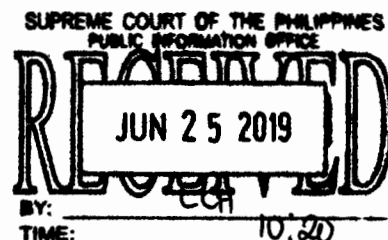




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 03 June 2019 which reads as follows:

G.R. No. 238094 (Commissioner of Internal Revenue and Atty. Jethro M. Sabariaga, Regional Director of the Bureau of Internal Revenue, Region No. 4, City of San Fernando, Pampanga v. The Court of Tax Appeals-Third Division and Kodec Precision, Inc.)

After a judicious study of the case, the Court resolves to **DISMISS** the instant petition¹ for failure of the petitioners Commissioner of Internal Revenue (CIR) and Atty. Jethro M. Sabariaga, Regional Director of the Bureau of Internal Revenue, Region No. 4, City of San Fernando, Pampanga (petitioners) to show that the Court of Tax Appeals (CTA)-Third Division committed grave abuse of discretion in declaring petitioners in default in its Resolutions dated July 25, 2017,² October 9, 2017,³ and January 8, 2018.⁴

At the outset, it must be emphasized that the extraordinary remedy of *certiorari* is granted only upon a showing that the tribunal acted with such grave abuse of discretion as to amount to “an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.”⁵ Petitioners failed to show such grave abuse of discretion on the part of the CTA-Third Division. This Court has held that “[i]t is **within the sound discretion of the [trial] 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.**”⁶ Here, the CTA-Third Division categorically declared petitioners’ excuse for failing to file their Answer as “inexcusable.”⁷ A close perusal of the records leads the Court to the same conclusion. As a result, the declaration of default was proper. Petitioners must follow the same rules of procedure which bind private parties.⁸

¹ *Rollo*, pp. 3-12.

² *Id.* at 45-48. Signed by Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino, and Ma. Belen M. Ringpis-Liban.

³ *Id.* at 55-57.

⁴ *Id.* at 18-19.

⁵ *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 778 (2004).

⁶ *Malipol v. Tan*, 154 Phil. 193, 199-200 (1974).

⁷ *Rollo*, p. 47.

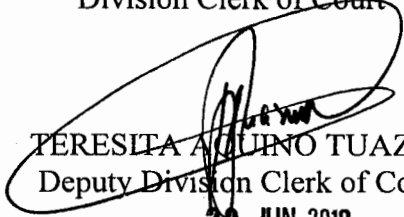
⁸ *CIR v. Procter & Gamble Philippine Manufacturing Corporation*, 281 Phil. 425, 440 (1991).

SO ORDERED. (CAGUIOA, J., on official leave.)"

Very truly yours,

MARIA LOURDES C. PERFECTO
Division Clerk of Court

By:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *verif. gln*
20 JUN 2019

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