



Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*Wilfredo Y. Capitán*  
WILFREDO Y. CAPITÁN  
Division Clerk of Court  
Third Division  
DEC 01 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Petitioner,

G.R. No. 199480

Present:

VELASCO, JR., J.,  
Chairperson,  
PERALTA,  
DEL CASTILLO,\*  
PEREZ, and  
REYES, JJ.

- versus -

TESS S. VALERIANO,  
Respondent.

Promulgated:

October 12, 2016

X-----*Wilfredo Y. Capitán*-----X

DECISION

REYES, J.:

This is a Petition for Review on *Certiorari*<sup>1</sup> filed by the People of the Philippines (petitioner) assailing the Decision<sup>2</sup> dated November 18, 2011 of the Court of Tax Appeals (CTA) *en banc* in CTA EB Criminal Case No. 010. The CTA *en banc* sustained the Resolutions dated November 23, 2009<sup>3</sup> and June 1, 2010<sup>4</sup> of the CTA Special First Division which dismissed the criminal case against Tess S. Valeriano (Valeriano).

\* Additional Member per Raffle dated November 3, 2014 *vice* Associate Justice Francis H. Jardeleza.

<sup>1</sup> *Rollo*, pp. 7-25.

<sup>2</sup> CTA *en banc rollo*, pp. 67-75.

<sup>3</sup> CTA Special First Division *rollo*, pp. 32-33.

<sup>4</sup> *Id.* at 61-64.

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### Antecedent Facts

On February 9, 2006, the Regional Director (RD) of the Bureau of Internal Revenue (BIR), Revenue Region No. 6, wrote a Letter<sup>5</sup> to the City Prosecutor of Manila, recommending the criminal prosecution of Valeriano as president/authorized officer of the Capital Insurance & Surety Co., Inc. (Corporation) for failure to pay the following internal revenue tax obligations of the Corporation in violation of Section 255,<sup>6</sup> in relation to Section 253(d)<sup>7</sup> and Section 256,<sup>8</sup> of the 1997 National Internal Revenue Code (NIRC):

Kind of Tax	Assessment No./ Demand No.	Year	Date	Amount
Def. Income Tax	34-2000	2000	January 14, 2004	P 12,541,339.18
Def[.] VAT	34-2000	2000	January 14, 2004	16,296,946.70
Def. EWT	34-2000	2000	January 14, 2004	4,397,619.73
Def. DST	34-2000	2000	January 14, 2004	17,513,440.24 <sup>9</sup>

Thus, an Information<sup>10</sup> was filed with the CTA by Assistant City Prosecutor Suwerte L. Ofrecio-Gonzales (Assistant City Prosecutor Ofrecio-Gonzales) on July 9, 2009 against Valeriano for violation of Section 255, in relation to Section 253(d) and Section 256, of the 1997 NIRC.

<sup>5</sup> Id. at 4-6.

<sup>6</sup> **Sec. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.** - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000[.00]) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000[.00]) but not more than Twenty thousand pesos (P20,000[.00]) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

<sup>7</sup> **Sec. 253. General Provisions.** -

x x x x

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.

x x x x

<sup>8</sup> **Sec. 256. Penal Liability of Corporations.** - Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000[.00]) but not more than One hundred thousand pesos (P100,000[.00]).

<sup>9</sup> CTA Special First Division *rollo*, p. 4.

<sup>10</sup> Id. at 1-2.

On August 4, 2009, the CTA First Division issued a Resolution,<sup>11</sup> whereby Assistant City Prosecutor Ofrecio-Gonzales was ordered to submit within five days from receipt thereof proof that the filing of the criminal case was with the written approval of the BIR Commissioner, and not by the RD, in compliance with Section 220<sup>12</sup> of the 1997 NIRC, as amended.

In a Resolution<sup>13</sup> dated September 28, 2009, the CTA First Division ordered Assistant City Prosecutor Ofrecio-Gonzales to comply with the earlier resolution, within a final and non-extendible period of five days from receipt of the Resolution.

However, Assistant City Prosecutor Ofrecio-Gonzales failed to comply with the order to submit the approval of the Commissioner (to file the criminal action), as required. Consequently, the CTA First Division, through a Resolution<sup>14</sup> dated November 23, 2009, dismissed the case against Valeriano for failure to prosecute.

On January 29, 2010, a Special Attorney from the Legal Division of BIR Revenue Region No. 6 filed an "Entry of Appearance with Leave to Admit Manifestation and Motion for Reconsideration."<sup>15</sup> Attached thereto was a photocopy<sup>16</sup> of the supposed written approval of the BIR Commissioner to file the criminal case against Valeriano.

The CTA Special First Division then promulgated an Order<sup>17</sup> on February 9, 2010, requiring Valeriano to comment on the Motion with Leave to Admit Manifestation and Motion for Reconsideration filed by the counsel of the BIR Commissioner. However, the records disclose that Valeriano had already moved out of her address of record.<sup>18</sup>

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<sup>11</sup> Signed by Presiding Justice Ernesto D. Acosta, Associate Justices Lovell R. Bautista and Caesar A. Casanova; *id.* at 26-27.

<sup>12</sup> **Sec. 220.** *Form and Mode of Proceeding in Actions Arising under this Code.* - Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

<sup>13</sup> CTA Special First Division *rollo*, pp. 29-30.

<sup>14</sup> *Id.* at 32-33.

<sup>15</sup> *Id.* at 34-35.

<sup>16</sup> *Id.* at 43-44.

<sup>17</sup> *Id.* at 57.

<sup>18</sup> *Id.*

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On June 1, 2010, the CTA Special First Division issued a Resolution,<sup>19</sup> denying the petitioner's motion for reconsideration for lack of merit.

On July 1, 2010, the petitioner filed a Petition for Review<sup>20</sup> with the CTA *en banc*, arguing that it was not at fault when Assistant City Prosecutor Ofrecio-Gonzales failed to comply with the orders of the CTA Special First Division<sup>21</sup> and that the government is not bound by the errors committed by its agents.<sup>22</sup>

The CTA *en banc*, in its Resolution<sup>23</sup> dated August 9, 2010, directed Valeriano to file her comment. But as with the other documents sent to her, the resolution was returned unserved with the notation "RTS moved out." As Valeriano failed to file Comment,<sup>24</sup> the CTA *en banc*, through a Resolution<sup>25</sup> dated October 14, 2010, directed the parties to submit their respective memoranda. Only the petitioner filed a Memorandum,<sup>26</sup> after which the case was submitted for decision.<sup>27</sup>

The CTA *en banc* rendered its Decision<sup>28</sup> on November 18, 2011, denying the petition. The dispositive portion thereof reads as follows:

**WHEREFORE**, premises considered, the petition for review is hereby **DENIED**. Accordingly, the assailed Resolutions dated November 23, 2009 and June 1, 2010 are hereby **AFFIRMED with MODIFICATION that the DISMISSAL is without prejudice**.

**SO ORDERED.**<sup>29</sup>

In sustaining the dismissal of the case, the CTA *en banc* noted that the petitioner failed to comply with the Resolutions dated August 4, 2009 and September 28, 2009 of the CTA Special First Division. While the petitioner did attach to its motion for reconsideration an alleged written approval of the BIR Commissioner,<sup>30</sup> it was merely a photocopy which was hardly readable. Hence, there was no

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<sup>19</sup> Id. at 61-64.

<sup>20</sup> CTA *en banc* rollo, pp. 4-14.

<sup>21</sup> Id. at 12.

<sup>22</sup> Id. at 12-A.

<sup>23</sup> Id. at 43-44.

<sup>24</sup> Id. at 45.

<sup>25</sup> Id. at 47-48.

<sup>26</sup> Id. at 49-60.

<sup>27</sup> Id. at 63-64.

<sup>28</sup> Id. at 67-75.

<sup>29</sup> Id. at 74-75.

<sup>30</sup> Id. at 32-33.

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compliance with the resolutions even when the lawyer of the BIR, deputized as special prosecutor, took over in the filing of the motion for reconsideration.<sup>31</sup>

Ergo, this petition with the lone assignment of error:

**THE HONORABLE CTA *EN BANC* ERRED IN RENDERING ITS DECISION DATED NOVEMBER 18, 2011, DENYING THE PETITION FOR REVIEW FOR THE PETITIONER'S SUPPOSED FAILURE TO PROSECUTE.**<sup>32</sup>

### Ruling of the Court

The records of the case reveal that, indeed, the petitioner had earlier submitted a letter<sup>33</sup> of the RD of BIR Revenue Region No. 6, recommending the criminal prosecution of Valeriano. This letter was attached to the Information along with other documents pertinent to the case.<sup>34</sup> However, this was not deemed as compliance with Section 220, as the letter was not from the BIR Commissioner himself.

After the dismissal decreed by the CTA Special First Division, the petitioner, through a motion for reconsideration, presented an alleged copy of the written approval<sup>35</sup> dated July 2006 signed by then BIR Commissioner Jose Mario C. Buñag. Yet, as the CTA *en banc* found, the contents of the photocopied letter were faded and almost imperceptible.

The prerequisite approval of the BIR Commissioner in the filing of a civil or criminal action is provided under Section 220 of the 1997 NIRC, which states that:

**Sec. 220. *Form and Mode of Proceeding in Actions Arising under this Code.*** – Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but **no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.** (Emphasis ours)

<sup>31</sup> Id. at 74.

<sup>32</sup> *Rollo*, p. 18.

<sup>33</sup> CTA Special First Division *rollo*, pp. 4-6.

<sup>34</sup> *Rollo*, pp. 29-30.

<sup>35</sup> CTA Special First Division *rollo*, pp. 43-44.

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The required approval of the Commissioner provided under Section 220 of the 1997 NIRC aside, Section 7 thereof allows the delegation of powers of the Commissioner to any subordinate official with the rank equivalent to a division chief or higher, save for the instances specified thereunder, viz:

**Section 7. Authority of the Commissioner to Delegate Power.** – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the **rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however, That the following powers of the Commissioner shall not be delegated:*

- (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
- (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
- (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: *Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000[.00]) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of [F]inance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and*
- (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept. (Emphasis and underlining ours)

In *Republic v. Hizon*,<sup>36</sup> the Court upheld the validity of a complaint for collection of tax deficiency which was signed by the Chief of the Legal Division of BIR Region 4 and verified by the RD of Pampanga. Citing Section 7 of the 1997 NIRC, the Court ratiocinated that “[n]one of the exceptions relates to the Commissioner’s power to approve the filing of tax collection cases.”<sup>37</sup>

<sup>36</sup> 378 Phil. 330 (1999).

<sup>37</sup> Id. at 338.

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The Court made a similar pronouncement in *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*,<sup>38</sup> where the authority of the Chief of the BIR Accounts Receivable and Billing Division to issue a demand letter was questioned. The Court ruled that “[t]he general rule is that the Commissioner of Internal Revenue may delegate any power vested upon him by law to Division Chiefs or to officials of higher rank. He cannot, however, delegate the four powers granted to him under the [NIRC] enumerated in Section 7.”<sup>39</sup> The act of issuance of the demand letter by the Chief of the Accounts Receivable and Billing Division did not fall under any of the exceptions that have been specified as non-delegable.<sup>40</sup>

In the same manner, the approval of filing of a criminal action is not one of the non-delegable functions of the Commissioner. As previously stated, the petitioner had earlier submitted a written recommendation from the RD to file the instant case against Valeriano. Therefore, the recommendation of the RD to file the instant case constitutes as compliance with the requirement under Section 220 of the 1997 NIRC.

Notwithstanding the foregoing, the petitioner is cautioned to take the initiative of periodically checking on the progress of its cases<sup>41</sup> to avoid a similar instance where its counsel’s negligence or failure to comply with court orders would result to delay or worse, constitute as bar in the prosecution of criminal tax cases.

**WHEREFORE**, the petition is hereby **GRANTED**. The Decision dated November 18, 2011 of the Court of Tax Appeals *en banc* in CTA EB Criminal Case No. 010, as well as the Resolutions dated November 23, 2009 and June 1, 2010 of the Court of Tax Appeals Special First Division in CTA Case No. O-145, are **REVERSED and SET ASIDE**. The case is **REMANDED** to the Court of Tax Appeals for further proceedings.

**SO ORDERED.**

  
**BIENVENIDO L. REYES**  
Associate Justice


<sup>38</sup> 513 Phil. 317 (2005).

<sup>39</sup> Id. at 325.

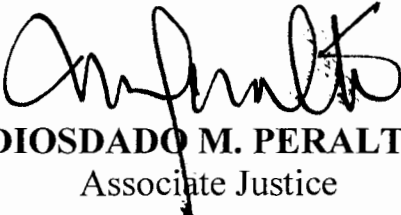
<sup>40</sup> Id. at 326.

<sup>41</sup> *Macondray & Co., Inc. v. Provident Insurance Corporation*, 487 Phil. 158, 161 (2004).

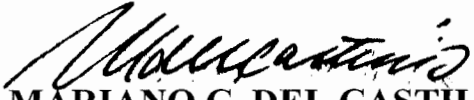
**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice




**MARIANO C. DEL CASTILLO**  
Associate Justice



**JOSE PORTUGAL PEREZ**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

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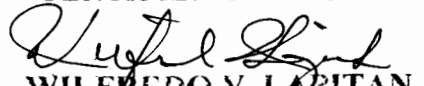
### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice

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**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Trial Division

DEC 01 2016

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