REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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COMPANIA DE GARAY, INC. Represented by FLORENTINE T. GARAY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and ESMERALDA M. TABULE IN HER CAPACITY AS THE REGIONAL DIRECTOR OF REVENUE REGION NO. 16,
Respondents.

CTA CASE NO. 8031

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, *JJ.*

Promulgated:

OCT 2 2 2012 3:47 pm

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RESOLUTION

Submitted for resolution is respondents' **"MOTION TO DISMISS"** filed on August 13, 2012 through registered mail and received by this Court on August 22, 2012, without petitioner's comment despite notice.

Respondents seek the dismissal of the case for petitioner's failure to prosecute for unreasonable length of time and for lack of interest, substantially arguing that petitioner's failure to appear on pre-trial and constant violation of court orders and processes manifest petitioner's lack of interest in the case. Among others, petitioner's violations were manifested by being repeatedly ordered by this Court to show cause why it should not be held in contempt and why the case should

not be dismissed; by letting the non-extendible period of time to lapse; by filing an unsigned Joint Stipulation of Facts and Issues (JSFI); and by failing to appear in Court despite due notice.

This Court finds respondent's motion meritorious.

The Rules of Court contemplates situations where a case may be dismissed due to the fault of the plaintiff, or in this case, the petitioner. Section 3, Rule 17 of the 1997 thereof provides:

> "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 defendant or upon the court's own motion, without prejudice to the rights 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."

Clearly, the three instances where the dismissal of a case is due to petitioner's fault are: (a) failure to appear during the scheduled trial, especially on the date for the presentation of its evidence in chief; (b) failure to prosecute his action for an unreasonable length of time; or (c) failure to comply with the rules or any order of the court.

A review of the relevant incidents of the case shows as follows:

February 16, 2010	The Petition for Review was filed by Compania De Garay, Inc., represented by Florentine T. Garay
June 10, 2010	Petitioner was absent on the first scheduled date for pre-trial. Respondents' counsel arrived late. Pre-trial was reset on July 8, 2012.
July 8, 2010	Per agreement of the parties the pre-trial was re-set to August 5, 2010.
August 5, 2010	Respondents' counsel was absent and considering the pendency of petitioner's

	motion to disqualify respondents' counsel, the pre-trial was re-set on September 2, 2010.
October 14, 2010	Due to pending incidents, the pre-trial was re-scheduled to October 14. But petitioner failed to appear and was issued a warning from the Court. Pre-trial was reset on November 11, 2010
November 11, 2010	Petitioner failed to appear again and pre-trial was reset on December 9, 2010
December 9, 2010	The parties appeared and were given until January 10, 2011 to file their JSFI
January 27, 2011	Considering that no JSFI was filed, a Resolution was issued ordering petitioner to show cause why the case should not be dismissed for failure to comply with the order of the court
January 31, 2011	Petitioner filed the JSFI but was denied, in a Resolution dated February 28, 2011, because it was not signed by respondents' counsel.
August 23, 2011	Petitioner's counsel's filed his Notice of Appearance, after petitioner's representative, Florentine Garay, was prohibited in appearing before this Court for being a non-lawyer.
October 11, 2011	For petitioner's failure to submit the JSFI on September 19, 2011 per order of this Court in a Resolution dated September 9, 2011, petitioner was again ordered to show cause why this case should not be dismissed.
March 20, 2012	a Resolution was issued requiring the parties to file their JSFI within a non-extendible period of ten days
June 25, 2012	A Resolution was issued ordering the parties to show cause why they should not be punished for contempt for failure to comply with the order of the court. Pre-trial was set on July 19, 2012
August 2, 2012	Scheduled Pre-trial. Petitioner failed to appear.

As shown above, the several postponements of the pre-trial were due to petitioner's absences and filing of several motions. This fact, coupled with petitioner's failure to comply with several orders of the Court, justifies the conclusion that petitioner lacks the required diligence to prosecute its case within a reasonable length of time to the prejudice of respondents. It is the duty of petitioner to appear on the date of the pre-trial, prosecute its action within a reasonable length of time, and comply with the Rules and court orders. Failure to do so would justify the dismissal of the case. The true test for the exercise of the power to dismiss a case on the ground of failure to prosecute is whether, under the prevailing circumstances, the party is culpable for want of due diligence ir failing to proceed with reasonable promptitude.[1]

WHEREFORE, premises considered, respondents' **MOTION TO DISMISS** is **GRANTED.** Accordingly, petitioner's **PETITION FOR REVIEW** is hereby **DISMISSED** for failure to prosecute.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

[1] Suarez vs. Villarama, G.R. NO. 124512, June 27, 2006 .