

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

BUKIDNON SECOND ELECTRIC
COOPERATIVE, INC. (BUSECO),

Petitioner,

CTA *EB* NO. 2553
(CTA Case No. 10084)

Present:

-versus-

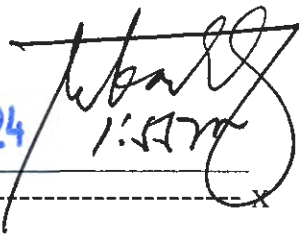
DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JUL 11 2024

A handwritten signature in black ink is written over a blue date stamp that reads "JUL 11 2024". The signature appears to be "H. B. ...".

X

X

RESOLUTION

MODESTO-SAN PEDRO, J.:

For the Court’s resolution is petitioner’s *Motion for Reconsideration*, filed on March 5, 2024, without any comment from respondent.¹

Petitioner seeks the reversal and setting aside of this Court *En Banc*’s Decision, dated February 8, 2024 (“Assailed Decision”), which denied its Petition for Review for lack of merit. Petitioner raises the following arguments:

- (a) The absence of its counsel and witness during trial was excusable:✓

¹ See Records Verification, dated April 23, 2024, *Rollo*, unpaginated.

- (i) Its counsel did not know that a Pre-Trial Order (“PTO”) had been issued as the parties had not yet filed a Joint Stipulation of Facts and Issues (“JSFI”);
- (ii) Petitioner timely sent its proposed JSFI to respondent and thus cannot be blamed for the late filing of the same;
- (iii) Petitioner’s staff, who scheduled the flight for petitioner’s counsel, mistook the relevant hearing for a hearing in another case;
- (iv) When the mistake in (iii) was discovered, there was not enough time to move to reset the hearing; and
- (v) Notarization is not necessary for the presentation of a medical certificate to prove the illness of petitioner’s witness;
- (b) Petitioner should be given an opportunity to present its case:
 - (i) It proved that the absence of its counsel and witness at the hearing was excusable; and
 - (ii) Only legal issues were raised.

The Motion lacks merit.

Argument (a)(i) is unconvincing as it relies on the idea that the Court is barred from issuing a PTO without a JSFI. This is mistaken. If the parties fail to file a JSFI, the Court does not have to leave the case pending for eternity. It may simply issue a PTO based on the parties’ respective Pre-Trial Briefs and the proceedings at the Pre-Trial Conference to forego any further delay in the proceedings, as the Court *a quo* correctly did. Considering this, the belief allegedly held by petitioner’s counsel, that the Court cannot issue a PTO without the prior submission of the JSFI, is so patently erroneous that We cannot accept it as justification for the absence.

This is especially so as the parties were explicitly given until December 7, 2020 within which to file their JSFI during the Pre-Trial Conference, which petitioner’s counsel attended. If petitioner’s counsel truly believed that the non-submission of the JSFI would prevent the issuance of the PTO and the cancellation of the scheduled hearing, then the fact that he only followed up on the JSFI *almost two months after the deadline*² is a clear sign of blatant negligence, if not outright intent to delay proceedings.

Argument (a)(ii) is also unsatisfactory. The reason for the delay was its inadvertent sending of the proposed JSFI to the wrong email address, as petitioner itself admits.³ Again, however, it had multiple months, even after the deadline, to notice the lack of response from respondent and thus to notice,

² See Motion for Reconsideration, p. 3, *id.* at 90.

³ See Petition for Review, p. 4, *id.* at 4.

the mistaken email address. The failure of petitioner and its counsel to ensure that the JSFI was timely filed is thus still a failure to exert diligence in prosecuting its case. In any event, they should not have relied on the mistaken belief that the non-submission of the JSFI would lead the Court to defer the issuance of the PTO and reschedule the hearing.

We are also not swayed by argument (a)(iii), an attempt to throw petitioner's secretarial staff under the bus to save petitioner and its counsel. Significantly, petitioner's current account of the flight contradicts the account it offered in its *Manifestation with Motion for Reconsideration* before the Court in Division. There, petitioner claimed that its "counsel, despite the unavailability of witness, *decided to take a flight to Manila on the date of the hearing February 9, 2021*"⁴ (Italics supplied). That its counsel *consciously decided to fly to Manila on the date of the hearing* despite the absence of petitioner's witness implies that *he was fully aware that a hearing in CTA Case No. 10084 was scheduled for February 9, 2021*. It further implies that he was the one who scheduled the flight, as he *decided to fly to Manila*. This directly contradicts petitioner's current claim that it (and, implicitly, its counsel) believed that only one hearing, in CTA Case No. 9761, was scheduled for that week, due to confusion on the part of its staff.

Considering the sudden shift between incompatible allegations, We put no stock in petitioner's current version of events and thus rejects it as a valid excuse for the absence of its counsel and intended witness.

Argument (a)(iv) is too insubstantial to accept. Petitioner gave no specific times or dates as to the discovery of its alleged mistake and thus failed to convincingly show that it did, indeed, have insufficient time to move to reset the hearing. Importantly, the Assailed Decision already identified various ways to efficiently contact the Court for any concerns, especially during the pandemic, such as through emails or phone calls.⁵ Petitioner is tellingly silent on this, still not offering any reason to explain its failure to simply call the Court in Division's Clerk of Court, which could have easily been done on the morning of the hearing.

Argument (a)(v) is irrelevant as petitioner never submitted a medical certificate in the first place and as the Assailed Decision says nothing about notarization. We thus need not consider it at all.

Given that we have already either refuted or rejected arguments (a)(i) to (a)(v), argument (b)(i) similarly holds no water. ✓

⁴ See *Manifestation with Motion for Reconsideration*, p. 2, *id.* at 19.

⁵ See *Assailed Decision*, p. 7, *id.* at 78.

Finally, argument (b)(ii) fails to challenge Our finding, in the Assailed Decision, that petitioner already agreed to present witnesses during the Pre-Trial rather than pursuing a Motion for Judgment on the Pleadings or a Motion for Summary Judgment.⁶ It was thus bound by such assent and cannot now claim that it focused solely on legal questions.

In sum, nothing in the present Motion convinces us that Our Assailed Decision or the Court in Division's dismissal of the case were in error.

ACCORDINGLY, the instant Motion for Reconsideration, filed March 5, 2024, is hereby **DENIED** for lack of merit. The assailed Decision, dated February 8, 2024, is hereby **AFFIRMED**.

SO ORDERED.



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

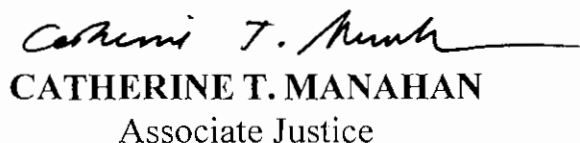
WE CONCUR:



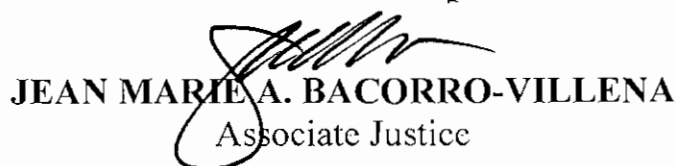
ROMAN G. DEL ROSARIO
Presiding Justice



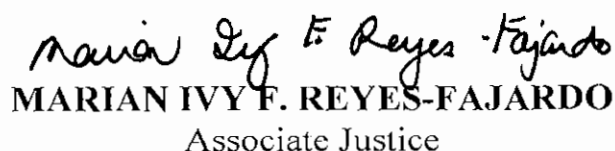
MA. BELEN M. RINGPIS-LIBAN
Associate Justice



CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice

⁶ See Assailed Decision, p. 8, *id.* at 79.


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice