

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BUREAU OF INTERNAL REVENUE CTA EB NO. 2569
represented by COMMISSIONER (CTA Case No. 10298)
CAESAR R. DULAY,

Petitioner, Present:

-versus-

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

HON. MENARDO I. GUEVARRA in
his capacity as SECRETARY OF
JUSTICE and FERDINAND
SANTOS in his capacity as
President of Camp John Hay
Hotel Corp.,

Promulgated:

Respondents.

APR 30 2024

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RESOLUTION

MANAHAN, J.:

For resolution is petitioner's *Verified Motion for Reconsideration (of the Decision dated August 3, 2023) posted on August 23, 2023* and received by the Court on August 30, 2023 with public respondent's *Comment (To the Verified Motion for Reconsideration dated 23 August 2023)* filed on November 3, 2023.¹

Petitioner seeks reconsideration of the Court's Decision promulgated on August 3, 2023, the dispositive portion of which reads as follows:

¹ Attached to respondents' *Manifestation and Motion to Admit Attached Comment* which was granted and admitted by the Court in a Resolution dated January 31, 2024. *on*

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“WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by Petitioner in CTA EB No. 2569 is **DENIED** for lack of merit. The assailed Decision dated October 15, 2021 and Resolution dated February 8, 2022 are hereby **AFFIRMED** with modification as discussed above.

SO ORDERED.”

Petitioner assails the Decision of the Court *En Banc* dated August 3, 2023 on the ground that the Resolution promulgated by the Secretary of Justice is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

While petitioner acknowledges the policy of non-interference with the prosecutor’s and the Department of Justice’ (DOJ) executive discretion to determine the existence of probable cause, it cites grave abuse of discretion as an exception and in this particular instance, to allow the courts to intervene and discuss the merits of said allegation and ultimately resolve the existence or non-existence of probable cause.

Petitioner went on to support its theory of grave error committed by the prosecutors and the Secretary of Justice in affirming the lack of probable cause in favor of private respondent, Ferdinand Santos. In the face of convincing evidence, the fact remains that the latter clearly violated Section 266 of the 1997 National Internal Revenue Code (NIRC), as amended, when he failed to appear and submit the books required of him pursuant to the list appearing in the *subpoena duces tecum* (SDT) issued by the Bureau of Internal Revenue (BIR). Petitioner stresses that partial compliance is considered non-compliance because an SDT was issued for the private respondent’s entire compliance and not a piecemeal SDT which he may partly comply at his whim.

Petitioner ends its argument by concluding that all the elements of the offense under Section 266 of the 1997 NIRC, as amended, are present in this case and the failure of the prosecutors and DOJ to appreciate this fact constitutes grave abuse of discretion.

In his Comment, public respondent dismisses the above arguments of petitioner as rehashed arguments that have 

already been addressed by the Court in its Decision dated August 3, 2023.

RULING OF THE COURT

Upon due consideration of petitioner's arguments, we find its Motion for Reconsideration devoid of merit.

The issues raised have been directly addressed in the assailed Decision but we nevertheless find it worthy to emphasize that the original action availed of by petitioner is the special civil action of Petition for Certiorari under Rule 65 of the Revised Rules of Court described as follows:

**"Rule 65
Certiorari, Prohibition and Mandamus**

Section 1. *Petition for Certiorari.* – **When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court,** alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

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Section 4. *When and where petition filed.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty-day (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court, or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the 

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Court of Appeals whether or not the same is in aid of its appellate jurisdiction or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.” (*Emphasis supplied*)

A Petition for Certiorari under Rule 65 is a special remedy because it is intended only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.²

The analysis of the records of this case, particularly the Investigating Prosecutor’s Resolution dated January 26, 2016 recommending the dismissal of the criminal complaint filed by petitioner against the private respondent for violation of Section 266 in relation to Section 5(C) of the 1997 NIRC, as amended, and the Resolution of public respondent promulgated on June 20, 2017 affirming said dismissal, led the Court to conclude that there is no grave abuse of discretion on the part of these officials.

The Court *En Banc* in the assailed Decision, places a premium on the executive discretion of the public prosecutor in the conduct of a preliminary investigation to determine probable cause. We quote for emphasis, the Court in Division’s ruling on the matter, thus:

“Generally, the public prosecutor is afforded a wide latitude of discretion in the conduct of a preliminary investigation. Consequently, it is a sound judicial policy to refrain from interfering in the conduct of preliminary investigation, and to just leave the DOJ the ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice’ findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.

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² *People of the Philippines vs. Court of Appeals*, G.R. No. 142051, February 24, 2004. 

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We see no cogent reason to depart from the assailed Decision finding that the public respondent did not commit grave abuse of discretion in affirming the resolutions of the Investigating Prosecutor dismissing the case against private respondent for lack of probable cause.

ACCORDINGLY, premises considered, the *Verified Motion for Reconsideration (of the Decision dated August 3, 2023)* filed by petitioner BIR is hereby **DENIED** for lack of merit.

SO ORDERED.

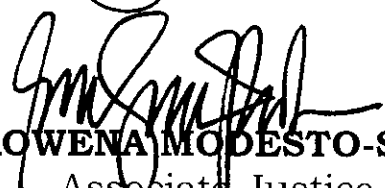

CATHERINE T. MANAHAN
Associate Justice

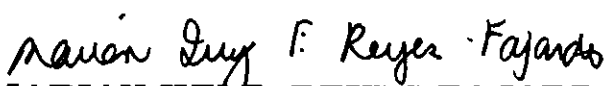
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice

