Petitioner further argues that the honest mistake of the petitioner in failing to attach the required verification and certification against forum shopping plus the fact that petitioner is not itself guilty of forum shopping and is not minded to forum shop are sufficient by themselves to warrant the relaxation of procedural rules.

Respondent counterargues that the requirement against forum shopping is mandatory in character and failure to comply with the requirement shall not be curable by mere amendment of the petition.

Petitioner's contention is devoid of merit.



Section 5, Rule 7 of the 1997 Rules of Civil Procedure, as amended, in part, provides:

“SEC. 5. *Certification against forum shopping.*—

xxx

xxx

xxx.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.”

Pursuant to the aforecited provision, the required Certificate of Forum Shopping is mandatory (*Loyola vs. Court of Appeals, 245 SCRA 472*). Failure to comply with this requirement cannot be excused by the fact that plaintiff is not guilty of forum shopping nor can subsequent compliance with the requirement excuse a party’s failure to comply in the first instance (*Melo vs. Court of Appeals, 318 SCRA 102*).



Thus, it has been held:

“It should be emphasized that the mere submission of a certification under Administrative Circular No. 04-94 after the filing of a motion to dismiss on the ground of non-compliance thereof does not necessarily operate as a substantial compliance; otherwise, the Circular would lose its value or efficacy.” (*Kavinta vs. Castillo, Jr.*, 249 SCRA 604; *Tomarong vs. Lubguban*, 269 SCRA 629)

We are not unmindful of the adverse consequence to petitioner of the dismissal of its petition solely on a so-called technical ground. Nonetheless, We hold that compliance with the certification requirement on non-forum shopping should not be made subject to a party's afterthought, lest the policy of the law be undermined (*Melo vs. Court of Appeals, supra*).

The rules apply to the petitioner who shows no other reason for failure to comply with *Section 5, Rule 7 of the 1997 Rules of Civil Procedure, as amended*, save to claim mere excusable oversight or inadvertent mistake of petitioner's counsel/personnel. Such excuse cannot be countenanced when negligence would be used to flout the clear and express provisions of the law. “Oversight”, which they candidly cite



as a reason for their failure to comply, is not a justification. The counsel's oversight and the consequences thereof, bind the client.

While it is true that litigation is not a game of technicalities, this does not mean that the *Rules of Court* may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. Justice eschews anarchy (*Limpot vs. Court of Appeals*, 170 SCRA 367).

While We agree with the petitioner that the fifteen day period to file a Motion For Reconsideration shall be counted from its receipt on June 14, 2004 of the Resolution dismissing the petition, and, therefore, its Motion For Reconsideration was filed on time on June 29, 2004, nonetheless, the Division of this Court did not err in dismissing the petition and denying the "Motion For Reconsideration and Motion To Admit Amended Petition For Review" for failure to comply with *Section 5, Rule 7 of the 1997 Rules of Civil Procedure, as amended*. Pursuant to said provision, failure to comply with the foregoing requirements shall



not be curable by mere amendment of the complaint or other initiatory pleading, but shall be cause for the dismissal of the case, without prejudice.

While respondent failed to raise the issue of lack of verification and certification of non-forum shopping in his Answer, said issue was raised, albeit, in a verbal motion to dismiss, during the hearing on May 14, 2004 (*Order dated June 8, 2004*). Thus, this Court, finding the motion to be meritorious, ordered for the dismissal of the case. There was nothing irregular in this Court's Order as this was done upon motion and after hearing as mandated by the rules (*2nd par., Section 5, Rule 7, 1997 Rules of Civil Procedure, as amended*).

In view of the foregoing, We see no reason to reverse the assailed Resolutions dated June 8, 2004 and October 6, 2004, of the Division of this Court.

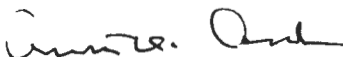


WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE** and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

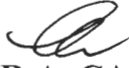
WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice

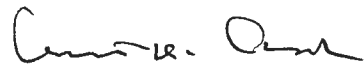

ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice



CERTIFICATION

Pursuant to Article VIII, Section 13 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.



ERNESTO D. ACOSTA
Presiding Justice

