REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

SORSOGON ELECTRIC COOPERATIVE II (SORECO II)*, Petitioner,	**CTA EB NO. 1966** (CTA Case No. 9377)
	Present:
- versus -	**DEL ROSARIO, *P.J.*,** **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** and, **MODESTO-SAN PEDRO, *JJ.***
THE BUREAU OF INTERNAL REVENUE (BIR), Rep. by the Hon. Commissioner and the Revenue District Officer of Revenue District Office No. 68 (Sorsogon), Respondent.	**Promulgated:** NOV 22 2019 3:44 p.m.

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DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review, pursuant to Rule 8, Section 3(b)[1] of the Revised Rules of the Court of Tax Appeals (RRCTA), filed by Sorsogon Electric Cooperative II (SORECO

* Also appeared to be Sorsogon II Electric Cooperative (SORECO II) in CTA Case No. 9377, but referred to consistently in the assailed Order and Resolution in this company name.

1 **SEC. 3.** *Who may appeal; period to file petition.* –

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

II/petitioner). The petition seeks the reversal of the Third Division's Order dated 17 April 2018[2] and Resolution dated 31 August 2018[3] in *Sorsogon Electric Cooperative II v. The Bureau of Internal Revenue*, CTA Case No. 9377, dismissing petitioner's prior Petition for Review and denying a Motion for Reconsideration thereof, respectively.

FACTUAL ANTECEDENTS

On 30 June 2016, petitioner filed its Petition for Review (With Very Urgent Prayer For Temporary Restraining Order And/Or Writ of Preliminary Injunction/Stay of Execution And/Or Suspension of Collection)[4] before the Court of Tax Appeals (**CTA**), seeking relief from the order of garnishment that the Bureau of Internal Revenue (**BIR**) issued against it. The case was raffled to the Court's Third Division.

After resolving several motions filed by both parties, the case was eventually set for pre-trial conference on 17 January 2017.[5] On the other hand, the hearing on petitioner's Very Urgent Prayer For Temporary Restraining Order And/Or Writ of Preliminary Injunction/Stay of Execution And/Or Suspension of Collection (Urgent Motion for TRO/Suspension of Collection) was set at an earlier date or on 11 October 2016. On the said date, petitioner and counsel did not appear and there was no proof of their receipt of the notice of hearing (for the said date). The hearing was then reset to 14 November 2016 wherein petitioner presented Atty. Percival G. Alvarez (**Atty. Alvarez**)[6]. During this hearing, petitioner moved for a continuance. The same was granted and the continuation of their presentation of evidence (in support of its Urgent Motion for TRO/Suspension of Collection) was again set on 06 December 2016.[7]

On 01 December 2016, petitioner posted *via* private courier an "Urgent Motion To Transfer Date Of Presentation Of Further Evidence"[8]. It alleged that their next intended witness, Roberto

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2 Division Docket, pp. 435-436.
3 Id., pp. 473-475.
4 Id., pp. 10-30.
5 Notice of Pre-Trial Conference dated 22 September 2016, id. pp. 159-160.
6 Order dated 14 November 2016, id., pp. 177-178.
7 Id.
8 Id., pp. 182-183.

Janaban (**Janaban**), SORECO II's Internal Auditor, has gone absent without leave (**AWOL**). The Court received the same on 02 December 2016, Friday, at 2:46 p.m. Due to the Court's receipt of the foregoing on a late Friday afternoon, the Third Division Court only had time to resolve respondent's motion on 06 December 2016 (Tuesday), the day originally set date for the continuation of the petitioner's presentation of evidence. Accordingly, the hearing on 06 December 2016 proceeded where only respondent's counsel appeared. Despite petitioner's absence, the Third Division reset the hearing on petitioner's Urgent Motion for TRO/Suspension of Collection on 17 January 2017,[9] the same date as the pre-trial conference.

On 09 January 2017, respondent filed an "Urgent Motion to Reset Pre-Trial Conference"[10] while petitioner filed its Pre-Trial Brief on 13 January 2019.[11] The Court, in resolving respondent's motion, reset the pre-trial conference on 04 April 2017 but maintained the hearing on petitioner's Urgent Motion for TRO/Suspension of Collection set on 17 January 2017.[12] During the hearing on the latter date, counsels for both parties appeared, with petitioner manifesting that it had no more witnesses to present.[13]

On 28 March 2017, respondent filed its Pre-Trial Brief.[14] Petitioner, on the other hand, filed a "Motion to Transfer Date of Pre-Trial" on 31 March 2017.[15] The Third Division, in a Resolution dated 03 April 2017[16], granted petitioner's motion and reset the pre-trial conference on 30 May 2017.

Before the pre-trial conference or on 09 May 2017, petitioner filed a "Very Urgent Manifestation with Motion"[17] praying that Atty. Ferdinand E. Laguna (**Atty. Laguna**), its counsel of record, be deemed relieved from his duties as its counsel due to his appointment in the Office of the Ombudsman and that it be allowed reasonable time to procure the services of another counsel. Accordingly, on 26 May 2017,

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9 Order dated 06 December 2016, id., p. 192.
10 Id., pp. 193-196.
11 Id., pp. 198-202.
12 Resolution dated 16 January 2017, id., p. 211.
13 Order dated 17 January 2017, id., pp. 208-209.
14 Id., pp. 301-306.
15 Id., pp. 309-311.
16 Id., p. 317.
17 Id., pp. 325-327.

the Third Division resolved to further reset the pre-trial conference to 14 August 2017.[18]

Thereafter, petitioner's representative, Atty. Alvarez entered his appearance as its new counsel.[19] The pre-trial conference finally took place and the parties were granted twenty (20) days therefrom or until 03 September 2017 to submit their Joint Stipulation of Facts and Issues (**JSFI**).[20] However, as of 06 September 2017, the parties have yet to submit the JSFI, *per* a Records Verification Report[21] from the Court's Judicial Records Division (**JRD**).

On 08 November 2017, petitioner filed a Manifestation[22] stating that, due to the distance between counsels, it opted to send its proposed JSFI (attached to the manifestation as ANNEX "A") with its list of documentary exhibits and proposed trial dates, through electronic mail to respondent's counsel, Atty. Rowell B. Vicente (**Atty. Vicente**) on 07 November 2017 at around 4:30 a.m.

Considering the parties' failure to submit their JSFI on 03 September 2017, the Third Division ordered[23] that another Pre-trial Conference be set on 17 April 2018.

A week before the intended pre-trial conference, petitioner, on 10 April 2018, filed another "Motion to Reset Pre-trial Scheduled on April 16, 2018 (Cum Apology)".[24] Despite specifying the wrong date in the motion's title, petitioner nevertheless moved for the resetting of the 17 April 2018 pre-trial conference. Petitioner sought the resetting on the following grounds: (1) SORECO II's anniversary is held every 16th of April; (2) petitioner only realized that the date of the hearing is the day after the anniversary; (3) petitioner will have several activities in relation to the celebration and thus, may not be able to appear in court the following day at 9:00 a.m.; and, (4) even if petitioner's counsel or representative were to take the earliest flight out of Legazpi

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18 Resolution, id., pp. 332-333.
19 Dated 21 July 2017, pp. 355-356.
20 Order dated 14 August 2017, id., pp. 368-369.
21 Id., p. 370.
22 Id., pp. 397-398.
23 Resolution dated 08 January 2018, id., pp. 424-425.
24 Id., pp. 428-430.

City, there would be no assurance that they would reach the Court from Ninoy Aquino International Airport (**NAIA**), considering the traffic.[25]

Since petitioner's "Motion to Reset Pre-trial Scheduled on 16 April 2018 (Cum Apology)" was not resolved, the pre-trial conference set on 17 April 2018 continued as scheduled. During the hearing, neither petitioner's representative nor counsel appeared; while respondent moved for the case's dismissal. The Third Division ordered[26]:

> ...
>
> Records show that the Petition for Review was filed as early as of June 30, 2016, and petitioner has requested for several postponements. To date, the parties have failed to stipulate on facts and issues of the case.
>
> As prayed for by respondent and finding the reason alleged by petitioner in the Motion to Reset unmeritorious, this case is hereby **DISMISSED.**
>
> ...

Thereafter, on 24 May 2018, petitioner filed a Motion for Reconsideration[27] (**MR**) against the above-quoted Order. The MR alleged that the basis of its last motion to reset was meritorious given that its counsel was also its General Manager (**GM**) and his attendance at SORECO II's anniversary last 16 April 2018 was important. The MR further stated that the resetting would have only constituted a week's delay as petitioner prayed that pre-trial conference be set on 25 April 2018. Lastly, petitioner claimed that, even if it had not prayed for a resetting, its counsel's absence would still be justified since Atty. Alvarez had his "prostate and blood sugar" checked on the 15th and 16th of April 2018 (due to difficulty discharging his urine). Still, the Third Division found no merit in petitioner's MR and denied the same.[28]

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[25] Id.
[26] Order dated 17 April 2018, id., p. 435.
[27] Id., pp. 437-450.
[28] See supra note 3.

Hence, the present petition.[29]

ISSUES

In this petition, petitioner raises the following issues for the Court *En Banc*'s resolution:

I.
WHETHER COUNSEL'S MOTION TO RESET (CUM APOLOGY) DATED 10 APRIL 2018 IS MERITORIOUS AND SHOULD BE RECONSIDERED.[30]

II.
WHETHER THE FACT THAT FAILURE TO SUBMIT A JOINT STIPULATION OF FACTS IS RESPONDENT'S GRIEVOUS FAULT AND NOT PETITIONER'S IS SUFFICIENT REASON TO RECONSIDER THE RESOLUTION DENYING PETITIONER'S MOTION FOR RECONSIDERATION.

III.
WHETHER THE FACT THAT RESPONDENT EQUALLY FILED MOTIONS TO RESET AND OTHER MOTIONS WHICH CAUSED THE DELAY IN THE RESOLUTION OF THE CASE SHOULD BE A GROUND TO RECONSIDER THE ORDER OF DISMISSAL.

IV.
WHETHER THE FACT THAT PETITIONER HAS MERITORIOUS CASE AND THE FACT THAT THE MONEY NOW SUBJECT OF THE CASE, CONSISTING OF GOVERNMENT FUNDS TO FINANCE GOVERNMENT INITIATED ELECTRIFICATION PROGRAMS (SUCH AS THE

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29 Petition for Review dated 03 October 2018, *Rollo*, pp. 48-113.

30 Petitioner cited the following circumstances in support of this issue:

a) That even if counsel did not file a motion to reset the April 17, 2018 hearing, he underwent medical check-up last April 15 and 16, 2018, due to difficulty in discharging his urine and due to high sugar level.
b) The date of the next setting requested by counsel, which is April 25, 2018, is only a week after April 17, 2018 can be construed as meritorious.
c) That the anniversary of the cooperative is a very important event and is attended by member-consumers and counsel is himself the general manager of petitioner but does not mean that counsel consider the same as less important [than] the processes of the Honourable Court. (Id., pp. 88-89)

SITIO ELECTRIFICATION, MISSIONARY RURAL ELECTRIFICATION AND THE LIKE) IS SUFFICIENT BASIS TO RECONSIDER THE ORDER OF DISMISSSAL.

V.

WHETHER THE FACT THAT THE ALLEGED DELINQUENCY WAS NOT FOR TAXES, PETITIONER MUST LEGALLY PAY BUT THAT FOR THOSE IT SHOULD HAVE WITHHELD AS A WITHHOLDING AGENT UNDER BIR REVENUE REGULATION NO. 17-2003 AS AMENDED BY REVENUE REGULATION NO. 14-2008 IS SUFFICIENT BASIS TO RECONSIDER THE ORDER OF DISMISSSAL.

VI.

WHETHER IN THE HIGHER INTEREST OF JUSTICE, PETITIONER MUST BE GIVEN THE OPPORTUNITY TO PROVE ITS CASE RATHER THAN LOSING IT ON MERE TECHNICALITY.

VII.

WHETHER THE FACT THAT HUMAN EXPERIENCE DICTATES THAT PEOPLE, EVEN THE HONORABLE COURT *A QUO* COMMITS MISTAKE [IF NOT NEGLIGENCE] AS SHOWN BY THE DOUBLE SERVICE OF THE SAME RESOLUTION, IS SUFFICIENT BASIS TO RECONSIDER THE ORDER OF DISMISSSAL.[31]

RULING OF THE COURT *EN BANC*

Of the several issues being forwarded by petitioner for resolution, the Court deems it proper to pass upon only those that are germane to the Third Division's assailed 17 April 2018 Order and 31 August 2018 Resolution, respectively. Therefore, the Court *En Banc* shall no longer belabor itself in discussing the other issues (IV and V) as these require the presentation of evidence which could only be appreciated during trial. As for the remaining issues raised, the Court finds the same to be without merit. The reasons shall be essayed below, in *seriatim*.

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31 Id., supra, pp. 88-90.

PETITIONER'S MOTION TO RESET (CUM APOLOGY) FILED ON 10 APRIL 2018 IS BASED ON UNMERITORIOUS GROUNDS

At the onset, it must be stressed that Atty. Alvarez's illness is not one of petitioner's grounds in its motion to reset the 17 April 2018 pre-trial conference. As the Third Division correctly observed, neither petitioner nor its counsel notified the Court of Atty. Alvarez's sickness on 15 April 2018.[32] Likewise, a review of the medical certificate[33] reveals certain defects which cast doubt on the document's veracity. Atty. Alvarez's medical certificate[34] reads:

> ...
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> Date April 15 & 16 2018
>
> To Whom It May Concern:
>
> This is to certify that Mr./Miss/Mrs. Atty. Percival G. Alvarez, 61 N – year-of-age, and presently residing at Bliss Macabog Sorsogon City has been my patient and confined at ____________ hospital/seen at my clinic with a working diagnosis of for prostate & diabetes (unreadable) .
>
> Remarks (unreadable)
>
> Issued upon the request of the interested party for whatever purpose this may be deemed necessary.
>
> Sincerely yours,
>
> **Dennis B. Donor, M.D., FPCP** **NOTARY PUBLIC**
> Internal Medicine – Cardiology
> Lic. No: 76473
> ...

For one, the fact that the medical certificate bears two (2) dates, "April 15 & 16 2018" makes the date of its issue unclear. Second, it does not disclose the discomforts complained of by Atty. Alvarez (difficulty discharging urine)[35] as pleaded in petitioner's MR and in its present petition. Third, the diagnosis that Atty. Alvarez was suffering from

32 See supra note 3.
33 Division Docket, p. 453.
34 Id.
35 See supra note 27, pp. 440-441.

"prostate" at the time is also confusing since, a prostate is human body part and not a form of illness. It is highly unlikely that a licensed physician would make such an elementary mistake. Fourth, as regards the notarization of the medical certificate, the jurat of the notary public is undated, bears no document number and also lacks an oath or affirmation by the executing physician. Lastly, the certificate does not state, neither does it hint about Atty. Alvarez's inability to attend the 17 April 2018 pre-trial conference.

In *Pajarillaga v. Court of Appeals et al.*[36], the Supreme Court affirmed the decision of the Court of Appeals when the latter disregarded petitioner's illness as an excuse for absence at trial. There, petitioner's medical certificate only remarked that petitioner refrain from strenuous activity but failed to state that travel from Manila to Mt. Province was too strenuous to endanger petitioner's health[37] thereby, warranting non-attendance.[38]

The other medical records submitted by petitioner also fail to convince. To support its claim of Atty. Alvarez's illness, petitioner submits a variety of medical documents from Chinese General Hospital and Medical Center (**CGHMC**), Sorsogon Medical Mission Group Hospital and Health Services Cooperative (**SMMGHHSC**), Aquinas University Hospital Foundation, Inc. (**AUHFI**). The nature of these documents and their date of issuances are as follows:

Type of Document	Issuing Institution	Date issued
Receipt	CGHMC	12/12/2017[39]
Discharge Plan	CGHMC	12/12/2017[40]
Ultrasound Result	SMMGHHSC	12/19/2017[41]
Chemistry Report	SMMGHHSC	12/22/2017[42]
Serology Report	SMMGHHSC	12/22/2017[43]
Clinical Microscopy	AUHFI	11/11/2017[44]
Urinalysis Report	Unknown	12/19/2017[45]

36 G.R. No. 163515, 31 October 2008.
37 Id.
38 Id.
39 Division Docket, p. 454.
40 Id., p. 455.
41 Id., pp. 456-457.
42 Id., p. 458.
43 Id., p. 459.
44 Id., p. 460.
45 Id., p. 461.

Although these documents may evince the ailments that Atty. Alvarez claimed, they still do not justify his absence at the pre-trial conference. As obviously shown above, these documents were issued four (4) to five (5) months prior to 17 April 2018 and in no way do they attest to Atty. Alvarez's inability to appear before the Court on the said date. Besides, if SORECO II was very concerned with the state of their counsel's health affecting the proceedings then, it should have procured the services of another lawyer.

Moreover, petitioner's request that the pre-trial conference be set a week after the date originally intended is not a ground that would warrant a ready approval of its motion. It is not a basis to justify petitioner's actions rather, it is a relief prayed for (by the latter); the approval of which rests on the sound discretion of the Court.

Likewise, SORECO II's anniversary, without a doubt, is a significant day to its members. However, whether or not its importance equates to the proceedings instituted by petitioner before this Court is a matter of petitioner's own disposition. As for the courts, the appearance of litigants and their counsels during set hearing dates is of utmost consideration. The mandatory character of their appearance during pre-trial is accentuated in the following provisions of the Rules of Court[46]:

> ...
> **Section. 4.** ***Appearance of parties.*** - It shall be the duty of the parties and their counsel to appear at the pre-trial. **The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing** to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.
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> **Section 5.** ***Effect of failure to appear.*** - **The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless other-wise ordered by the court.** A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.
> ...

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46 Rules of Court, Rule 18, Sections 4 and 5; emphasis supplied.

In deciding whether to grant or deny a motion to postpone the pre-trial, the court must take into account two factors: **(a)** the reason given; and, **(b)** the merits of the movant's case.[47] Unfortunately for petitioner, this Court finds SORECO II's anniversary on 16 April 2018 as an unjustified excuse to warrant the postponement of pre-trial. The fact that petitioner's counsel is also its General Manager does not strengthen petitioner's cause. As observed by the Third Division, its resolution setting the pre-trial conference on 17 April 2018 was sent to petitioner through both ordinary and registered mail, and notice was received by the latter as early as <u>10 January 2018</u>. Petitioner had ample time, between 10 January 2018 and 17 April 2018, to immediately apprise the Court of its counsel's unavailability during that date, yet Atty. Alvarez only filed his motion to reset seven (7) days before the actual hearing date. The allegation that he only remembered SORECO II's anniversary on 16 April 2017[48] deserves scant consideration. Certainly, the counsel's forgetfulness of his own personal appointments is not a good reason to justify the postponement of court proceedings. As held by the Supreme Court:

> ...
> To be sure, judicial action must be guided by the principle that a party-litigant must be given the fullest opportunity to establish the merits of his case. Rules of procedure, however have their own reasons for their existence; they are with us to ensure prompt, speedy, and orderly dispensation of justice. This competing reason must be weighed and balanced against the admittedly weightier need to give litigants their day in court. **When procedural rules are at the point of being abused, such as when the litigant fails to establish a valid cause to postpone the proceedings, procedural rules cannot and must not be brushed aside.**[49]
> ...

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47 *Vergara et al. v. Otadoy, Jr.*, G.R. No. 192320, 04 April 2016 citing *Philippine American Life & General Insurance Company v. Enario*, G.R. No. 182075, 15 September 2010.
48 See supra note 24, p. 428.
49 *Vergara et al. v. Otadoy, Jr.*, supra note 47; (emphasis supplied).

PETITIONER'S UNJUSTIFIED ABSENCE AT THE PRE-TRIAL AND FAILURE TO COMPLY WITH THE COURT'S DIRECTIVE ARE CLEAR GROUNDS FOR DISMISSAL

It is well to note that the order for submission of a JSFI, like any lawful order of the Court, must be observed by litigants under pain of certain sanctions. For petitioner, the penalty for non-compliance is provided in Rule 17 of the Rules[50] which states:

> ...
> **Section 3.** *Dismissal due to fault of plaintiff.* — **If, for no justifiable cause,** the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or **to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion,** without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. **This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.**
> ...

As discussed earlier, on 14 August 2017, the Third Division already ordered both parties to submit their JSFI by 03 September 2017. In petitioner's manifestation filed on 08 November 2017, it admitted that it had only sent its proposed JSFI to respondent's counsel on 07 November 2017, more than two (2) months after the date set by the Court. Petitioner cites the distance between the parties' counsel as the cause of the belated notice to the BIR of the copy of the JSFI. However, it is worthy to note that in the *interim* or between 03 September and 08 November 2017, a Commissioner's Hearing was held on 19 September 2017[51] for the marking of petitioner's evidence (in connection with petitioner's Urgent Motion for TRO/Suspension of Collection). During the said date, petitioner's counsel also failed to appear. It is shown further, that petitioner had previously filed a motion to reset[52] the Commissioner's Hearing yet, it

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50 Rules of Court, Rule 17, Section 3; emphasis supplied.
51 Commissioner's Report dated 19 September 2017, Division Docket, p. 379.
52 Dated 09 September 2017, id., pp. 372-373.

remained unresolved due to petitioner's own failure to submit three additional copies of its motion before the hearing date as ordered[53] by the Third Division. Therefore, petitioner's claim of distance as the culprit for the parties' failure to submit their JSFI is unfounded. Surely, petitioner had the chance to confer with respondent during the Commissioner's Hearing, if only its counsel had not failed to attend on the said date. The Court is of the impression that petitioner, in filing its motion to reset the Commissioner's Hearing, pre-empted a favorable resolution from the Third Division. Petitioner could not now pass the blame to anyone for its own procedural lapse.

It is likewise well to note that, despite the parties' failure to file their JSFI, the Third Division did not dismiss petitioner's case; instead, another pre-trial conference was set. Yet again, petitioner's counsel, Atty. Alvarez, was absent on the date given to him. Petitioner must be reminded that a motion for postponement is a privilege and not a right.[54] Besides, the movant should not also assume that his motion would be granted.[55]

Incidentally, while it is true that the JSFI is an obligation imposed by the Court on both parties, the duty to ensure its execution and filing, or to inform the Court prior or on date the JSFI falls due in case the parties fail to arrive at a mutual agreement, rests heavily on petitioner's shoulders as the one instituting the suit. This is precisely why Rule 17[56] of the Rules provides different sanctions for the plaintiff/petitioner and defendant/respondent, which sanctions include the dismissal of the case and counterclaim, respectively. At any rate, the non-submission of the JSFI, although a factor considered in dismissing petitioner's case, was not the Third Division's sole reason for the dismissal of petitioner's case.

RESPONDENT'S MOTIONS FOR POSTPONEMENT DO NOT EXCUSE PETITIONER'S OWN LAPSES

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53 Minute Resolution dated 18 September 2017, p. 378.
54 *Vergara et al. v. Otadoy, Jr.*, supra note 47.
55 Id.
56 Supra note 50.

In another attempt to cushion the supposed drastic action of dismissal from the Court, petitioner likewise points out respondent's previous actions, namely: **(a)** respondent's motion to reset presentation of petitioner's evidence on 20 November 2017 filed 06 November 2017[57]; **(b)** withdrawal of counsel for the respondent on 05 October 2017[58]; **(c)** motion to defer transmittal of BIR records dated 22 September 2016[59]; **(d)** respondent's Urgent Motion for Extension of Time to File Answer on 02 August 2016[60]; and, **(e)** respondent's Motion for Extension of Time to File Comment (Re: Very Urgent Prayer For Temporary Restraining Order and/or Writ of Preliminary Injunction/Stay Execution and/or Suspension of Collection) filed on 25 July 2016.[61] According to petitioner, the Third Division was biased and treated respondent's motions with more favor. It then insists that the Court should take into account the foregoing motions in determining whether its case should be dismissed.

As previously stated, in every motion to postpone, the Court must take account of whether the movant's reasons are justified. In taking action on the cited motions or any motion for that matter, the Court weighs the reasons stated by the parties *vis-à-vis* the relief sought by them. The granting of a motion to postpone, like respondent's, only means that the Court finds reasonable grounds to allow the same.

At this point, it must be clear to petitioner that, regardless of respondent's motions for postponements, it has a corresponding duty to appear before the court on days set for hearings. The court schedules could not be set aside on a whim or whenever it becomes inconvenient for the parties. In the event that absence in the court hearings could not be avoided, it remains the duty of the parties, more so of the counsels, to observe proper procedure in obtaining leave from the court. Lawyers and parties alike are not to assume that their motion for postponements will be acted on favorably as a matter of course. The Supreme Court aptly addressed this unwelcome scenario in courts -

57 Division Docket, pp. 389-390.
58 Id., pp. 168-169.
59 Id., pp. 161-163.
60 Id., pp. 109-111.
61 Id., pp. 102-104.

> ...
>
> Courts possess the duty and authority to control the proceedings before it. This includes the setting of trial dates and allowing postponement of hearings. Lawyers, in turn, as officers of the court, are duty bound to obey and respect court orders. Hence, when courts set trial dates and a lawyer finds that he or she may not be able to attend the hearing, the proper course of action is to move for the court to set the hearing at another date. However, even when a motion for postponement is filed before the court, there is never an obligation for the court to grant it. Far from being a right, the grant of a motion for postponement is a privilege addressed to the court's sound discretion. Hence, a party filing such motion must not assume that it will be granted. In *Spouses Santos v. Alcazar,* we reminded that: "[A] party moving for postponement should be in court on the day set for trial if the motion is not acted upon favorably before that day. He has no right to rely either on the liberality of the court or on the generosity of the adverse party."[65] As for a lawyer who finds himself or herself in a predicament when he or she has two hearings set on the same day, this Court has also stated that he or she has no right to assume that the court will grant him or her a continuance:
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>> The most ethical thing for him to do in such a situation is to inform the prospective client of all the facts so that the latter may retain another attorney. If the client, having full knowledge of all the facts, still retain[s] the attorney, he assumes the risk himself and cannot complain of the consequences if the postponement is denied and finds himself without attorney to represent him at the trial.[62]
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> ...

Petitioner's apparent inclination to miss hearing dates and other schedules set in court are evident in the records. The records reveal that petitioner's representative and counsel were absent during the dates set for the presentation of its evidence on 06 September 2016[63], 11 October 2016[64] and 06 December 2016[65] despite due notice from the Court. During a hearing on a motion set on 14 November 2016, the Third Division had even admonished petitioner for failing to produce the documents on which it based claims of irreparable injury and urgency. At the time, petitioner pled that it be allowed to present its documentary evidence on another date[66] and for Atty.

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62 *Dy Teban Trading v. Dy*, G.R. No. 185647, 26 July 2017.
63 Order, id., p. 140.
64 Order, id., pp. 173-174.
65 Order, id., p. 192.
66 TSN, 14 November 2016, pp. 1-30.

Laguna to present another witness.[67] Despite getting the Court's nod on both requests, petitioner still failed to appear on the next scheduled hearings of 06 December 2016 and on 17 January 2017.[68] Atty. Laguna was also late during the said hearing, prompting the Third Division to resolve the matter before it prior to his arrival.[69] In yet another occasion, petitioner's Urgent Motion for TRO/Suspension Order was also denied[70] primarily due to its failure to timely produce evidence in support of its motion.

The records further show that petitioner likewise failed to attend the Commissioner's Hearings set for the marking of its evidence on 30 March 2017[71], 19 September 2017[72] and 16 November 2017[73], despite having been previously notified.

With the above evident show of disinterest or laxity in promptly and diligently pursuing its case, petitioner could no longer be allowed any leniency. Not even finger-pointing to respondent or to this Court will cure its shortcomings and avoid the inevitable dismissal of its case.

PETITIONER'S OBLIGATION TO JUSTIFY ABSENCE IN COURT NOT CURED BY SUPPOSED MISTAKE ON THE PART OF THE COURT

Oddly, petitioner pleads for sympathy from the Court by comparing its conduct to the Court's supposed "negligence or mistake" in sending of dual notices of its resolutions. For petitioner's guidance, even while the Court may send notices twice, such will not prejudice any party. Likewise, this is not proscribed and is not fatal to any litigant's cause. One thing is clear, it is petitioner that is duty-bound to comply with the rules of procedure and observe court processes; in its failure to be prompt in attending to said duty, it must

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67 Id.
68 Id., 17 January 2017, pp. 1-6.
69 Id.
70 Resolution dated 10 July 2017, Division Docket, pp. 344-354.
71 Commissioner's Report, id., p. 308.
72 Commissioner's Report, id., p. 379.
73 Commissioner's Report, id., p. 412.

bear the consequences. As stated previously, the Rules provide that the absence of the plaintiff in the pre-trial is a ground for dismissal.

Incidentally, although the Court is not bound by the technical rules of procedure,[74] observance thereof remains paramount and its liberal application may only be warranted for the weightiest of reasons. The Supreme Court in *Magsino v. De Ocampo et al.*[75] held:

> ...
> Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.
>
> Like all rules, procedural rules should be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure.
>
> The rules were instituted to be faithfully complied with, and allowing them to be ignored or lightly dismissed to suit the convenience of a party like the petitioner was impermissible. Such rules, often derided as merely technical, are to be relaxed only in the furtherance of justice and to benefit the deserving. Their liberal construction in exceptional situations should then rest on a showing of justifiable reasons and of at least a reasonable attempt at compliance with them...
> ...

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74 Revised Rules of the Court of Tax Appeals, Rule 1.

...

SEC. 2. Liberal construction. - The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court.

...

75 G.R. No. 166944, 18 August 2014 citing *Social Security System v. Chaves*, G.R. No. 151259, 13 October 2004; *Bolos v. Bolos*, G.R. No.186400, 20 October 2010; *Iloilo La Filipina Uygongco Corporation v. Court of Appeals*, G.R. No. 170244, 28 November 2007; and *Mediserv, Inc. v. Court of Appeals*, G.R. No. 161368, 5 April 2010.

WHEREFORE, the foregoing considered, petitioner Sorsogon Electric Cooperative II's (SORECO II's) Petition for Review filed on 03 October 2018, assailing the Third Division's Order dated 17 April 2018 and Resolution dated 31 August 2018 in *Sorsogon Electric Cooperative II (SORECO II) v. The Bureau of Internal Revenue*, CTA Case No. 9377, is **DISMISSED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen S.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice