

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

EN BANC

CEBU III ELECTRIC  
COOPERATIVE, INC.,  
Petitioner,

CTA EB NO. 2318  
(CTA Case No. 9987)

*Present:*

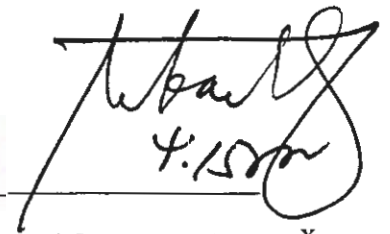
- versus -

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

SECRETARY,  
DEPARTMENT OF  
FINANCE,  
COMMISSIONER OF  
INTERNAL REVENUE and  
CTA – SECOND DIVISION,  
Respondents.

Promulgated:

APR 22 2024



A handwritten signature in black ink is written over a horizontal line. Below the signature, the date '4.15.24' is written in blue ink.

x-----x

DECISION

**FERRER-FLORES, J.:**

Before this Court is a Petition for Review filed on September 11, 2020 by the **Cebu III Electric Cooperative, Inc. (CEBECO/petitioner)** against the **Secretary of the Department of Finance (DOF Secretary), Commissioner of Internal Revenue (CIR), and the Court of Tax Appeals (CTA), Second Division** seeking to set aside the *Order* dated July 29, 2019 (**assailed Order**),<sup>1</sup> dismissing the original Petition for Review in CTA Case No. 9987, and *Resolution* dated July 21, 2020 (**assailed Resolution**)<sup>2</sup>, denying CEBECO's motion for reconsideration, both rendered by the Second Division of this Court.

<sup>1</sup> *Rollo*, p. 4.

<sup>2</sup> *Rollo*, pp. 8 to 10.

## THE PARTIES

CEBECO is non-stock, non-profit electric cooperative created and existing pursuant to the provisions of Presidential Decree (P.D.) No. 269 with Certificate of Registration No. 116 issued on September 17, 1979 and Taxpayer's Identification Number (TIN) 000-534-985-000, with registered address at Luray II, Toledo City, Cebu.

Respondent Secretary of Finance is the duly designated person authorized to exercise the duties of this office including the review of rulings of the CIR relative to matters arising under the National Internal Revenue Code (NIRC) with office address at BSP Compound, Roxas Boulevard Corner Pablo Ocampo Sr. Street, Manila, where he may be served with summons and other court processes.

Respondent CIR is the duly designated person authorized to exercise the duties of his office including the interpretation of the provisions of the NIRC, as amended, and issue rulings relative thereto with office address at the Bureau of Internal Revenue (BIR) Building, BIR Road, Diliman, Quezon City.<sup>3</sup>

## THE ANTECEDENT FACTS

On October 10, 2013, CEBECO filed a request for ruling with the BIR seeking to confirm its exempt status based on its registration under P.D. No. 269.

In response thereto, BIR Ruling No. 158-2014 dated May 30, 2014 was issued with the following finding:

Accordingly, this Office opines that CEBECO's income from its electric service operations is subject to income tax. Beginning January 1, 2010, however, CEBECO is subject to all other national government taxes and fees, including VAT, filing, recordation, license or permit fees or taxes as its exemption ended on December 31, 2009, the thirtieth full calendar year after the date of the cooperative's organization as stated in its registration papers or until it shall become completely free of indebtedness incurred by borrowing, whichever event comes first. xxx

On appeal before the DOF, the said ruling of the BIR was affirmed by the former.

---

<sup>3</sup> *The Parties, Petition For Review, Docket*, p. 11.

On December 13, 2018, CEBECO filed the original *Petition for Review* before the Court seeking the revocation of the aforesaid BIR Ruling No. 158-2014.<sup>4</sup>

The CIR filed his *Answer*<sup>5</sup> on March 12, 2019, while the Secretary of Finance filed his *Comment*<sup>6</sup> on April 1, 2019.

On April 4, 2019, CEBECO moved for additional time to prepare a *Reply* to the *Answer* and *Comment* filed by the CIR and the Secretary of Finance, respectively.<sup>7</sup> The same was granted by the Court in Division in the Order dated April 15, 2019.<sup>8</sup>

The Court issued the Notice of Pre-Trial Conference dated April 5, 2019 setting the case for Pre-Trial Conference on May 23, 2019.<sup>9</sup>

Thereafter, the CIR and the DOF Secretary filed their Pre-Trial Briefs<sup>10</sup> on May 15 and 23, 2019, respectively.

Meanwhile, CEBECO filed the *Urgent Motion to Postpone Pre-Trial Conference* dated May 16, 2019 alleging that, its then counsel, Atty. Marie Joy T. Abangan, was advised by her nephrologist to prepare for a nephrectomy; thus, CEBECO prayed for the pre-trial to be postponed for at least thirty (30) days to afford it time to secure the services of another lawyer.<sup>11</sup>

CEBECO's *Urgent Motion* was granted by the Court during the hearing held on May 23, 2019. The Court then reset the pre-trial conference to July 29, 2019 to give ample time for CEBECO to secure the services of a new counsel.<sup>12</sup>

On July 1, 2019, Atty. Abangan filed *via* registered mail, received by this Court on July 15, 2019, her *Notice of Withdrawal as Counsel* citing health reasons as the ground for her withdrawal as counsel. The same was allegedly

---

<sup>4</sup> Docket, pp. 10 to 21.

<sup>5</sup> Docket, pp. 101 to 125.

<sup>6</sup> Docket, pp. 127 to 148.

<sup>7</sup> Docket, pp. 152 to 153.

<sup>8</sup> Docket, p. 165.

<sup>9</sup> Docket, pp. 156 to 157.

<sup>10</sup> CIR's *Pre-Trial Brief*, Docket, pp. 167 to 171; DOF Secretary's *Pre-Trial Brief*, Docket, pp. 181 to 185.

<sup>11</sup> Docket, pp. 178 to 179.

<sup>12</sup> Minutes of the hearing held on, and Order dated, May 23, 2019, Docket, pp. 188 to 189.

conformed with by CEBECO through its General Manager, Mr. Virgilio Fortich, Jr.<sup>13</sup>

In a Minute Resolution dated July 16, 2019, the Court in Division noted the filing of the *Notice of Withdrawal as Counsel* but found that CEBECO's counsel filed insufficient copies of the same; thus, the Court directed Atty. Abangan to submit additional two (2) copies within five (5) days from notice. The Court likewise ordered CEBECO to cause the entry of appearance of its new counsel within ten (10) days from notice.<sup>14</sup>

On July 26, 2019, the new counsel, Atty. Carlos V. Jaurigue, entered his appearance with the conformity of CEBECO through its General Manager, Mr. Fortich.<sup>15</sup> On even date, CEBECO, through its new counsel, Atty. Jaurigue, moved for the resetting of the pre-trial conference to another date.<sup>16</sup>

During the hearing held on July 29, 2019, the Court dismissed the case for failure of the counsel for CEBECO to appear at the pre-trial and for failure of CEBECO to file a pre-trial brief.<sup>17</sup>

On August 15, 2019, CEBECO belatedly filed its Pre-Trial Brief through Atty. Jaurigue.<sup>18</sup>

Thereafter, CEBECO, through Atty. Jaurigue, submitted the additional copies of Atty. Abangan's *Notice of Withdrawal as Counsel* on September 4, 2019.<sup>19</sup> Atty. Abangan likewise filed *via* registered mail on August 29, 2019 said additional copies which was received by the Court on September 10, 2019.<sup>20</sup>

On October 2, 2019, the Judicial Records of the Second Division of the Court issued a report that, as of even date, there was no appeal filed on the Order dated July 29, 2019 by any of the parties in the case.<sup>21</sup>

In the Resolution dated October 16, 2019, the Court declared the Order dated July 29, 2019 as final and executory; thus, it ordered that an Entry of

---

<sup>13</sup> Docket, pp. 196 to 197.

<sup>14</sup> Docket, p. 201.

<sup>15</sup> Docket, pp. 206 to 207.

<sup>16</sup> Docket, pp. 202 to 204.

<sup>17</sup> Minutes of the hearing held on, and Order dated, July 29, 2019, Docket, pp. 208 to 209.

<sup>18</sup> Docket, pp. 211 to 213.

<sup>19</sup> Docket, pp. 214 to 221.

<sup>20</sup> Docket, pp. 222 to 226.

<sup>21</sup> Docket, p. 229.

Judgment be issued and that the Clerk of Court enter the said Order in the Book of Entries of Judgments.<sup>22</sup>

On March 6, 2020, CEBECO filed its *Motion for Reconsideration* moving for the reconsideration of the Order of Dismissal.<sup>23</sup> Respondents CIR and DOF Secretary filed their comments thereto on June 25, 2020<sup>24</sup> and July 21, 2020,<sup>25</sup> respectively.

The Court issued the assailed Resolution dated July 21, 2020 denying CEBECO's *Motion for Reconsideration* for being filed out time.<sup>26</sup>

Hence, the instant Petition for Review.

### **THE PROCEEDINGS BEFORE THE COURT *EN BANC***

On August 26, 2020, CEBECO filed a *Motion for Extension of Time to File Petition For Review*.<sup>27</sup> The same was granted by the Court giving CEBECO until September 11, 2020 to file its *Petition for Review*.<sup>28</sup>

Thereafter, CEBECO filed the instant *Petition for Review* on September 11, 2020, assailing the CTA Second Division's Order, dated July 29, 2019, and Resolution, dated July 21, 2020.<sup>29</sup>

In its Resolution dated October 5, 2020, the Court ordered CEBECO's counsel. Atty. Jaurigue, to submit the certification of his Mandatory Continuing Legal Education (MCLE) Compliance No. VI, pursuant to Office of the Court Administrator (OCA) Circular No. 79-2014.<sup>30</sup>

On November 9, 2020, Atty. Jaurigue filed a *Manifestation* where he alleged that he cannot comply with the said order since he has not yet completed the said compliance program but further manifests his intention to complete the same.<sup>31</sup>

---

<sup>22</sup> Docket, p. 231.

<sup>23</sup> Docket, pp. 232 to 233.

<sup>24</sup> Docket, pp. 242 to 245.

<sup>25</sup> Docket, pp. 249 to 262.

<sup>26</sup> Docket, pp. 266 to 268.

<sup>27</sup> *Rollo*, pp. 1 to 3.

<sup>28</sup> *Rollo*, p. 11.

<sup>29</sup> *Rollo*, pp. 12 to 21.

<sup>30</sup> *SUBJECT: Bar Matter No. 1922 (Re: Recommendation of the Mandatory Continuing Legal Education [MCLE] Board to Indicate in All Pleadings Filed with the Courts the Counsel's MCLE Certificate of Compliance or Certificate of Exemption)*

<sup>31</sup> *Rollo*, pp. 57 to 58.

Subsequently, in the Resolution dated December 7, 2020, the Court found that the deadline for the Sixth Compliance Period has lapsed on April 14, 2019; thus, the Court ordered Atty. Jaurigue to pay a fine of two thousand pesos (₱2,000.00) for failure to indicate the required MCLE compliance when he signed the *Petition for Review*. Furthermore, Atty. Jaurigue was directed to submit an updated MCLE Compliance Certificate within thirty (30) days from notice; otherwise, he should be replaced with another counsel pursuant to the rules.<sup>32</sup>

Notwithstanding the foregoing, Atty. Jaurigue still failed to comply with the Court's orders.<sup>33</sup> As such, on May 24, 2021, Atty. Jaurigue was ordered to show cause why he should not be subjected to disciplinary action by the Court for his failure to comply with the Resolution dated December 7, 2020.<sup>34</sup>

On June 25, 2021, Atty. Jaurigue filed his *Submission* informing the Court that, since he was not able to comply with the completion of his MCLE Compliance, he has informed CEBECO of the substitution of counsel as directed by the Court. He was, however, unable to file a withdrawal of appearance pending the conformity of CEBECO and the availability of the substituting counsel for the case. He further manifested that he had no intention to show disrespect nor disobey the Resolution of the Court and implored the leniency of the Court for reasons stated in his submission.<sup>35</sup>

In the Resolution dated July 27, 2021, the Court noted Atty. Jaurigue's *Submission* and deemed the same as sufficient compliance to the Show Cause Order of the Court in the Resolution dated May 24, 2021. The Court further directed the counsel to inform the Court of the status of his MCLE compliance and to file the appropriate motion/s for his withdrawal as counsel and the appointment of a substitute counsel, all within ten (10) days from receipt thereof.<sup>36</sup>

On March 4, 2022, Atty. Jaurigue filed his *Withdrawal of Counsel* with attached acceptance by CEBECO through Board Resolution No. 79, series of 2021. In said withdrawal, Atty. Jaurigue also prayed that any Court orders, resolutions and processes be served on CEBECO at its office address pending the retention by CEBECO of its substitute counsel for the case.<sup>37</sup> The Court noted Atty. Jaurigue's withdrawal and directed that all Court orders,

---

<sup>32</sup> *Rollo*, pp. 62 to 64.

<sup>33</sup> *Records Verification* dated March 2, 2021, issued by the Judicial Records Division of the Court *En Banc*; *Rollo*, p. 65.

<sup>34</sup> *Rollo*, pp. 67 to 68.

<sup>35</sup> *Rollo*, pp. 69 to 71.

<sup>36</sup> *Rollo*, pp. 75 to 77.

<sup>37</sup> *Rollo*, pp. 92 to 95.

resolutions and processes be served directly to CEBECO at its office address.<sup>38</sup>

The Court then received the *Letter* dated April 6, 2022 from Atty. Jaurigue wherein he updated the Court of his completion of the Sixth Compliance Program for the MCLE.<sup>39</sup> In the Resolution dated June 1, 2022, the Court noted the same without action and directed CEBECO to secure the services of counsel and to have the latter file his or her Entry of Appearance within fifteen (15) days from notice.<sup>40</sup>

On July 19, 2022, Agan Montenegro Malasaga & Co. entered its appearance as the new counsel for CEBECO<sup>41</sup> which was noted by the Court; hence, the Court ordered that copies of motions, orders, judgment, resolutions and other papers relative to the case be issued to said counsel at its given address.<sup>42</sup>

Thereafter, the Court directed CEBECO to submit the original *Secretary's Certificate and Verification and Certification [Against Forum Shopping]*.<sup>43</sup> In compliance thereto, on September 21, 2022, CEBECO filed the said originals<sup>44</sup> which the Court deemed as sufficient compliance with the Court's Resolution dated September 9, 2022. Respondents were then ordered to file their comments to the instant Petition for Review.<sup>45</sup>

On November 22, 2022, respondent CIR filed a *Manifestation with Motion to Admit Attached Comment/Opposition (To the Petition for Review dated 01 September 2020)* claiming that their comment/opposition was mistakenly filed before the Court's Second Division, under the CTA case number of the case, due to mistake in the heading of the pleading and the case number of the case. Respondent CIR, thus, prayed that the Court *En Banc* admit the attached Comment/Opposition.<sup>46</sup>

Meanwhile, respondent DOF Secretary filed a *Motion for Extension* seeking an additional period within which to file his Comment on the Petition

---

<sup>38</sup> *Rollo*, p. 97.

<sup>39</sup> *Rollo*, p. 99.

<sup>40</sup> *Rollo*, pp. 101 to 102.

<sup>41</sup> *Rollo*, pp. 103 to 104.

<sup>42</sup> *Rollo*, p. 105.

<sup>43</sup> Resolution dated September 9, 2022; *Rollo*, pp. 107 to 108.

<sup>44</sup> *Compliance* dated September 20, 2022 with attached original copies of *Secretary's Certificate and Verification and Certification [Against Forum Shopping]*; *Rollo*, pp. 113 to 118.

<sup>45</sup> *Rollo*, pp. 120 to 121.

<sup>46</sup> *Manifestation with Motion to Admit Attached Comment/Opposition (To the Petition for Review dated 01 September 2020)*; *Rollo*, pp. 122 to 125.


for Review.<sup>47</sup> The Court granted said motion giving respondent DOF Secretary until January 31, 2023 to file his Comment.<sup>48</sup>

On January 23, 2023, respondent DOF Secretary filed through registered mail his *Comment (On the Petition for Review)* which was received by the Court on January 31, 2023.<sup>49</sup>

In the Resolution dated March 22, 2023, this Court admitted the respective comments filed by respondents CIR and DOF Secretary then submitted the case for decision.<sup>50</sup>

### THE ISSUES

In the Petition for Review, the following issues were raised:

1. Whether or not the period to appeal the Order of the respondent Court has lapsed and the Motion for Reconsideration of said Order was filed out of time;
2. Whether or not the withdrawal of the former counsel of petitioner, Atty. Abangan, and entry of appearance of Atty. Jaurigue were operative to the respondent Court considering the conformity of the petitioner in both instances;
3. Whether or not the respondent Court complied with the requirement that the petitioner be furnished a copy of all Orders and/or Resolutions of the respondent Court relative to the case;
4. Whether or not the Order of the respondent Court dated July 29, 2019 has become final and executory; and,
5. Whether or not the dismissal of the case was proper despite the Motion to Re-Set Pre-Trial filed by Atty. Jaurigue. 

---

<sup>47</sup> *Rollo*, pp. 134 to 135.

<sup>48</sup> Resolution dated January 13, 2023; *Rollo*, pp. 140 to 141.

<sup>49</sup> *Rollo*, pp. 146 to 157.

<sup>50</sup> *Rollo*, pp. 161 to 163.



## THE ARGUMENTS

### *CEBECO's arguments*

CEBECO posits that the period to appeal the assailed Order has not lapsed and its Motion for Reconsideration was not filed out time since the subject Order was not properly served to CEBECO. It further claims that the subject Order, which was promulgated in open court when it was not represented by its counsel, was not served upon the (new) counsel, Atty. Jaurigue, but instead, was served upon the (then) withdrawing counsel, Atty. Abangan. According to CEBECO, there was already a proper substitution of Atty. Abangan by Atty. Jaurigue at the time the Order was promulgated; thus, the Order should have been served upon Atty. Jaurigue. CEBECO asserts that the withdrawal of Atty. Abangan and the entry of appearance of Atty. Jaurigue was with the consent of CEBECO through Mr. Fortich, its general manager, who affixed his signature in the "conforme" portion of the withdrawal and entry of appearance of the concerned counsels.

Further, CEBECO asserts that the Court in Division erred when it dismissed the case for failure of counsel of CEBECO to appear during the hearing despite the filing of a motion to reset pre-trial. Atty. Jaurigue avers that he was just recently retained by CEBECO then and he has not obtained the required Special Power of Attorney to represent CEBECO at the pre-trial conference. Moreover, he has not finished the evaluation of the case and the preparation of the pre-trial brief; hence, he deemed it proper to ask for a resetting of the pre-trial conference.

### *CIR's arguments*

The CIR contends that the Court in Division correctly dismissed the original petition and denied CEBECO's Motion for Reconsideration for being filed out time. Considering that the Court in Division, through the Resolution dated October 16, 2020, already declared that the assailed Order has already become final and executory for failure of CEBECO to perfect an appeal within the prescribed period, the latter's motion for reconsideration was properly denied. Even assuming *arguendo* that the said motion was timely filed, the same should still be denied as the failure of CEBECO to file the pre-trial brief due to counsel's kidney illness was not substantiated with any proof.

### *DOF Secretary's arguments*

The DOF Secretary argues that, since CEBECO had notice of the pre-trial conference on July 29, 2019, the dismissal of the case due to non-appearance of CEBECO and its counsel during pre-trial was foreseeable such that CEBECO cannot claim to have had no notice of dismissal. It lost the case

because of its failure to file its pre-trial brief and its unwarranted absence during pre-trial. Further, CEBECO cannot feign lack of knowledge of the dismissal caused by its absence during pre-trial since the effect of such absence is provided for in the Rules of Court and jurisprudence. Furthermore, CEBECO's failure to file a pre-trial brief was likewise due to its own fault and negligence considering it had more than sufficient time to file the same. Moreover, CEBECO proffered no excuse to be absent during pre-trial since it was notified.

The DOF Secretary also asserts that CEBECO is guilty of laches in assailing the Order dismissing its petition.

### **THE RULING OF THE COURT *EN BANC***


The Petition for Review lacks merit.

The Court in Division did not err when it denied CEBECO's *Motion for Reconsideration* for being filed out of time since, at the time the said motion was filed, the assailed Order had already become final and executory. The Court, thus, can no longer modify or alter the assailed Order.

For an orderly disposition of this case, in order to resolve the *first* issue, the Court shall first discuss the *second*, *third*, and *fourth* issues. Thereafter, the Court will address the *fifth* issue.

***The period to appeal the Order of the Court in Division has lapsed; thus, the Motion for Reconsideration of the same was filed out of time.***

CEBECO claims that the assailed Order has not become final and executory since the same was only served upon Atty. Jaurigue, the alleged counsel of record at the time of the dismissal, on February 27, 2020. As such, CEBECO posits that the motion for reconsideration was timely filed on March 6, 2020. According to CEBECO, the Court erred when it still served upon Atty. Abangan, the former counsel, the copy of the assailed Order despite her withdrawal.

Section 1 of Rule 15 of the Revised Rules of the CTA (RRCTA) provides as follows: 

RULE 15  
*Motion for Reconsideration or New Trial*

SECTION 1. *Who May and When to File Motion.*  
— Any aggrieved party may seek a reconsideration or new trial of any decision; resolution or order of the Court. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision, resolution or order of the Court in question.**

Based on the foregoing, an aggrieved party has fifteen (15) days from notice of the decision, resolution or order in question within which to file a motion for reconsideration or new trial.

In relation to how the notice of decision, resolution or order is to be served upon the parties, we refer to Section 2 of Rule 13 of the Revised Rules of Court which provides:

RULE 13  
FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND  
OTHER PAPERS

xxx xxx xxx

Section 2. Filing and Service, defined. — Filing is the act of submitting the pleading or other paper to the court.

Service is the act of providing a party with a copy of the pleading or any other court submission. **If a party has appeared by counsel, service upon such party shall be made upon his or her counsel**, unless service upon the party and the party's counsel is ordered by the court. Where one counsel appears for several parties, such counsel shall only be entitled to one copy of any paper served by the opposite side. xxx

Applying the foregoing provisions to the case, since CEBECO is represented by counsel, service of the Order should be made upon CEBECO's counsel. As such, the reckoning point for the fifteen (15)-day period to file a motion for reconsideration should be counted from the receipt of CEBECO's counsel.

Considering that there is a dispute as to which notice should the period to file a motion for reconsideration be reckoned from, this Court shall first determine which notice is binding upon CEBECO. To resolve the same, it is necessary to identify who the counsel of record is and to whom the notice should have been served to be binding upon CEBECO.

W

The withdrawal of Atty. Abangan was incomplete and ineffective; thus, the Court properly served the assailed Order to Atty. Abangan, as then counsel of record at the time the Order was rendered.

To recall, through Order dated May 23, 2019, the Pre-trial Conference originally scheduled on May 23, 2019 was rescheduled to July 29, 2019. Said Order was received on June 20, 2019 by Atty. Abangan,<sup>51</sup> being the counsel of record at the time the Order was issued.

On July 1, 2019, Atty. Abangan filed *via* registered mail her *Notice of Withdrawal as Counsel* which was received by the Court on July 15, 2019. On July 16, 2019, the Court in Division found the submission insufficient and ordered Atty. Abangan to file the deficient copies of her *Notice of Withdrawal as Counsel* within five (5) days from notice. Meanwhile, on July 26, 2019, Atty. Jaurigue filed his *Appearance as Counsel* and also moved for the resetting of the pre-trial on July 29, 2019.

We look first at the effectivity of Atty. Abangan's withdrawal.

Section 26 of Rule 138 of the Revised Rules of Court provides that a counsel may withdraw from a case with the written conformity of the client or the Court:

**SEC. 26. Change of attorneys. — An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court.** He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party. *(Emphasis supplied)*

In this case, Atty. Abangan filed her *Notice of Withdrawal as Counsel* which contained a written conformity of CEBECO. The Court notes that, at the latter portion of said notice, Mr. Fortich, the General Manager of CEBECO, affixed his signature to signify the conformity of CEBECO to Atty. Abangan's withdrawal. In addition, his authority, as per Board Resolution dated November 20, 2018, provides as follows: *M*

---

<sup>51</sup> *Registry Return Receipt* of the Order dated May 23, 2019, Docket, dorsal portion, p. 189.

**RESOLVED AS IT IS HEREBY RESOLVED**, that General Manager, VIRGILIO C. FORTICH, JR., is hereby authorized to file a Petition for Review with the Bureau of Internal Revenue (BIR) Ruling No. 158-2014 with the Court of Tax Appeals and to sign the verification and all other documents on behalf of CEBU III Electric Cooperative, Inc. (CEBECO III). (*Underscoring supplied*)

A cursory reading of the above shows that the authority of Mr. Fortich covered the filing of the Petition for Review and the signing of the verification and all other documents on behalf of CEBECO. It is, thus, within the authority of Mr. Fortich to sign the “conforme” in the *Notice of Withdrawal as Counsel* on behalf of CEBECO.

As to the effectivity of the withdrawal, as a rule, the withdrawal of a counsel from a case made with the written conformity of the client takes effect once the same is filed with the court. The leading case of *Arambulo vs. Court of Appeals*<sup>52</sup> laid out the rule that, in general, such kind of a withdrawal does not require any further action or approval from the court in order to be effective. In contrast, the norm with respect to withdrawals of counsels without the written conformity of the client is that they only take effect after their approval by the court.<sup>53</sup>

While it is true that the filing of a withdrawal of a counsel from a case made with the conformity of the client takes effect upon its filing with the court, such rule presumes that the filing is in compliance with the existing rules and regulations. In the instant case, records show that, at the time the assailed Order was rendered, her withdrawal was not yet complete for failure to file the required number of copies pursuant to Administrative Matter (A.M.) No. 11-9-4-SC<sup>54</sup> and CTA *En Banc* Resolution No. 005-13.<sup>55</sup>

To recall, in the Minute Resolution dated July 16, 2019, the Court required her to submit two (2) more copies of the Notice of Withdrawal as Counsel within five (5) days from notice. Based on the records of the case, Atty. Abangan received the said Minute Resolution on August 19, 2019. Nonetheless, it was only on August 29, 2019 or ten (10) days from her receipt that she filed *via* registered mail her *Compliance* to the said Minute Resolution. Furthermore, Atty. Abangan did not proffer any reason as to the belated compliance to the Court’s order.

---

<sup>52</sup> G.R. No. 105818, September 17, 1993.

<sup>53</sup> *Rosa F. Mercado vs. Commission on Higher Education*, G.R. No. 178630, November 27, 2012.

<sup>54</sup> Dated November 13, 2012; Efficient Use of Paper Rule.

<sup>55</sup> For all other pleadings to be filed with the Court in Division, only four copies shall be filed, to be distributed as follows: one for the original docket and three for the Justices; CTA *En Banc* Resolution No. 005-13, May 28, 2013.

Inasmuch as the *Compliance* was filed beyond the period granted by the Court and that, as it is, the pleading was deficient in required number of copies, the *Notice of Withdrawal as Counsel* is deemed not filed. Clearly, her withdrawal was ineffective. At most, her withdrawal was deemed filed or completed only on August 29, 2019 when the required number of copies of the *Notice of Withdrawal as Counsel* was completely filed.

As such, as of the date when the assailed Order was promulgated (i.e., July 29, 2019), Atty. Abangan remained to be the counsel of record.

*The Court in Division properly furnished a copy of the assailed Order to the then counsel of record, Atty. Abangan.*

As discussed earlier, Section 2 of Rule 13 of the Revised Rules of Court provides that, if a party has appeared by counsel, service upon such party shall be made upon his or her counsel, unless service upon the party and the party's counsel is ordered by the court.

In CEBECO's case, since it is represented by counsel, service of the Order should be made upon CEBECO's counsel.

It is axiomatic that, when a client is represented by counsel, notice to counsel is notice to client. In the absence of a notice of withdrawal or substitution of counsel, the Court will rightly assume that the counsel of record continues to represent his client and receipt of notice by the former is the reckoning point of the reglementary period.<sup>56</sup>

Considering that Atty. Abangan's withdrawal was not yet complete and effective at the time the assailed Order was rendered, she remained to be CEBECO's counsel of record upon whom the Court orders, resolutions and processes shall be served.

The Court in Division, thus, did not err when it still served upon Atty. Abangan the copy of the assailed Order.

---

<sup>56</sup> *Fernando G. Manaya, vs. Alabang Country Club Incorporated*, G.R. No. 168988, June 19, 2007.

*The assailed Order has become final and executory.*

With the finding that Atty. Abangan remained to be CEBECO's counsel of record at the time of the promulgation of the assailed Order, it was then proper for the Court in Division to serve notice upon Atty. Abangan. Upon receipt of Atty. Abangan on September 25, 2019, the same served as notice to CEBECO; hence, the running of the fifteen (15)-day period to file a motion for reconsideration was then triggered.

On October 2, 2019, based on the *Records Verification* issued by the Judicial Records Division of the Court, no appeal was filed on the Order dated July 29, 2019 by any of the parties.

It is evident that, despite notice to CEBECO through Atty. Abangan, it failed to timely file a motion for reconsideration of the assailed Order. CEBECO should have filed the motion for reconsideration within fifteen (15) days from September 25, 2019 or until October 10, 2019. As a consequence thereof, on October 16, 2019, the Court in Division promptly issued a Resolution ordering the issuance of the Entry of Judgment in the case and for the Clerk of Court to enter the assailed Order in the Book of Entries of Judgments.

In *People of the Philippines vs. Benedicta Mallari, et al. (Mallari)*,<sup>57</sup> the Supreme Court ruled that the CTA First Division's December 14, 2009 Resolution had already attained finality because of petitioner's failure to file a Motion for Reconsideration within the fifteen (15)-day reglementary period allowed under the CTA's revised internal rules. As a result, it now becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land.

In view of the foregoing, this Court finds that the assailed Order has indeed become final and executory. Consequently, the same is already immutable and may no longer be modified in any respect. Thus, the Court in Division aptly declared that the assailed Order dated July 29, 2019 had become final and executory.

That the assailed Order was only received by Atty. Jaurigue on February 27, 2020 is of no moment. As early as July 26, 2019, Atty. Jaurigue was already aware of the schedule of the case for pre-trial conference. In fact,

---

<sup>57</sup> G.R. No.197164, December 4, 2019.

W

he even filed an *Urgent Motion to Re-Set Pre-Trial*. It is but prudent, therefore, for Atty. Jaurigue to monitor the status of such urgent motion relative to the pre-trial knowing the possible repercussions of CEBECO's absence therefrom.

A lawyer has the responsibility of monitoring and keeping track of the period of time left to file an appeal. He cannot rely on the courts to apprise him of the developments in his case and warn him against any possible procedural blunder.<sup>58</sup>

Furthermore, the filing of the motion to reset is not a guarantee that the same will be granted by the Court. He should have, at the very least, appeared during the scheduled hearing to represent the interest of CEBECO. All the more reason to attend is the fact that he filed the motion only on July 26, 2019 which was a Friday, the last working day before the pre-trial conference on July 29, 2019 (i.e., Monday).

In *Republic of the Philippines vs. Maximo Gumayan et. al.*,<sup>59</sup> the Supreme Court upheld the order of the lower court allowing the plaintiff to present its evidence *ex parte* due to defendant's failure to appear during pre-trial. In said case, defendant filed a motion for postponement three (3) days before the scheduled pre-trial which the Court denied in open court in this wise:

**As to the denial of Gumayan's motion for postponement, we have repeatedly held that such motions are addressed to the sound discretion of court and that movant has no right to assume that his motion would be granted, especially on less than three days' notice and must be in court on the day of the hearing so that if his motion is denied, he can proceed with the trial. Considering that counsel for Gumayan gave no valid excusable reason in his motion for postponement why he had to attend the administrative case in the town of Estancia in preference to the hearing of this case; that copies of the motion for postponement were served on the other parties by ordinary mail only on January 15, 1957, so that they could not have had at least three days' notice thereof before the hearing or January 18, 1957; and that both plaintiff and the surety company were in court ready for trial on the day set for hearing; the lower court committed no abuse of discretion in denying Gumayan's motion for postponement and in allowing the other parties to introduce their respective evidence even in the absence of Gumayan or counsel.**

Gumayan argues that he was not furnished with a copy of the order denying his motion for postponement, and that for this reason, he was deprived of his chance to present evidence in support of his defense. Again we see no merit in this claim. **While it is true that Gumayan was entitled to a copy of the court's order denying his motion for postponement, he**

---

<sup>58</sup> *Elizabeth Sublay vs. National Labor Relations Commission*, G.R. No. 130104, January 31, 2000.

<sup>59</sup> G.R. No. L-16780, May 31, 1961.



suffered no prejudice by such lack of notice, for **he lost his chance to present evidence not because he was not notified of the denial of his motion for postponement, but because of his unwarranted absence in court on the date of the hearing.** Anyway, Gumayan was served a copy of the decision rendered by the court, and such notice of the decision based on evidence presented at the hearing by the other parties during Gumayan's absence was sufficient notice to him of the denial of his motion for postponement. (*Emphasis supplied*)

The Supreme Court reiterated the above principle in *Republic of the Philippines vs. Sandiganbayan and Brig. Gen. Pedro R. Balbanero*.<sup>60</sup>

It is clear from the above pronouncements that the mere filing of a motion for postponement of pre-trial is not a justification for petitioner's absence from said hearing.

CEBECO was likewise not diligent in prosecuting its claim. As early as May 16, 2019, Atty. Abangan already manifested that CEBECO will need to hire another lawyer for the case when she moved for the postponement of the pre-trial conference. CEBECO, however, neglected to hire a new lawyer for more than two (2) months until Atty. Jaurigue was engaged to represent it with only three (3) days remaining before the pre-trial conference. Furthermore, the records are bereft of any effort on CEBECO's part to properly equip its new counsel with the requisite Special Power of Attorney (SPA) to represent it during the pre-trial conference. It also did not actively inquire on the status of its case with its counsel or even with the Court itself inasmuch as the status of the case is easily accessible through the Court's official website.<sup>61</sup>

Pertinent thereto is the case of *Florencio G. Bernardo vs. The Hon. Special Sixth Division of the Court of Appeals*<sup>62</sup> wherein the Supreme Court elucidated that a party-litigant should not solely rely on its counsel to litigate its case, to wit:

True enough, the party-litigant should not rely totally on his counsel to litigate his case even if the latter expressly assures that the former's presence in court will no longer be needed. **No prudent party will leave the fate of his case entirely to his lawyer. Absence in one or two hearings may be negligible but want of inquiry or update on the status of his case for several months (four, in this case) is inexcusable. It is the duty of a party-litigant to be in contact with his counsel from time to time in order to be informed of the progress of his case.** Petitioner simply claims that he was busy with his gravel and sand and trading businesses which involved frequent traveling from Manila to outlying provinces. But this was

---

<sup>60</sup> G.R. No. 123997, January 20, 1999.

<sup>61</sup> <https://cta.judiciary.gov.ph>.

<sup>62</sup> G.R. No. 106153, July 14, 1997.

not a justifiable excuse for him to fail to ask about the developments in his case or to ask somebody to make the query for him. Petitioner failed to act with prudence and diligence; hence, his plea that he was not accorded the right to due process cannot elicit this Court's approval or even sympathy. *(Emphasis supplied)*

Glaringly, from the date of pre-trial conference (i.e., July 29, 2019) to the date of Atty. Jaurigue's receipt of the assailed Order (i.e., February 27, 2020), almost seven (7) months passed without CEBECO or its counsel checking the status of its case or its urgent motion to reset pre-trial. Such indifference to its own case is frowned upon by this Court.

In fine, this Court can no longer entertain CEBECO's Petition for Review as its *Motion for Reconsideration* before the Court in Division was filed out of time; thus, it already lost its right to appeal. Failure to interpose a timely appeal deprives the appellate body of any opportunity to alter the final judgment, more so to entertain the appeal.<sup>63</sup>

***The dismissal of the case for non-appearance of CEBECO during the pre-trial conference was proper notwithstanding the Motion to Re-Set Pre-Trial filed by Atty. Jaurigue.***

Even assuming *arguendo* that the *Motion for Reconsideration* was timely filed and, thus, this Court may entertain this Petition, the Petition will still be denied.

Sections 4, 5, and 6 of Rule 18 of the Revised Rules of Court, provides as follows:

SEC 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.

SEC 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 otherwise 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.

---

<sup>63</sup> *Bureau of Internal Revenue vs. TICO Insurance Co., Inc.*, G.R. No. 204226, April 18, 2022.

SEC. 6. *Pre-trial brief.* — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

XXX XXX XXX

**Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.** (*Emphasis supplied*)

As mentioned earlier, CEBECO failed to appear during the pre-trial conference and to timely file its Pre-Trial Brief.

CEBECO, through Atty. Jaurigue, filed an *Urgent Motion to Re-Set Pre-Trial* on July 26, 2019 alleging that the counsel was only engaged on July 23, 2019 and that an SPA was yet to be secured from CEBECO.

In the case of *Clodualda D. Daaco vs. Valeriana Rosaldo Yu*,<sup>64</sup> the Supreme Court held that, in certain instances, the non-appearance of a party during pre-trial may be excused, to wit:

In certain instances, however, the **non-appearance of a party may be excused if a valid cause is shown. What constitutes a valid ground to excuse litigants and their counsels at the pre-trial is subject to the sound discretion of a judge.** Unless and until a clear and manifest abuse of discretion is committed by the judge, his appreciation of a party's reasons for his nonappearance will not be disturbed. (*Emphasis supplied*)

In the present case, however, the Court notes that the *Urgent Motion* was filed just three (3) days before the scheduled pre-trial, which both CEBECO and Atty. Jaurigue were aware of. Moreover, the date of filing of such urgent motion, July 26, 2019, was actually the Friday before the scheduled pre-trial conference on Monday, July 29, 2019. Considering that the motion was filed at such short notice, it is but prudent for Atty. Jaurigue to be present during the scheduled hearing to protect CEBECO's interest. Atty. Jaurigue, however, did otherwise.

With regard to the Pre-Trial Brief, the Court also observes that CEBECO did not file any Pre-Trial Brief within the period set by the Court nor did it seek the extension for the filing of the same. It was only in its *Motion for Reconsideration* that CEBECO alleged that its failure to submit the Pre-Trial Brief on time was justified as the former counsel was "deliberating with a kidney illness." CEBECO, however, did not submit any document to substantiate such claim.

---


<sup>64</sup> G.R. No. 183398, June 22, 2015.

For these reasons, we find the absence of CEBECO and its counsel during the pre-trial conference and the late submission of its Pre-Trial Brief to be unjustified; thus, the dismissal of the case was in order.


In light of the foregoing discussions, the Court finds that the assailed Order has already become final and executory and, thus, no longer subject to modification.


**WHEREFORE**, premises considered, the *Petition for Review* is **DENIED** for lack of merit. The assailed *Order* dated July 29, 2019 and assailed *Resolution* dated July 21, 2020 rendered by the Second Division of this Court in CTA Case No. 9987 are **AFFIRMED**.

**SO ORDERED.**

  
**CORAZON G. FERRER-FLORES**  
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




**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice



**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice


**ON LEAVE**  
**LANEE S. CUI-DAVID**  
Associate Justice



**HENRY S. ANGELES**  
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