

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

SECOND DIVISION

**PHILIPPINE PHARMA
PROCUREMENT, INC.
(formerly: PITC PHARMA,
INC.),**

Petitioner,

- versus -

CTA CASE NO. 9734

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, JJ.

**BUREAU OF INTERNAL
REVENUE represented by
COMMISSIONER CAESAR
R. DULAY,**

Respondent.

Promulgated:

AUG 03 2018

2:10 pm 

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RESOLUTION

Before this Court is petitioner's **Motion for Reconsideration (of the 24 May 2018 Order)**, filed on June 18, 2018, without respondent's comment as per records verification dated July 16, 2018.

Petitioner moves for a reconsideration of the Order dated May 24, 2018, dismissing the Petition for Review for failure to prosecute.

It must be noted that during the pre-trial conference set on May 24, 2018, petitioner failed to appear and to file his Pre-Trial Brief despite due notice. Thus, respondent made an oral motion to dismiss the case on the ground of failure to prosecute, which was granted by the Court.¹

¹ Docket, pp. 243 and 245.

However, the Court received copies of the Entry of Appearance (With Motion to Cancel Pre-Trial) on May 24, 2018 and May 29, 2018, filed by petitioner's counsel respectively via courier and registered mail, on May 22, 2018.²

In the Motion to Cancel Pre-Trial, petitioner prays for the cancellation of the May 24, 2018 pre-trial conference because of the need for additional time to collate all relevant documents, review and study the specific circumstances in this case, to confer with petitioner's proper officials who are familiar with the case background in order to intelligently prepare all the required judicial affidavits as required by the rules of procedure of the Court, and to enable respondent's counsel to re-arrange schedule in order to attend all hearings of this case.

Subsequently, the Court issued a minute resolution on May 30, 2018, and noted the entry of appearance filed by Attys. Efren B. Gonzales, Maria Romelina T. Apostol and Reginald Jeremy I. Wan as counsels for petitioner.³

Thus, on June 18, 2018, petitioner filed the instant Motion for Reconsideration (of the 24 May 2018 Order), praying that the Court reconsider and set aside its Order dated May 24, 2018, and set the pre-trial conference anew on a date convenient to the calendar of the Court.⁴ Petitioner argues that the precipitate dismissal of the petition violates petitioner's right to due process and equal protection of the laws. Petitioner also claims that the cancellation was requested considering that the date of the pre-trial conference, which was set by the Court, coincided with the date on which petitioner's counsel already had a prior commitment for equally important work, rendering him unavailable for hearing on May 24, 2018, the date of the pre-trial conference.

Petitioner further alleges that in requesting for the cancellation of the May 24, 2018 pre-trial conference, petitioner and its handling counsel noted that the previous setting of the pre-trial conference on April 26, 2018 was cancelled by the Court upon the request of respondent's counsel who was scheduled to go on vacation on same date. Petitioner argues that in stark contrast, petitioner's request for cancellation was for the protection of its interests considering that it

² Docket, pp. 253-257.

³ Docket, p. 259.

⁴ Docket, pp. 261 to 266.

was in danger of losing a huge amount of money on the basis of an unfounded assessment.

Petitioner states that apparently the Court on May 24, 2018 had yet to receive the Entry of Appearance (with Motion to Cancel Trial) which was sent through registered mail. It also alleges that the Court failed to notice the Motion to Cancel Pre-Trial which accompanied the Entry of Appearance upon its receipt considering that the Court in its Minute Resolution dated May 30, 2018 simply noted such entry of appearance, without mentioning anything about the Motion to Cancel Pre-Trial.

Petitioner further argues that under Section 3, Rule 13 of the Rules of Court, which is supplementary to the Revised Rules of the Court of Tax Appeals pursuant to its Section 3, Rule 1, motions are deemed filed by personally presenting such motion to the clerk of court or by registered mail. Petitioner states that in the latter case, the date of the mailing of the motion, as shown by the post office stamp or the registry receipt) shall be considered the date of its filing. As such, the Entry of Appearance (with Motion to Cancel Pre-Trial) was deemed filed on May 22, 2018 and the Court would be properly dispensing justice and according petitioner due process and equal protection of the laws by reconsidering and setting aside its Order dated May 24, 2018 and setting the pre-trial conference anew.

Petitioner's contention that it was denied due process is not well-taken.

It must be pointed out that the assailed Order is pursuant to Section 5, Rule 11 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, and Section 3, Rule 17 of the Rules of Court.

Section 5, Rule 11 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, provides:

"SEC. 5. Procedure in civil cases. – In civil cases, the parties shall submit, **at least three days before the pre-trial, their** respective **pre-trial briefs** xxx

xxx

xxx

xxx"

Failure to file the pre-trial brief or to comply with its required contents **shall have the same effect as failure to appear at the pre-trial.** (*Emphasis supplied.*)

In relation thereto, Section 3, Rule 17 of the Rules of Court allows dismissals due to plaintiff's fault, including plaintiff's failure to comply with the Rules for no justifiable cause:

"SEC. 3. *Dismissal due to fault of plaintiff.* – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court."

"The most basic tenet of due process is the right to be heard. Where a party had been afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process. Due process is satisfied as long as the party is accorded an opportunity to be heard. If it is not availed of, it is deemed forfeited without violating the Bill of Rights."⁵

Records show that as early as May 16, 2018, petitioner's counsel already knew that the pre-trial conference was reset from April 26, 2018 to May 24, 2018 after receiving a copy of the Order of the Court dated April 20, 2018.⁶ Accordingly, petitioner should have already filed with the Court its Pre-Trial Brief and submitted its judicial affidavits and exhibits to the Court at least five days before the May 24, 2018 pre-trial conference under the above-mentioned rules governing pre-trial conferences observed by the Court.

At the very least, petitioner should have ensured that its filed motion will be received by the Court prior to the scheduled pre-trial conference on May 24, 2018. This petitioner failed to do.

⁵ *R Transport Corporation vs. Philhino Sales Corporation*, G.R. No. 148150, July 12, 2006.

⁶ Docket, p. 253.

Moreover, petitioner is reminded that the grant of a motion for continuance or postponement is not a matter of right.⁷ It is addressed to the sound discretion of the courts. Parties asking for postponement have no right to assume that their motions would be granted nor to expect that their motion for reconsideration of their denied motion for postponement would be reconsidered.⁸ Thus, they must be prepared on the day of the hearing.⁹

Considering that petitioner was duly notified of the resetting of the pre-trial conference to May 24, 2018 and despite notice, it failed to appear on the said date and file its pre-trial brief, it is clear that there was no violation of due process in issuing the assailed Order.

Nevertheless, in the interest of substantial justice, and to give petitioner "the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities,"¹⁰ the Court shall allow the re-setting of the pre-trial conference.

In *Olave, et al. vs. Mistas, et al.*¹¹, the Supreme Court did not find heavy pressures of work as sufficient justification for the failure of therein respondents counsel to timely move for pre-trial. However, unlike the respondents in *Olave*, the failure of petitioner to file its Pre-Trial Brief with the Court and provide petitioner with a copy thereof within the prescribed period under Section 1, Rule 18 of the Rules of Court and to appear at the pre-trial conference, were the first and, so far, only procedural lapse committed by petitioner. Petitioner did not manifest an evident pattern or scheme to delay the disposition of the case or a wanton failure to observe a mandatory requirement of the Rules.¹² In fact, petitioner, for the most part, exhibited reasonable dispatch in prosecuting its claim against respondent by instantaneously filing a Motion for Reconsideration of the Order dated May 24, 2018 dismissing its Petition for Review for failure to prosecute.

Accordingly, the ends of justice and fairness would be best served if the parties to this case are given the full opportunity to

⁷ *R Transport Corporation vs. Philhino Sales Corporation*, G.R. No. 148150, July 12, 2006, citing *Bautista vs. Court of Appeals*, G.R. No. 157219, May 28, 2004.

⁸ *Gochan, et al. vs. Gochan, et al.*, G.R. No. 143089, February 27, 2003.

⁹ *Id.*

¹⁰ *Cortal vs. Inaki A. Larrazabal Enterprise*, G.R. No. 199107, August 30, 2017.

¹¹ G.R. No. 155193, November 26, 2004.

¹² *Malayan Insurance Co., Inc. vs. Ipil International, Inc., et al.*, G.R. No. 141860, August 31, 2006.

thresh out the real issues and litigate their claims in a full-blown trial. Besides, respondent would not be prejudiced should the Court proceed with the hearing of this case, as he failed to file his comment on the motion and is not stripped of any affirmative defenses nor deprived of due process of law.¹³

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (of the 24 May 2018 Order)** is **GRANTED**. Thus, the **Order** dated May 24, 2018 is **REVERSED** and **SET ASIDE**.

Accordingly, set this case for the pre-trial conference on September 13, 2018 at 1:30 p.m. Petitioner is ordered to file with the Court and serve on the adverse party at least three (3) days before the date of the pre-trial its pre-trial brief. Further, pursuant to Section 2 of the Judicial Affidavit Rule (A.M. No. 12-8-8-SC), the parties are ordered to submit the judicial affidavits of their witness not later than five (5) days before the pre-trial.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

¹³ *Bank of the Philippine Islands vs. Dando*, G.R. No. 177456, September 4, 2009, citing *Polanco vs. Cruz*, G.R. No. 182426, February 13, 2009.