REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RAMON A. GONZALES,
Petitioner,

- versus - C.T.A. CASE NO. 5156

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 06 1995

x - x

RESOLUTION

This concerns the order in open court on June 15, 1995 dismissing this case for failure of petitioner to prosecute his appeal.

The records show that after the filing of respondent's answer to petitioner's petition for review on December 27, 1994, petitioner filed, on January 30, 1995, a motion for summary judgment. Said motion was set for hearing on a motion day, February 24, 1995, but petitioner failed to appear on said date. On April 11, 1995, after the filing of respondent's comment and petitioner's reply, a resolution was promulgated by the Court denying petitioner's motion for summary judgment "on the ground that there are genuine issues of fact that call for the presentation of evidence.", and setting the case for hearing on April 26, 1995. On said date, petitioner was again absent but the Court, instead of dismissing the case, ordered the resetting to May 11, 1995 to give petitioner a chance to present his evidence.

On May 10, 1995, the day before the scheduled hearing (on May 11, 1995), petitioner filed a "Motion To Reset Hearing" alleging that the notice of hearing was received by him only on that day and that on May 11, 1995, "he has a hearing in Civil Case No. 93-64246 (PPN Realty, Inc. vs. Restituto Bantay), RTC, Branch 12, Manila, set ahead of the present case." Consequently, he prayed "that the hearing of this case scheduled for May 11, 1995 at 9:00 A.M. be SET to another date preferably in the June calendar of this Court."

On May 11, 1995 (the date of hearing), there was of course no appearance again on the part of petitioner and respondent's counsel verbally moved that the case be dismissed for non-appearance and failure to prosecute. However, the Court did not rule on the motion immediately but simply considered the same submitted for resolution.

On May 19, 1995, this Court denied respondent's motion to dismiss for non-suit "to give petitioner a last chance to prosecute its case" but with a warning "that no further postponement will be allowed on the next scheduled date of hearing."

On June 15, 1995, the last date set by the Court, petitioner manifested that "the hearing is premature because the case has not been set for pre-trial." He contended that pre-trial, as prescribed under Rule 20 of the Rules of Court, is mandatory and that, without it, "all proceedings thereafter are null and void." Petitioner likewise cited Circular No. 13 of the Supreme Court dated July 1, 1987 on pre-trial. However, the Court, after noting that petitioner was still unprepared to prosecute his appeal in clear disregard of the warning of this Court, and upon oral motion of respondent's counsel, dismissed the case for failure to prosecute.

Clearly, from the foregoing facts, the Court has been lenient enough to petitioner but he was simply unprepared to go to trial and present his evidence. Indeed, if he wanted to raise the matter of pre-trial, why did he not say so at the first opportunity after the denial of his motion for summary judgment? On April 26, 1995, the first setting of the case for hearing, he should have appeared and raised already the question of pre-trial procedure before the Court or should have at least filed a motion to that effect prior thereto. In fact, even on the next setting on May 11, 1995, he could have raised the question of pre-trial but instead he filed a motion to reset (or *postponement), praying that the hearing of the case be set to another date preferably in the June calendar of this Court. Obviously, by the actuation of petitioner, he should be deemed to have waived the question of pre-trial or considered estopped from raising the same in the June hearing which he himself requested. Is petitioner trying to show that he could toy with this Court's proceedings? Or that he could hide his unpreparedness to go to trial and proceed with the prosecution of his case? By his conduct, he even defeated the very purpose of pre-trial which is to abbreviate the proceedings.*

At any rate, without prejudice to a more extended opinion on the matter of pre-trial, which is applicable to proceedings of trial courts of general jurisdiction, the Court of Tax Appeals is a special court vested with exclusive and appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in internal revenue cases and decisions of the Commissioner of Customs in customs cases (Sec. 7, Rep. Act No. 1125). As such special court, it is vested with the power to promulgate its own rules and regulations for the conduct of its business and is not bound by the technical rules of evidence (Sec. 8, ibid). Thus, on the matter of trial or hearing of cases filed before it, the Rules of the Court of Tax Appeals, *(promulgated and adopted by the Court on September 10, 1955 ([51 OG 4635; No. 9, Sept. 1955]), under Sections 1 and 2 thereof specifically provide as follows:*

RULE 11

SETTING OF CASES FOR HEARING

> *Sec. 1. Immediately after the respondent shall have filed his answer to the Petition for Review the Clerk of Court shall set the case for hearing on the first available date immediately following the tenth day after the filing thereof.*
>
> *Sec. 2. Where, due to the urgency of the case, either the petitioner or the respondent desires that the hearing thereof be set on an earlier date, the petitioner shall so state in his pleading, in which event the case shall be set for hearing by the Clerk on the first available date immediately after the filing of the respondent's Answer." (Underlining supplied.)*

Further, Rule 16 of the same CTA rules provides that the provisions of the Rules of Court applicable to proceedings before the Court of First Instance (now Regional Trial Court) shall, insofar as they may not be inconsistent with the provisions of Republic Act No. 1125 and the Rules of the Court of Tax Appeals, be applicable to cases pending before the Court, except that, in any case pending before it, this Court may, in the exercise of its discretion, fix a shorter period for the filing of pleadings and other papers.

Verily, the Court of Tax Appeals is mandated by its rules to immediately set the case for hearing on the merits on the first available date following the tenth day after the filing of the answer. (And we should emphasize the words "shall" and "immediately" used by the rules). Withal, the pre-trial procedure under the Rules of Court cannot be strictly or mandatorily required to govern the proceedings of the Court of Tax Appeals. Or simply the adoption of said procedure should be at the Court's discretion.

WHEREFORE, confirming the order in open court on June 15, 1995, this case is DISMISSED for petitioner's failure to prosecute his appeal.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge