REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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PURECHEM CORPORATION, Petitioner,	**CTA EB No. 1856** (CTA Case No. 9653)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JAN 13 2021 1:45 p.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION (Re: Decision dated August 13, 2019)"**[1] filed on September 9, 2019, and **"SUPPLEMENTAL MOTION FOR RECONSIDERATION Re: Decision dated August 13, 2019 (WITH MOTION FOR LEAVE TO FILE),"**[2] both without respondent's Comment,[3] despite due notice. In the said Motion, petitioner prays for reconsideration of the Court's Decision dated August 13, 2019, the dispositive portion of which reads:

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[1] Docket, pp. 110 to 123.
[2] Docket, pp. 130 to 134.
[3] Records Verification dated December 11, 2019 and September 23, 2020, Docket, pp. 128 and 152.

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The Order dated February 1, 2018 and the Resolution dated April 18, 2018, rendered by the Second Division of this Court in CTA Case No. 9653 are hereby **AFFIRMED.**
>
> **SO ORDERED.**"

In support of its Motion, petitioner argues that:

1. The negligence of petitioner's former counsel was so gross as to deprive petitioner of due process and its day in court, and petitioner cannot be faulted for good faith reliance on its counsel.

2. The strict application of the rules of procedure will be tantamount to a deprivation of petitioner's property through mere technicality, as the tax assessment involves millions of pesos and a substantial fraction of petitioner's assets.

3. Petitioner's case is meritorious on its face and deserves consideration by this Court.

In its Supplemental Motion, petitioner averred that:

1. The Formal Letter of Demand (FLD) attached to the Formal Assessment Notice (FAN) it received on January 5, 2016, for alleged deficiency value-added taxes for the 1st and 2nd quarters, contains the phrase "Please note that the interest and total amount due will have to be adjusted if paid beyond January 16, 2016." Clearly, the assessment against petitioner is for an indefinite amount. Thus, the assessment is void and no liability can arise therefrom.

2. Void assessments cannot give rise to an obligation to pay deficiency taxes, and likewise divests the taxing authority of the right to collect them. To allow respondent to collect taxes based on a void assessment would be a grave injustice to petitioner. In the interest of benevolent justice and judicious consideration, petitioner equitably deserves to be given its day in court.

3. The instant case is meritorious on its face and deserves consideration on the merits by this Court.

THE COURT *EN BANC'S* RULING

In its motion, petitioner contends that the negligence of its former counsel was so gross as to deprive it of due process.

In the case of Apex Mining, Inc. vs. Court of Appeals[4] , the Supreme Court held that as a general rule, the negligence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client. However, the application of the general rule to a given case should be looked into and adopted according to the surrounding circumstances obtaining. Thus, exceptions to the foregoing have been recognized by the court in cases where reckless or gross negligence of counsel deprives the client of due process of law, or when its application will result in outright deprivation of the client's liberty or property or where the interests of justice so require, and accord relief to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence.

Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It examines a thoughtless disregard of consequences without exerting any effort to avoid them.[5]

After a second hard look at the incidents that transpired in CTA Case No. 9653, there is sufficient bases to conclude that petitioner's former counsel was guilty of gross negligence.

In CTA Case No. 9653, petitioner's former counsel not only failed to submit a Pre-Trial Brief, he likewise failed to attend the scheduled pre-trial conference, not once, but twice, despite due notice. Records show that no effort was exerted by petitioner's former counsel to explain his absence during the scheduled Pre-Trial conferences, nor was there any attempt on his part to ask for an extension of time to file Pre-Trial Brief, or for the postponement of the scheduled Pre-Trial Conference in case he was then not available on the scheduled dates of hearing. Clearly, petitioner's former counsel, and the members of the law firm to which he belongs, failed to discharge the duties expected of him to the detriment of petitioner.

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[4] G.R. No. 133750, November 29, 1999.
[5] *Multi-Trans Agency Phils., Inc. vs. Oriental Assurance Corp.*, G.R. No. 180817, June 23, 2009.

Worse, there was likewise no showing that petitioner was properly informed about the scheduled Pre-Trial Conference and that none of the lawyers of the law firm could sign the requisite Pre-Trial Brief. Consequently, petitioner was deprived of taking any possible remedial recourse to avoid the dismissal of its Petition for Review in CTA Case No. 9653. As borne by the record, had petitioner been informed of the inability of his counsel to perform the duties expected of him, petitioner would have easily taken action to engage the services of another law firm so as not to have its case dismissed.

Based on the foregoing factual milieu, it is evident that petitioner's former counsel was indeed guilty of gross negligence in handling the case before the Court in Division.

Thus, it follows that if the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case.[6]

Technical rules of procedure may be relaxed to achieve substantial ends of justice

In the case of *Guillermo Dela Cruz vs. Hon. Deodoro J. Sison,*[7] it was held that the liberal application of rules of procedure in order to achieve the substantial ends of justice is preferred, as the over-strict adherence to a technical rule can result in a party's deprivation of due process of law, to wit:

> "Despite the foregoing, however, the Court agrees with the CA that the case should be remanded to the trial court for further proceedings and reception of respondent bank's evidence. As was noted by the CA, the trial court should have liberally applied the rules of procedure and admitted the answer even if filed one day late. xxx xxx xxxx
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> xxx xxx xxx
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> In the following instances, the Court reckoned it wise to liberally apply the rules of procedure in order to achieve the substantial ends of justice, viz.:

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[6] *Apex Mining, Inc. et al., vs. Court of Appeals, et al., supra.*
[7] G.R. No. 142464, September 26, 2005.

> ... (1) **<u>matters of</u>** life, liberty, honor or **<u>property</u>**; (2) **<u>counsel's negligence without any participatory negligence on the part of the client</u>**; (3) the existence of special or compelling circumstances; (4) **<u>the merits of the case;</u>** (5) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (6) **<u>a lack of any showing that the review sought is merely frivolous and dilatory</u>**; and (7) the other party will not be unjustly prejudiced thereby.
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> xxx xxx xxx
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> Rules of procedure are mere tools intended to facilitate the attainment of justice, rather than frustrate it. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities." *(Emphasis supplied.)*

Considering that on its face, petitioner appears to have a meritorious case against the validity of the subject assessment, and in the interest of liberality, procedural rules may be relaxed to accord petitioner every opportunity to present evidence in CTA Case No. 9653, so that substantial justice may be achieved.

After all, it is settled that procedural rules were conceived to aid the attainment of justice. If a stringent application of the procedural rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter. xxx xxx xxx The rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires. Simply put, procedural rules may be relaxed in order to prevent injustice to a litigant.[8]

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[8] *B.E. San Diego, Inc. vs. Manuel A.S. Bernardo*, G.R. No. 233135, December 5, 2018.

The instant Motion for Reconsideration must be denied pursuant to the Revised Rules of the Court of Tax Appeals, as amended.

During the deliberation of the instant Motion for Reconsideration, the members of the Court *En Banc* were divided in their votes. The ponente, together with Associate Justice Ma. Belen M. Ringpis-Liban, Associate Justice Catherine T. Manahan, and Associate Justice Maria Rowena Modesto-San Pedro, voted to grant the instant Motion on the basis of the foregoing disquisitions. In effect, the assailed Order dated February 1, 2018 and the Resolution dated April 18, 2018 issued by the Court in Division in CTA Case No. 9653 would be reversed.

On the other hand, Presiding Justice Roman G. Del Rosario, Associate Justice Juanito C. Castañeda, Jr., and Associate Justice Jean Marie A. Bacorro-Villena voted that the Decision of the Court *En Banc* dated August 13, 2019 be affirmed. Said Decision affirmed the Order dated February 1, 2018 and the Resolution dated April 18, 2018 issued by the Court in Division in CTA Case No. 9653.

The foregoing situation warrants the application of Section 2 of Republic Act (RA) No. 1125, as amended by RA No. 9503, and Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA), which respectively provide as follows:

<u>Section 2 of Republic Act (RA) No. 1125, as amended by RA No. 9503:</u>

> "**SEC. 2.** ***Sitting En Banc or Division; Quorum; Proceedings.*** — The CTA may sit *en banc* or in three (3) Divisions, each Division consisting of three (3) Justices.
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> Five (5) Justices shall constitute a quorum for sessions en banc and two (2) Justices for sessions of a Division: Provided, That when the required quorum cannot be constituted due to any vacancy, disqualification, inhibition, disability, or any other lawful cause, the Presiding Justice shall designate any Justice of other Division of the Court to sit temporarily therein.
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> **The affirmative votes of <u>five (5) members</u> of the Court *en banc* shall be necessary to <u>reverse a</u>**

decision of a Division but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level." *(Emphasis and underscoring supplied)*

Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA):

"SEC. 3. ***Court en banc; quorum and voting***. — The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. The presence at the deliberation and the **affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division** but only a simple majority of the justices present to promulgate a resolution or decision in all other cases. Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied." *(Emphasis and underscoring supplied)*

From the foregoing, the affirmative votes of five (5) members of this Court sitting *En Banc* is necessary to reverse a decision of a Division thereof.

If the said votes are not had, as in the instant case, the motion for reconsideration shall be denied. Consequently, the assailed Order dated February 1, 2018 and the Resolution dated April 18, 2018 issued by the Court in Division in CTA Case No. 9653 must be deemed affirmed, in accordance with Section 2 of RA No. 1125, as amended by RA No. 9503, and Section 3, Rule 2 of the RRCTA.

WHEREFORE, considering that the required affirmative votes of five (5) members of the Court *En Banc* was not obtained in the instant case pursuant to Section 2 of R.A. No. 1125, as amended by R.A. No. 9503, in relation to Section 3 of Rule 2 of the RRCTA, the instant Motion for Reconsideration is hereby **DENIED.**

The assailed Order dated February 1, 2018 and the Resolution dated April 18, 2018 issued by the Court in Division in CTA Case No. 9653 are hereby **DEEMED AFFIRMED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice