

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

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 08 2024

X ----- X

JK 11:38 a.m.

DECISION

MODESTO-SAN PEDRO, J.:

The Case

For the Court *En Banc*'s consideration is a Petition for Review,¹ filed on 14 December 2021 under *Rule 43 of the Rules of Court*, pursuant to *Section 4 (b), Rule 8² of the Revised Rules of the Court of Tax Appeals ("RRCTA")*,³ seeking to reverse and set aside the Order ("Assailed Order"),⁴ dated 9 February 2021, and the subsequent Resolution ("Assailed Resolution"),⁵ dated 29 July 2021, both issued by Court's First Division,

¹ See Petition for Review, *Rollo*, pp. 1-28, with annexes.

² SECTION 4. Where to appeal; mode of appeal. —

xxx xxx xxx

((b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

³ A.M. No. 05-11-07-CTA, 22 November 2005.

⁴ See Order dated 9 February 2021, *Rollo*, 43-44.

⁵ See Resolution dated 29 July 2021, *id.*, pp. 31-33.

(“Court in Division”), ruling on the dismissal of the original case on the ground of failure to prosecute under **Section 3, Rule 17 of the Rules of Court**.

The Parties

Petitioner Bukidnon Second Electric Cooperative, Inc. (“petitioner” or “BUSECO”) is a non-stock non-profit electric cooperative, granted with a franchise by the National Electrification Commission, pursuant to Presidential Decree (“PD”) No. 269.⁶ It is primarily engaged in supplying, promoting, and encouraging the fullest use of electric service within its franchise area in the province of Bukidnon based on the lowest cost with sound economy.⁷

On the other hand, respondent Commissioner of Internal Revenue (“respondent” or “CIR”) is the head of the Bureau of Internal Revenue (“BIR”), empowered, among others, to decide on disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, and other matters arising from the implementation of the **National Internal Revenue Code (Tax Code)** and other laws administered by the BIR.⁸

The Facts

The present controversy arose from an assessment issued by respondent alleging petitioner’s deficiency taxes amounting to Php163,091,030.24 for the taxable year 2015, inclusive of interest and compromise penalties.⁹

After payment of Php797,919.83, and the reinvestigation performed by the BIR, respondent issued a Final Decision on Disputed Assessment (“FDDA”), dated 5 April 2019, alleging deficiency taxes amounting to Php39,122,153.59.¹⁰

Aggrieved, petitioner filed the original Petition for Review¹¹ on 24 May 2019. The case was docketed in the Court in Division as CTA Case No. 10084.

During the Pre-Trial Conference held on 5 November 2020, the presentation of petitioner’s evidence was set for 9 February 2021. Petitioner manifested the presentation of its witness, Hazel C. Del Puerto, whose Judicial

⁶ See Certificate of Franchise, Exhibit “P-2”, *id.*, p. 21.

⁷ See Par. 1, Parties, Petition for Review, *id.*, p. 10.

⁸ See Par. 2, Parties, Petition for Review, *id.*, p. 10-11; see also Par. 3, Summary of Admitted Fact, Joint Stipulation of Facts and Issues (“JSFI”), *id.*, p. 279.

⁹ See Par 7, Summary of Admitted Facts, JSFI, *id.*

¹⁰ See Pars. 8-9, Summary of Admitted Facts, JSFI, *id.*, 280.

¹¹ See Petition for Review, *id.* pp. 10-17.

The Issues²¹

- I. WHETHER THE CTA IN DIVISION ERRED IN DISMISSING THE ORIGINAL PETITION FOR REVIEW FOR FAILURE TO PROSECUTE; and
- II. WHETHER THE CTA IN DIVISION ERRED IN DISMISSING THE PETITION WHEN THE ONLY QUESTION OF LAW IS INVOLVED AND NO FACTUAL ISSUES ARE IN DISPUTE.

The Arguments

In its Petition for Review, BUSECO primarily argues that the failure of its witness to present herself before the Court in Division on 9 February 2021 has justifiable cause. It reiterated that witness Del Puerto suspected an infection from COVID-19 as she suffered from diarrhea and fever and was thus unable to attend the hearing. Such reasoning, however, was found unacceptable by the Court in Division due to petitioner's failure to present a medical certificate proving the claim. Petitioner now emphasizes that a medical certificate is not required to be excused from work during the time of pandemic, pursuant to *Office of Court Administrator (OCA) Circular No. 165-2020* issued by the Supreme Court and the *Joint Memorandum Circular No. 20-04-A* of the Department of Trade and Industry (DTI) and Department of Labor and Employment (DOLE). Hence, according to petitioner, the same certification should not be mandated from the witnesses.²²

Further, petitioner asserts that the dismissal of the original Petition is a violation of due process rights and that the proper legal remedy is only the waiver to present evidence instead of dismissal. It advances that this position becomes more compelling because no factual issues were claimed to be involved, and the only issue is purely legal, *i.e.* whether petitioner is permanently exempt from income tax by virtue of *PD 269*.²³ In this regard, BUSECO claims that the Petition may be resolved on the merits without trial by the Court *En Banc*.²⁴

On the other hand, respondent counter-argues that no justifiable cause exists to warrant petitioner's absence during its presentation of evidence in chief. Specifically, the claimed illness was not duly proved due to the absence of a medical certificate. Respondent also pointed out that the affidavit stating the alleged illness, attached to the Motion for Reconsideration, appears to,

²¹ See Petition for Review, *id.*, pp. 1-2.

²² See Petition for Review, *id.*, pp. 2-4.

²³ *Id.*, p. 5.

²⁴ *Id.*, pp. 6-12.

have not been properly notarized. Finally, respondent questions the explanation offered by petitioner's counsel regarding having decided to take the flight on 9 February 2021 to explain the witness' unavailability, as it is highly unlikely for the counsel to arrive before 9:00am due to frequent flight delays during the pandemic.²⁵

The Ruling of the Court

The instant Petition for Review was timely filed before the Court *En Banc*

Before proceeding with the merits of the case, we shall first look into the timeliness of its filing of the instant Petition before the Court *En Banc*.

Under **Sections 3 (b), Rule 8 of the RRCTA**, a party adversely affected by a decision or resolution of a Division of the CTA on a motion for reconsideration or new trial may appeal to the Court *En Banc* by filing a petition for review within fifteen (15) days from receipt of the assailed decision or resolution.

Here, the Assailed Resolution was received by the petitioner on 1 December 2021.²⁶ Considering the fifteen (15)-day reglementary period, the Court finds the instant Petition for Review timely filed on 14 December 2021.

We shall now proceed to determine the merits of the present Petition.

The Court in Division did not err in dismissing the original petition due to failure to prosecute

The dismissal of a case due to failure to prosecute is provided under Section 3, Rule 17 of the Revised Rules of Court, as amended, which reads:

“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 or her evidence in chief on the complaint**, or to prosecute his or her 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 or her counterclaim in the same or in a separate action. This dismissal shall have

²⁵ See Comment / Opposition (re: Petition for Review dated 13 December 2021), *id.*, p. 50.

²⁶ See Mailing Envelope addressed to petitioner's counsel, Atty. Eleuterio F. Diao, IV, marked received on 1 December 2021, *id.*, p. 29.

the effect of an adjudication upon the merits, unless otherwise declared by the court.”
(Emphasis supplied.)

Enumerating the instances when there is deemed “failure to prosecute,” the Supreme Court held in the case of *Tricom Development Corporation vs. CPG Agricom Corporation* (“*Tricom case*”),²⁷ citing *Heirs of Sanchez vs. Abrantes*,²⁸ that:

“The fundamental test for ‘failure to prosecute’ contemplates want of due diligence attributable to the plaintiff in failing to proceed with reasonable promptitude. There must be unwillingness on the part of the plaintiff to prosecute, as manifested by any of the following instances: (1) **plaintiff fails to appear at the time of trial**; or (2) **plaintiff fails to prosecute the action for an unreasonable length of time**; or (3) **plaintiff fails to comply with the Rules of Court or any order of the court.**”
(Emphasis supplied.)

Here, the dismissal of the original petition was due to the cited *first* instance, which is the failure to appear on the date of the presentation of evidence in chief without justifiable cause. Thus, while BUSECO advances in its Petition that it cannot be said to have delayed the prosecution for an unreasonable length of time (i.e, *second* instance stated above), such proposition does not negate the lack of reasonable promptitude manifest in its unjustified failure to appear on the scheduled date of presentation of its witness.

It must be emphasized that during the hearing on 9 February 2021, both witness Del Puerto and the counsel for petitioner were not present before the Court in Division.

As for the witness’ absence, petitioner tries to justify the same by claiming that Del Puerto had been ill at the date of trial. As aptly observed by the Court in Division in the Assailed Resolution, no medical certificate was presented by petitioner to prove the same. Petitioner, however, raises *OCA Circular No. 165-2020* and the *DTI and DOLE’s Joint Memorandum Circular No. 20-04-A*, and argues that a medical certificate should not be mandated to prove witness’ illness.

The Court *En Banc* disagrees.

A reading of *OCA Circular NO. 165-2020* clearly reveals that the same is addressed and made applicable only to “judges and court personnel of the first and second level courts.” It relates to absences from work due to the required self-quarantine and/or treatment for COVID-19 and does not cover absence of party-litigants and witnesses during court proceedings. ♣

²⁷ G.R. No. 264395 (Notice), 6 March 2023.

²⁸ G.R. No. 234999, 4 April 2021.

Affidavit was subscribed on 30 October 2020, was likewise noted by the Court in Division.¹²

However, come 9 February 2021, petitioner's counsel and witness failed to appear before the Court in Division. In this regard, counsel for respondent moved to dismiss the case on the ground of failure to prosecute. After noting that the counsel for petitioner offered no justification for his absence, the Court in Division granted respondent's motion to dismiss, in open court, to wit:

“Accordingly, the instant case is DISMISSED pursuant to Section 3, Rule 17 of the Rules of Court. The hearing scheduled on March 25, 2021 at 9:00am for the presentation of respondent's evidence is CANCELLED.

SO ORDERED.”¹³

On 3 March 2015, petitioner filed its Manifestation with Motion for Reconsideration.¹⁴ Petitioner manifested that that it was unable to appear and present its sole witness, Del Puerto, due to the latter's fever and indigestion at the time of the hearing. According to petitioner, Del Puerto is based in Barangay Tankulan which was placed under localized lockdown from 22 January to 6 February 2021, and was afraid to travel to avoid worsening her condition and avoid exposing other people to COVID , if she tested positive.¹⁵

Further, counsel for petitioner narrated that he decided to take a flight to Manila despite the unavailability of witness which was, however, booked at 11:40am; thus, later than the scheduled hearing at 9:00am.¹⁶

The Court in Division denied the Motion for Reconsideration in its Resolution dated 29 July 2021;¹⁷ hence, the instant Petition¹⁸ before the Court *En Banc*. Respondent, on the other hand, filed his Comment/Opposition¹⁹ to the Petition on 18 May 2022.

On 9 February 2023, after noting the Report from the Philippine Mediation Center – Court of Tax Appeals stating that there was an unsuccessful mediation between the parties, the Court submitted the instant case for decision.²⁰

¹² See Minutes of Hearing held on 5 November 2020, *id.*, pp. 240-242.

¹³ See Order dated 9 February 2021, *id.*, p. 285.

¹⁴ See Manifestation with Motion for Reconsideration, *id.*, pp. 303-315, with annexes.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Resolution dated 29 July 2021, *id.*, pp. 347-349.

¹⁸ *Supra* note 1.

¹⁹ See Comment/Opposition, *Rollo*, p.

²⁰ See Resolution dated 9 February 2023, *id.*, p. 69.

Similarly, *Joint Memorandum Circular No. 20-04-A* provides “guidelines on workplace prevention and control of COVID-19.” Inarguably, the rules prescribed therein, including the alleged unnecessary securing of medical certificate, merely applies to workplace situations. Here, while Del Puerto is an employee of petitioner, her presence is required before the Court not as the latter’s employee but as its witness in a judicial proceeding. Thus, We find no error in requiring petitioner to present a medical certificate to prove Del Puerto’s claim of suffering diarrhea and fever during the day of the trial.

The Court *En Banc*, however, is not unaware of the precautions required of persons experiencing symptoms of COVID-19 and the health risks involved when these persons do not observe self-quarantine and potentially expose others to the virus. However, assuming that the absence of the witness was justified and satisfactorily proven, We likewise find no plausible reason for the absence of the counsel during the hearing.

In the Petition for Review, BUSECO propounded no explanation for the counsel’s non-attendance on the scheduled hearing. It was, however, stated in the Manifestation with Motion for Reconsideration, filed with the Court in Division that the “counsel, despite the unavailability of witness, decided to take a flight to Manila on the date of the hearing on [9 February] 2021.” However, his flight was only booked at 11:40am, whereas the hearing was scheduled as 9:00am.

It does not escape the Court *En Banc*’s attention that the 9 February 2021 hearing was set during the Pre-Trial Conference held on 5 November 2020, or almost three (3) months before the scheduled presentation of evidence. We find it rather irreconcilable that the counsel’s flight was booked at 11:40am of the same day of the trial, which would surely cause him to miss the 9:00am hearing. Also, considering the transport situation during the time of pandemic, necessary time allowances should have been accounted for by the counsel. For one, an earlier flight could have been booked by petitioner’s counsel considering the ample time (*i.e.*, 3 months) given to him to plan the itinerary. Also, party litigants are given multiple ways (e.g, through email or phone call) to reach the Court for various reasons and concerns especially during the height of the pandemic. Petitioner’s counsel could have thus easily moved to reset the hearing, requested to have the same heard through video conference, or taken any other similar action. Clearly, these were not utilized by petitioner in this case. It thus appears that due diligence in handling and management of a case with reasonable promptitude, as prescribed by the High Court in the *Tricom case*, was not observed herein.

In sum, the Court *En Banc* finds no justifiable reason for the absence of both the petitioner’s witness and its counsel during the hearing on 9 February 2021.

In sum, the Court *En Banc* finds no justifiable reason for the absence of both the petitioner's witness and its counsel during the hearing on 9 February 2021.

Meanwhile, petitioner also raises that the case at hand involves a question of law exclusively and that no other issues necessitating the testimony of a witness were raised. In this regard, petitioner advances that with the dismissal of the original petition due to failure to prosecute, there was a violation of its right to due process.

We find such contention devoid of merit.

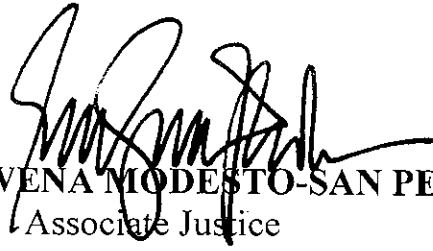
It must be emphasized that procedural rules should always be treated by litigants with utmost respect and due regard since these are designed to facilitate the efficient adjudication of cases and administration of justice. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the procedures prescribed by the courts. As such, procedural rules must not be belittled such that an unfavorable outcome brought about by a litigant's own non-observance of the rules would prompt such party to simply and generally allege a violation of due process rights. Indeed, the primordial policy is a faithful observance of the *Rules of Court*—their relaxation or suspension should only be for persuasive reasons and only in meritorious cases.

The *Rules of Court* do not, after all, lack remedies for parties who believe that their cases involve no pertinent questions of fact. If petitioner truly believed that its case involved issues of law only, it could have filed a Motion for Judgment on the Pleadings under *Rule 34 of the Rules of Court* or a Motion for Summary Judgment under *Rule 35 of the Rules of Court*. Its present contention is thus belied by the fact that it did not avail of said remedies, that it instead agreed, during Pre-Trial, to present a witness and evidence for a case it now claims does not need such.

All told, the denial of the Petition for Review is in order.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Order, given in open court on 9 February 2021, and the Resolution, dated 29 July 2021 of the Court's First Division are hereby **AFFIRMED**. ♪

SO ORDERED.



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

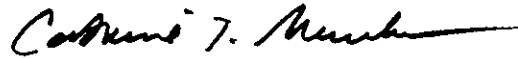
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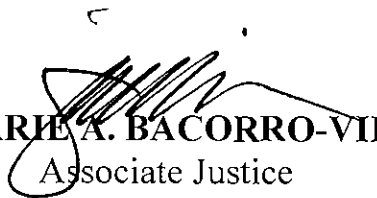
ROMAN G. DEL ROSARIO
Presiding Justice



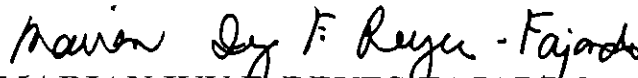
MA. BELEN M. RINGPIS-LIBAN
Associate Justice



CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIAN IVY P. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
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.

A handwritten signature in black ink, consisting of a series of loops and flourishes, representing the name Roman G. Del Rosario.

ROMAN G. DEL ROSARIO
Presiding Justice