

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

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. O-729
(NPS Docket No. XVI-INV-101-00275)

For: Failure to Supply Correct and
Accurate Information under Sec. 255
of the National Internal Revenue
Code, as amended, in relation to
Sections 253(d) and 256 of the same
code

-versus-

Members:

DEL ROSARIO, P.J., *Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, JJ.

JUANCHITO D. BERNARDO,
PRAXEDES P. BERNARDO and
JDBEC, INCORPORATED,

Promulgated:

Accused.

NOV 05 2019 10:12am

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R E S O L U T I O N

On September 6, 2019, this Court dismissed the instant case in view of plaintiff's failure to submit the copies of the letter-referral of the Commissioner of the Internal Revenue for preliminary investigation and filing of an Information, and the joint complaint-affidavit as required under Resolution dated July 15, 2019 pursuant to Section 7(a), Rule 112 of the Revised Rules of Court and Section 2, Rule 9 of Revised Rules of the Court of Tax Appeals (RRCTA).

On September 11, 2019, this Court denied plaintiff's Entry of Appearance and Motion for Consolidation with Motion to Defer Proceedings for being moot and academic.

On September 23, 2019, plaintiff filed a **Motion for Reconsideration with Submission (of Resolutions dated August 22, 2019 and September 6, 2019)** for CTA Crim. Case Nos. O-729 and O-735 asking this Court to reconsider the dismissal of the instant case under Resolution dated September 6, 2019 and admit the belated filing of the abovementioned documents.

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Plaintiff explains therein that the original prosecuting counsel, Merba A. Waga, had retired from the government service and transferred the case to other prosecuting lawyers. Plaintiff further avers that due to inadvertence, the case was not included in their motion for extension of time to file the required documents.

On October 8, 2019, plaintiff filed a **Motion for Reconsideration Ad Cautelam (of Resolution dated September 11, 2019)** requesting this Court that the same motion be given due course without prejudice to the preceding motion. Plaintiff also cited that its Motion for Consolidation with Motion to Defer Proceedings was a pending incident prior to the issuance of Resolution dated September 11, 2019.

On October 14, 2019, accused filed **Comment/ Opposition (Re: Plaintiff's Motion for Reconsideration with Submission)** which prays for this Court to deny said motion for utter lack of merit.

Plaintiff must be aware that the responsibility to account for each and every case and order of the court lies with them, hence, any resulting consequences due to their own negligence should also be borne by them.

This Court may consider such "inadvertence" if such will constitute an excusable negligence. In *Ireneo M. Santos v. Manuel S. Rustia*¹, the Supreme Court defines what an excusable negligence is, to wit:

Corpus Juris, Vol. 45, section 852 has to say the following, applicable a *fortiori* to excusable negligence:

Negligence, that is, a failure to comply with some duty of care owed by one to another, is a mixed question of law and fact, of standards of care and compliance therewith, involving the preliminary question as to whether defendant owed any duty of care to plaintiff, and leaving it for the jury to decide the ultimate facts of negligence, subject to the exceptions hereinafter stated. Where the standard of care is fixed and the measure of duty is defined by the law and is the same under all circumstances, and where compliance therewith is proved or disproved by uncontradicted evidence or undisputed facts from which only one inference can reasonably be made, the court may

¹ G.R. No. L-4917-R, October 31, 1951.

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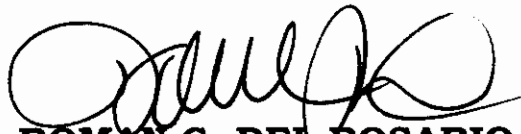
declare defendant to be guilty or not guilty of negligence as matter of law. Cases, where the standard of care is fixed, go to the jury only where the evidence of compliance rests on contradictory evidence or upon disputed facts. But where the standard of duty is not fixed, but variable, shifting with the circumstances, as is generally the case, it is for the jury to determine, under instructions, **what the standard of care required in a particular case is, and whether there has been a compliance with such requirements.** (*Emphasis supplied*)

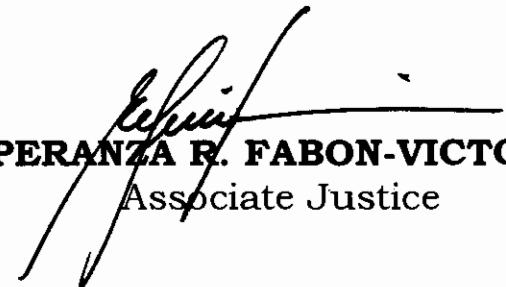
If plaintiff only applied the required standard of due diligence and care, i.e., where its retiring counsel had inventoried and prepared a listing of all cases assigned to her, showing the actions needed for said cases, then having them assigned to the succeeding prosecuting lawyers, such inadvertence would not have happened.

However, plaintiff fell short of such supposed standard of care, as reflected in the instant motions, hence, said inadvertence cannot be considered as an excusable negligence.

WHEREFORE, premises considered, Motion for Reconsideration with Submission (of Resolutions dated August 22, 2019 and September 6, 2019) and Motion for Reconsideration Ad Cautelam (of Resolution dated September 11, 2019) are hereby **DENIED** for lack of merit.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CATHERINE T. MANAHAN
Associate Justice