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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 26, 2021** *which reads as follows:*

"G.R. No. 238093 (Commissioner of Internal Revenue, *Petitioner,* **v. The Third Division of the Court of Tax Appeals and AZ Contracting System Service, Inc.,** *Respondents*). – This Petition for *Certiorari*[1] under Rule 65 of the Rules of Court seeks to reverse and set aside the Resolution[2] dated 10 January 2018 of the Court of Tax Appeals Third Division (CTA) in CTA Case No. 9558. The CTA denied the motion for reconsideration filed by the Commissioner of Internal Revenue (petitioner) and affirmed the denial of petitioner's Motion to Lift Order of Default and Admit Attached Answer.

Antecedents

On 30 March 2017, AZ Contracting System Service, Inc. (ACSSI) filed a petition for review before the CTA seeking review of petitioner's denial through inaction of ACSSI's claim for refund of excess and unutilized creditable withholding taxes for the year 2014, in the amount of Php15,352,600.00.[3] Accordingly, on 06 April 2017, the CTA issued Summons, directing petitioner to submit his Answer within fifteen (15) days from receipt thereof.[4]

Petitioner, however, failed to file an Answer. As such, on 28 July 2017, or more than three (3) months since the period for petitioner to file an Answer had lapsed, ACSSI filed a Motion to

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1 *Rollo*, pp. 2-29.

2 *Id.* at 30-33; penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justices Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban of the Third Division, Court of Tax Appeals, Quezon City.

3 *Id.* at 127

4 *Id.* at 94 and 127.

Declare Respondent in Default. This was granted by the CTA in its Resolution dated 22 August 2017.[5]

On 03 October 2017, petitioner filed a Motion to Lift Order of Default and Admit Attached Answer (Motion). Petitioner alleged that the Bureau of Internal Revenue (BIR) Records was only forwarded to the Litigation Division on 22 September 2017, despite several follow-up requests; that these records are vital for petitioner to meritoriously and intelligently prepare his Answer; that it is petitioner's policy to wait for the transmittal of the BIR Records before drafting the Answer, as all relevant material documents are contained therein; that due to the numerous cases, petitioner's counsel was unable to follow up on the transmittal of the BIR Records every day; that petitioner's counsel had other commitments consisting of almost daily morning and afternoon court hearing and conferences with the witnesses, and experienced extreme difficulty in coordinating with Revenue Officers in custody of the BIR Records; and that petitioner's counsel tried to handle the case as best she could, but she failed to monitor the time despite exertion of diligence and prudence.[6]

The CTA denied petitioner's Motion on 09 November 2017. It held that petitioner failed to show that his failure to file an Answer was due to excusable negligence and that he has a meritorious defense.[7] The CTA underscored that the grounds raised by petitioner did not prevent him from asking for additional time to file an Answer or to file an Opposition to ACSSI's Motion to Declare Respondent in Default. Such failure to file the relevant pleadings manifests petitioner's negligence in attending the present case.[8]

Further, the CTA also noted that the Summons was personally served on petitioner on 10 April 2017 and on the Solicitor General on 11 April 2017. However, it took petitioner six (6) months to finally participate in the court proceedings. Such actions contradict the assertions of petitioner's counsel that she exerted diligence in handling the case, and should therefore not be countenanced.[9]

Dissatisfied, petitioner filed a Motion for Reconsideration (Re: Resolution dated November 9, 2017) (Motion for Reconsideration) on 29 November 2017.[10] Petitioner maintained that he had no

5 *Id.*
6 *Id.* at 94-95.
7 *Id.* at 94-97.
8 *Id.* at 96.
9 *Id.*
10 *Id.* at 34-44.

intention to file his answer belatedly nor to violate the court's directive. However, the late transmittal of the BIR Records prevented his counsel from filing the answer within the prescribed period. He asserts that his counsel could no longer ask for an extension of time because the period to file the answer had already lapsed when the case was assigned to her. Petitioner likewise reiterated all other arguments from his previous Motion.[11]

On 10 January 2018, the CTA promulgated its assailed Resolution denying petitioner's Motion for Reconsideration. The CTA considered said motion as a second Motion for Reconsideration (second MR), which is expressly prohibited under Section 2, Rule 52 of the Rules of Court since it essentially prays for reconsideration of the resolution declaring petitioner in default.[12]

Aggrieved, petitioner filed the present petition for *certiorari*, claiming that he has no other plain, speedy, and adequate remedy in the ordinary course of law to seek the reversal or nullification of the assailed Resolution which will promptly and immediately relieve petitioner from its injurious effects. [13]

Issues

Petitioner now raises the following issues for the Court's discussion:

> I.
> THE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING DUE COURSE TO PETITIONER'S MOTION FOR RECONSIDERATION ON THE GROUND THAT SAID MOTION IS A SECOND MOTION FOR RECONSIDERATION WHICH IS PROHIBITED UNDER SECTION 2, RULE 52 OF THE RULES OF COURT
>
> II.
> RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION IN DECLARING PETITIONER IN DEFAULT[14]

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11 *Id.* at 30-31.
12 *Id.* at 32.
13 *Id.* at 3.
14 *Id.* at 9.

Ruling of the Court

Preliminarily, the Court resolves the issue of whether or not the CTA erred in considering petitioner's motion for reconsideration as a second MR.

We rule in the affirmative.

The Revised Rules of the CTA (CTA Rules) does not prohibit the filing of a Motion for Reconsideration of any decision, resolution, or order of the Court.[15] What the said CTA Rules prohibit,[16] as well as Section 2, Rule 52 of the Rules of Court which is suppletory to the CTA Rules, is the filing a second motion for reconsideration of a decision, final resolution, or order.

Notably, there is no prohibition in CTA Rules for seeking reconsideration of an order denying a Motion to Lift Order of Default. It is likewise significant that filing a Motion for Reconsideration is a requisite before a petition for *certiorari* may be filed.[17] In the present case, petitioner's Motion for Reconsideration is not a second MR, but the first motion of its kind filed to assail the CTA's Resolution dated 09 November 2017 denying petitioner's Motion to Lift Order of Default and Admit Attached Answer.

Moreover, the Rules of Court specifically provides that a party in default may file a Motion to Lift Order of Default before judgment, whenever his failure to answer is due to fraud, accident, mistake or excusable negligence.[18] The same is a particular remedy conferred to a litigant specifically for instances of default. It is clearly not in the nature of a Motion for Reconsideration, which may be filed only when the damages awarded are excessive, the evidence is insufficient to justify decision or final order, or that the decision or final order is contrary to law.

This, notwithstanding, the Court still finds that the CTA did not err in declaring petitioner in default.

Propriety of the Order of Default

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15 Section 1, Rule 15.

16 Section 7, Rule 15.

17 *Acance v. Court of Appeals*, G.R. No. 159699, 16 March 2005, 493 Phil. 676 (2005) [Per J. Callejo, Sr.]; *Tan v. Court of Appeals*, G.R. No. 108634, 17 July 1997, 341 Phil. 570 (1997) [Per J. Francisco].

18 Section 1, Rule 37, 2019 Revised Rules of Court.

When a defendant is served with summons and a copy of the complaint, he or she is required to answer within 15 days from its receipt. The defendant may also move to dismiss the complaint "[w]ithin the time for but before filing the answer."[19] Fifteen days is sufficient time for a defendant to prepare his defenses against the plaintiff's allegations in the complaint. Thus, a defendant who fails to answer within 15 days from service of summons either presents no defenses or was prevented from filing his or her answer within the required period due to fraud, accident, mistake or excusable negligence.[20]

In either case, the court may declare the defendant in default on plaintiff's motion and notice to defendant. The court shall then try the case until judgment without defendant's participation and grant the plaintiff such relief as his or her complaint may warrant.[21]

Under Section 3, Rule 9 of the Rules of Court, there are three (3) requirements before the claiming party may have the defending party declared in default: (1) that the claiming party must file a motion praying that the court declare the defending party in default; (2) the defending party must be notified of the motion to declare it in default; (3) the claiming party must prove that the defending party failed to answer the complaint within the period provided by the rule.[22]

ACSSI filed the Motion to Declare Respondent in Default on 28 July 2017. The same was served by personal service to petitioner, as evidenced by the stamp "Received" by the BIR-NOB-Litigation Division on 28 July 2017. Thus, the first and second requirements have been met.[23]

Anent the third requirement, We note that it took six (6) months from receipt of summons for petitioner to participate in the court proceedings. In all that time, petitioner did not seek an extension of time to file an Answer or even inform the CTA that they cannot file the same on time.[24] Thus, We find that all the elements for a valid declaration of default are present in the instant case. The CTA was correct in granting ACSSI's Motion and declaring petitioner in default.

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19 *Lui Enterprises, Inc. v. Zuellig Pharma Corp.*, G.R. No. 193494, 12 March 2014, 729 Phil. 440 (2014) [Per J. Leonen].

20 *Id.*

21 *Id.*

22 *Momarco Import Co., Inc. v. Villamena*, G.R. No. 192477, 27 July 2016 [Per J. Bersamin].

23 *Rollo*, p. 60.

24 *Id.* at 61.

The CTA correctly denied the motion to lift order of default

In *Montinola, Jr. v. Republic Planters Bank,*[25] the Court explained that a motion seeking to overturn an order of default for failure to file answer must meet three (3) requisites, namely: (1) it must be made by motion under oath by one that has knowledge of the facts; (2) it must be shown that the failure to file answer was due to fraud, accident, mistake or excusable negligence; and (3) there must be a proper showing of the existence of a meritorious defense. The defendant must also show that something would be gained by having the order of default set aside.[26]

To reiterate, a motion to set aside an Order of Default may be filed by the defaulting party at any time before judgment upon showing that his failure to answer was due to fraud, mistake, or excusable negligence, and that he has a meritorious defense. The same must be made under oath and accompanied by an affidavit of merit.[27]

In the present case, petitioner timely filed its Motion before the CTA rendered judgment. It raised the following reasons for its failure to file an answer within the period granted: belated transmittal of the BIR Records, heavy workload, and difficulty in coordinating with the Revenue Officer.[28] However, these reasons are not excusable so as to merit the lifting of an order of default.

To be sure, excusable negligence is "one which ordinary diligence and prudence could not have guarded against," and these circumstances should be properly alleged and proved.[29] In this case, however, the negligence of petitioner's counsel could have been prevented by the exercise of ordinary diligence and prudence. Simple attention to and care for the progress of the case before the CTA would have prevented the default order.[30]

In *Maripol v. Tan,*[31] this Court emphasized that it is not error, or an abuse of discretion, on the part of the court to refuse to set aside its

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25 G.R. No. 66183, 04 May 1988, 244 Phil. 49 (1988) [Per J. Paras].

26 *Villareal v. Court of Appeals,* G.R. No. 107314, 17 September 1998, 356 Phil. 826 (1998) [Per J. Mendoza].

27 *See Spouses Manuel v. Ong,* G.R. No. 205249, 15 October 2014, 745 Phil. 589 (2014) [Per J. Leonen].

28 *Rollo,* p. 96.

29 *Supra* at note 15.

30 *See Province of Davao Del Norte v. Buenaventura-Navarro,* G.R. No. 208771, 27 February 2019.

31 G.R. No. L-27730, 21 January 1974, 154 Phil. 193 (1974) [Per J. Zaldivar].

order of default and to refuse to accept the answer where it finds no justifiable reason for the delay in the filing of the answer, to wit:

> X x x It is within the sound discretion of the court to set aside an order of default and to permit a defendant to file his answer and to be heard on the merits even after the reglementary period for the filing of the answer has expired, **but it is not error, or an abuse of discretion, on the part of the court to refuse to set aside its order of default and to refuse to accept the answer where it finds no justifiable reason for the delay in the filing of the answer.** In the motions for reconsideration of an order of default, the moving party has the burden of showing such diligence as would justify his being excused from not filing the answer within the reglementary period as provided by the Rules of Court, otherwise these guidelines for an orderly and expeditious procedure would be rendered meaningless. Unless it is shown clearly that a party has justifiable reason for the delay, the court will not ordinarily exercise its discretion in his favor. (Emphasis supplied)

Prescinding from the above, it was within the CTA's discretion to deny the motion to lift the order of default. While the courts should avoid orders of default, and should be, as a rule, liberal in setting aside such orders, they could not ignore the abuse of procedural rules by litigants like the petitioner, who only had themselves to blame.[32] Thus, the CTA, guided by the applicable rules and jurisprudence, cannot be said to have exercised its discretion in a contumacious, capricious and whimsical manner when it denied petitioner's Motion to Lift Order of Default and Admit Attached Answer.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED**. Accordingly, the Resolution dated 10 January 2018 rendered by the Court of Tax Appeals Third Division in CTA No. 9558 is **AFFIRMED.**

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[32] *See Momarco Import Co., Inc. v. Villamena,* G.R. No. 192477, 27 July 2016 [Per J. Bersamin].

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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