

FIRST DIVISION

[G.R. No. 181371, March 02, 2011]

**CENTRAL LUZON DRUG CORPORATION, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

R E S O L U T I O N

DEL CASTILLO, J.:

When an appeal is withdrawn, the assailed decision becomes final and executory.

For Resolution is the Motion to Withdraw^[1] filed by petitioner Central Luzon Drug Corporation, praying for the dismissal of the instant case without prejudice.

Factual Antecedents

Petitioner is a duly registered corporation engaged in the retail of medicines and other pharmaceutical products.^[2] It operates 22 drugstores located in Central Luzon under the business name and style of "Mercury Drug."^[3]

On April 13, 2005, petitioner filed with respondent Commissioner of Internal Revenue (CIR) a request for the issuance of a tax credit certificate in the amount of P32,170,409, representing the 20% sales discounts allegedly granted to senior citizens for the year 2002.^[4]

On April 14, 2005, petitioner filed with the Court of Tax Appeals (CTA) a Petition for Review^[5] which was docketed as CTA Case No. 7206 and raffled to the First Division of the CTA.

On July 23, 2007, the First Division of the CTA rendered a Decision^[6] denying petitioner's claim for insufficiency of evidence. The pertinent portion of the Decision reads:

Under petitioner's Annual ITR and audited financial statements, it had gross sales amounting to P674,877,125.00. However, the Court cannot ascertain from the documents submitted by petitioner such as *Schedule of Sales (net)*, *Schedule of Prepaid Tax-OSCA*, and *Special Record Books* for the year 2002, whether its

gross sales of P674,877,125.00 included its gross sales to senior citizens of P26,681,354.59. The *Schedule of Prepaid Tax-OSCA*, taken from the *Special Record Books*, showed its daily sales to qualified senior citizens and the corresponding twenty percent (20%) discount granted by each of the twenty-two branches of petitioner. Meanwhile, the *Schedule of Sales* showed only its total monthly sales without indicating which portion therein were sales to senior citizens. Petitioner should have presented its daily net sales as reflected in the general ledger, cash receipt books, sales book or any other document whereby the Court can trace or verify that petitioner's gross sales of P674,877,125.00 for the year 2002 included its gross sales to senior citizens for the same year.

In sum, though the twenty percent (20%) sales discounts granted to senior citizens on their purchase of medicines should be treated as a tax credit and petitioner was able to substantiate the same, the instant petition will not prosper for petitioner's failure to show that its gross sales to senior citizens were declared as part of its taxable income.

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.^[7]

Aggrieved, petitioner moved for reconsideration^[8] but the First Division of the CTA denied the same in a Resolution^[9] dated September 12, 2007.

On October 3, 2007, petitioner filed a Motion for Extension of Time to File Petition for Review on Certiorari^[10] with the CTA *En Banc*.

On October 19, 2007, petitioner filed with the CTA *En Banc* a Petition for Review,^[11] docketed as CTA *En Banc* Case No. 316.

On December 4, 2007, the CTA *En Banc* resolved to deny due course, and accordingly, dismissed the Petition for Review for failure of petitioner to attach a Verification, a Certification of Non-Forum Shopping, as well as a Special Power of Attorney and a Secretary's Certificate, authorizing petitioner's counsel to file the Petition for Review.^[12]

Petitioner sought reconsideration,^[13] arguing that the Petition for Review was sufficient in form because the Verification and Certification of Non-Forum Shopping was already attached to the Motion for Extension of Time to File Petition for Review on *Certiorari*. Petitioner submitted a Secretary's Certificate to show that Mr. Jacinto J. Concepcion was authorized by petitioner to sign the Verification attached to the Motion for Extension of Time to File Petition for Review on *Certiorari*.

On January 17, 2008, the CTA *En Banc* denied reconsideration. It said:

The Court resolves to deny the Motion for Reconsideration.

The Verification and Certification of Non-Forum Shopping dated October 2, 2007 attached to petitioner's Motion for Extension of Time cannot replace the Verification and Certification of Non-Forum Shopping required to be attached to the Petition for Review as this would contravene the very purpose for which it is required. It is well to note that in the Verification and Certification of Non-Forum Shopping dated October 2, 2007, the affiant declared under oath, among others, that he has read the contents of the Petition and that they are true and correct of his own knowledge and belief; and that petitioner has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency and that there is no such action or proceeding pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency. For this reason, the same cannot be used in the Petition for Review dated October 18, 2007 as the affiant could not have read the Petition as it was not yet prepared at the time he executed the Verification and Certification of Non-Forum Shopping on October 2, 2007. It may not be amiss to stress that verification is required to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative.

Moreover, the subsequent filing of a Secretary's Certificate serves no purpose as the instant Petition is not verified and does not contain a Certification of Non-Forum Shopping required by Section 2 of Rule 6 of the Revised Rules of the Court of Tax Appeals.

As the Supreme Court has said: "[o]bedience to the requirements of procedural rules is needed if we are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction. Time and again, the Supreme Court has strictly enforced the requirement of verification and certification of non-forum shopping under the Rules of Court."

As a final note, the Court finds it necessary to reiterate that under prevailing procedural rules and jurisprudence, non-compliance with these requirements is a sufficient ground for the dismissal of the petition.

WHEREFORE, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.^[14]

This prompted petitioner to file before us a Petition for Review on *Certiorari*^[15] under Rule 45 of the Rules of Court to set aside the Resolutions^[16] dated December 4, 2007 and January 17, 2008 of the CTA *En Banc*.

In response, comments^[17] were filed by the respondent and the Office of the Solicitor General (OSG), as counsel for respondent.

However, instead of filing a reply to the comments, petitioner filed a Motion to Withdraw, praying that the case be dismissed without prejudice. According to petitioner, the amount of tax credit being claimed for 2002 would just be included in its future claims for issuance of a tax credit certificate since the said amount was carried over to its 2003 Income Tax Return (ITR).^[18]

The OSG does not oppose the Motion to Withdraw. However, citing Section 2,^[19] Rule 17 of the Rules of Court, the OSG argues that the withdrawal of the instant case is no longer a matter of right on the part of petitioner, but is discretionary upon the Court.^[20] The OSG also calls attention to the failure of Mr. Jacinto J. Conception, the person who signed the Verification and Certification of Non-forum Shopping, to exhibit before the notary public a valid Identification Card.^[21] The OSG insists that such failure renders the instant Petition defective.^[22] Thus, it should be dismissed with prejudice.^[23]

Our Ruling

We grant the Motion to Withdraw.

Section 1, Rule 13 of the Internal Rules of the Supreme Court^[24] provides that "[a] case shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum that the Court or its Rules require." In the instant case, records show that on August 19, 2009,^[25] we resolved to require petitioner to file a reply. Instead of complying, petitioner opted to file a motion to withdraw. Clearly, by requiring petitioner to file its Reply, the Court has not yet deemed the case submitted for decision or resolution. Thus, we resolve to grant petitioner's Motion to Withdraw.

However, we agree with the OSG that the dismissal of the instant case should be with prejudice. By withdrawing the appeal, petitioner is deemed to have accepted the decision of the CTA. And since the CTA had already denied petitioner's request for the issuance of a tax credit certificate in the amount of P32,170,409 for insufficiency of evidence, it may no longer be included in petitioner's future claims. Petitioner cannot be allowed to circumvent the denial of its request for a tax credit by abandoning its appeal and filing a new claim. To reiterate, "an appellant who withdraws his appeal x x x must face the consequence of his withdrawal, such as the decision of the court *a quo* becoming final and executory."^[26]

WHEREFORE, the Motion to Withdraw is hereby **GRANTED**. The Petition for Review is hereby **DISMISSED** and the case is hereby declared **CLOSED** and **TERMINATED**. No further pleadings or motions shall be entertained herein. Let an entry of judgment in this case be made in due course.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[1] *Rollo*, pp. 107-110.

[2] *Id.* at 11.

[3] *Id.*

[4] *Id.* at 38.

[5] *Id.*

[6] *Id.* at 37-45.

[7] *Id.* at 43-44.

[8] *Id.* at 46-51.

[9] *Id.* at 52-54.

[10] *Id.* at 24-27.

[11] *Id.* at 28-36.

[12] *Id.* at 56-57.

[13] *Id.* at 58-61.

[14] *Id.* at 63-64.

[15] *Id.* at 10-65, with Annexes "A" to "E," inclusive.

[16] Id. at 55- 57 and 62-65.

[17] Id. at 76-84 and 92-104.

[18] Id. at 107.

[19] SEC. 2. *Dismissal upon motion of plaintiff.* -- Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court.

[20] *Rollo*, p. 126.

[21] Id. at 127-128.

[22] Id.

[23] Id. at 128.

[24] A.M. No. 10-4-20-SC.

[25] *Rollo*, p. 106.

[26] *Southwestern University v. Hon. Salvador*, 179 Phil. 252, 257 (1979).