REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - **GH RESOURCES AND TRAINING SERVICES, INC.,** 4757-B Barasoain St., Brgy. Olympia, Makati City **GRACE H. CARTAGO,** (President) 4757-B Barasoain St., Brgy. Olympia, Makati City (At-Large) Accused.	**CTA CRIM. CASE NO. O-818** For: Violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code of 1997, as amended. Members: **CASTAÑEDA, JR.**, *Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.* Promulgated: FEB 17 2022 4:15 p.m.

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RESOLUTION

For the Court's resolution are the following:

1. plaintiff's **Motion for Reconsideration (to Resolution dated September 30, 2021)**, filed through registered mail on November 5, 2021 and received by the Court on November 17, 2021; and

2. plaintiff's **Manifestation (Return to Sender of Motion for Reconsideration to Resolution dated September 30, 2021)**, filed through

registered mail on November 16, 2021 and received by the Court on December 1, 2021.

To have a clear view of the facts surrounding the subject motion, a brief backgrounder is in order.

On February 26, 2020, an Information[1] was filed by Assistant State Prosecutor Susan T. Villanueva against GH Resources and Training Services, Inc. and Grace H. Cartago, being its alleged President, for willful failure to pay the national internal revenue taxes for taxable year 2007, in violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended.

However, the said Information was dismissed in the Court's Resolution dated June 1, 2020[2] on account of prescription. Copy of the same was received by both the Department of Justice (DOJ) and by the Bureau of Internal Revenue (BIR) main office on June 5, 2020 and June 8, 2020, respectively. However, since there was no motion for reconsideration or appeal that has been filed thereon[3], the June 1, 2020 Resolution was declared final and executory in the Court's Resolution dated October 7, 2020[4]. Both the DOJ and the BIR main office had been duly furnished with a copy thereof on October 14, 2020 and October 20, 2020, respectively.

Subsequently, plaintiff's special counsels, Attorneys Raul S.J. de Guzman, Carl Fitri A. Hussin and Philip A. Mayo, filed a Motion for Reconsideration[5] through registered mail on November 3, 2020, alleging, among others, the following: (1) that they only received the June 1, 2020 Resolution on October 16, 2020; (2) that they undertook the task of filing the said Motion for Reconsideration since the handling prosecutor of this case was already transferred to Makati City; and (3) that the *Tupaz vs. Ulep*[6] case cited by the Court in dismissing the instant case is not on all fours to the instant case.

The Court later denied the motion in its Resolution dated December 9, 2020[7] for lack of merit. Plaintiff's special counsels and

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[1] Docket, pp. 5 to 7.
[2] Docket, pp. 55 to 59.
[3] As per Records Verification dated September 28, 2020, Docket, p. 60.
[4] Docket, p. 62.
[5] Docket, pp. 63 to 69.
[6] G.R. No. 127777, October 1, 1999.
[7] Docket, pp. 75 to 76.

DOJ received copies of the said Resolution on January 7, 2021 and December 14, 2020, respectively.

Thus, plaintiff's special counsels filed by registered mail a Petition for Relief from Judgment (With Notice of Change of Address)[8] on February 26, 2021, praying that: (1) the said petition be granted; (2) that the Court's Resolutions dated June 1, 2020, October 7, 2020 and December 9, 2020, be reconsidered and set aside; and (3) that another one be rendered giving due course to the instant case.

On March 15, 2021, plaintiff's special counsels filed through registered mail a Manifestation (Return to Sender of Petition for Relief from Judgment)[9].

In the Resolution dated May 20, 2021,[10] the Court noted the above-stated Notice of Change of Address. Henceforth, all copies of the motions, orders, decision, and other documents or papers filed and/or issued in connection with the case are directed to be forwarded to plaintiff's special counsels' office address at BIR Legal Division, Revenue Region 8A, 36th Floor, Export Bank Plaza Building, Sen. Gil Puyat Ave., cor. Chino Roces Ave., Makati City. Moreover, the Court directed the accused in the same Resolution to file her answer to plaintiff's Petition for Relief from Judgment within 15 days from receipt thereof. However, no answer was filed thereon by the accused, as per Records Verification dated July 16, 2021.

On May 27, 2021, the Court noted plaintiff's Manifestation (Return to Sender of Petition for Relief from Judgment)[11].

Thereafter, the Court denied for lack of merit plaintiff's Petition for Relief from Judgment in its Resolution dated September 30, 2021.

Undeterred, plaintiff's special counsels filed through registered mail the instant Motion for Reconsideration (to Resolution dated September 30, 2021) on November 5, 2021, praying that the Court's Resolution dated September 30, 2021 be reconsidered and set aside, and another decision be rendered giving due course to the instant case. They likewise filed a Manifestation (Return to Sender of Motion

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[8] Docket, pp. 77 to 90.
[9] Docket, pp. 117 to 120.
[10] Docket, pp. 115 to 116.
[11] Resolution dated May 27, 2021, Docket, p. 123.

for Reconsideration to Resolution dated September 30, 2021) through registered mail on November 16, 2021.

Hence, this Resolution.

At the outset, in justifying the timely filing of the instant Motion, plaintiff's special counsels claim that they received the original copy of the Resolution dated September 30, 2015, dismissing its Petition for Relief from Judgment for lack of merit, only on October 15, 2021. Thus, they have fifteen (15) days from such date to file the instant motion for reconsideration. However, due to Supreme Court Administrative Circular No. 83-2021, which lifted the suspension of the filing and service of pleadings and other court submissions in the appellate courts on October 20, 2021, and Administrative Circular No. 72-2021, which stated that the period of filing and service shall resume seven (7) calendar days from October 20, 2021, they claim that they have until November 11, 2021, within which to file their motion for reconsideration. Hence, the instant Motion for Reconsideration, filed on November 5, 2021, was accordingly timely made.

More so, plaintiff's special counsels pray that this Court review, re-evaluate and revisit its Resolution dated September 30, 2021 (denying their Petition for Relief from Judgment) on the bases of the following assignment of errors, *viz:*

I. This Court by its resolution dated September 30, 2021, with all due respect, erred in denying the plaintiffs petition for relief from judgment for lack of Merit.

II. The Resolution of this Honorable Court dated October 7, 2020, rendering its earlier Resolution dated June 1, 2020, to be final and executory on the basis of alleged failure of the plaintiff to appeal on time lacks factual and legal bases.

Being interrelated, the foregoing assignment of errors will be addressed jointly.

To recall, plaintiff's special counsels alleged in the subject Petition for Relief from Judgment that their office – Legal Division, Revenue Region 8A-Makati City (now located at 36th Floor, Export

Bank Plaza, Sen. Gil Puyat comer Chino Roces Ave., Makati City), was not furnished with a copy of the June 1, 2020 Resolution, dismissing the instant criminal case on the ground of prescription, despite the statement in the Referral Letter, attached in the Complaint filed before the DOJ, that they will represent the herein plaintiff in the instant case. As such, they insist that they had no knowledge of the said Resolution until the same was indorsed to them by the BIR, National Office, Prosecution Division (BIR main office) on October 16, 2020. Counting fifteen (15) days from such date, they accordingly had until November 1, 2020, within which to file a motion for reconsideration. However, since both November 1 and 2, 2020 were declared holidays, they had until the next working day, November 3, 2020, within which to file the same. Thus, plaintiff's special counsels insist that their motion for reconsideration should have been considered as seasonably filed on November 3, 2020.

Notably, the foregoing allegations are, again, raised by plaintiff's special counsels in the instant motion for reconsideration, notwithstanding the Court's pronouncement in its Resolution dated September 30, 2020, that mere mentioning of their names as representatives of the BIR, in the CIR's Referral Letter dated May 17, 2019 does not automatically make them the counsels on records entitled to be furnished with a copy of the June 1, 2020 Resolution. They also cite the several lockdowns imposed by the government as additional factor for the belated filing of plaintiff's motion for reconsideration. They further point out that even the accused herein has her own share of non-compliance with the rules when she failed to file her Answer to plaintiff's Petition for Relief from Judgment.

For plaintiff's special counsels, the foregoing circumstances taken together warrant the relaxation of procedural rules, as the same were beyond their control.

Plaintiff's special counsels also maintain that procedural law should not weigh more than the merits of the case, otherwise, it would violate plaintiff's right to due process.

Lastly, plaintiff's special counsels insist that since there is an inadvertent improper service of the Resolutions dated June 1, 2020 (dismissing the Information on the ground of prescription) and October 7, 2020 (declaring the June 1, 2020 Resolution as final and executory) to BIR main office, the period during which the said

Resolutions have not yet been in their possession, or have not come to their knowledge, must not be considered in the computation of the period to appeal. This is so because during such period, they have no way to take action to protect the interest of the plaintiff, and to hold otherwise, would be unjust on their part, and would be violative of the provisions of Section 2, Rule 13 of the Rules of Court, which they quote as follows:

> "Section 2. Filing and Service, Defined. —
>
> Xxx xxx xxx
>
> Service is the act of providing a party with a copy of the pleading or any other court submission. **<u>If party has appeared by counsel, service upon such party shall be made upon his or her counsel, unless service is ordered by the court</u>**." *(Bold and underscoring are supplied by plaintiff's special counsels)*

The Court is not persuaded.

It cannot be gainsaid that in criminal cases, it is the filing of a complaint or information in Court that initiates a criminal action, and such act of filing signifies that the handling prosecutor has entered his or her appearance on behalf of the People of the Philippines.[12] The BIR lawyer, on the other hand, who shall appear in Court as special counsel for the BIR in collaboration with the prosecutor concerned, may enter his or her appearance in open court or in writing as required under Section 6, Rule 6 of the Proposed Amendments to the Revised Rules of the Court of Tax Appeals[13]. The same provision states that an attorney who appears in open court without previously having filed a written appearance must give the said counsel's business address to the Clerk of Court and file a written appearance within forty-eight (48) hours from such open court appearance, and such entry of appearance must contain the following details, *viz*:

> "The initial pleading or **entry of appearance shall show**:

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[12] *Gina Villa Gomez vs. People of the Philippines,* G.R. No. 216824, November 10, 2020, citing *Crespo vs. Judge Mogul*, 235 Phil. 465, 474 (1987).

[13] A.M. No. 05-11-07-CTA, September 16, 2008.

1) The attorneys' specific address which must not be a Post Office Box number;

2) His or her Roll of Attorney's Number;

3) The date and number of his or her current membership due in the Integrated Bar of the Philippines (IBP) per Official Receipt, or Lifetime Member Number;

4) Current Professional Tax Receipt (PTR) number together with date and place of issuance; and

5) MCLE certificate number and date of issue, unless exempt."

It also worth mentioning that one of the papers required be filing and serving under Section 4, Rule 13 of the 2019 Amendments to the 1997 Rules of Civil Procedure is "appearance", to wit:

"RULE 13

Filing and Service of Pleadings, Judgments and Other Papers

xxx xxx xxx

SECTION 4. *Papers Required to be Filed and Served.* — Every judgment, resolution, order, pleading subsequent to the complaint, written motion, notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the parties affected. (4)" *(Underscoring supplied)*

In view thereof, the CIR's Referral Letter dated May 17, 2019 cannot be considered as the plaintiff's special counsel's entry of appearance in this case as it lacks the necessary details as stated above.

Likewise, bearing in mind the pronouncement made by the Supreme Court in *People of the Philippines vs. Benedicta Mallari and*

Chi Wei-Neng[14] (Mallari case), this Court stands by its finding that the plaintiff's Motion for Reconsideration filed through registered mail on November 3, 2020, questioning the June 1, 2020 Resolution, dismissing the instant case on the ground of prescription, was filed out of time.

In *Mallari* case, the petitioners therein claim that the Notice of the CTA First Division Resolution dated December 14, 2009, dismissing the criminal complaint for failure of Assistant City Prosecutor Mendoza to obey a lawful order of the court, was not properly served to the designated special prosecutors, as the same was sent to BIR Regional Office in Manila, and not to BIR Main Office. However, citing the settled rule that "when a party is represented by counsel of record, service of orders and notices must be made upon his/her counsels or one of them. Otherwise, notice to the client and to any other lawyer, not the counsel on record is not notice in law", the Supreme Court held that the petitioner, through Assistant City Prosecutor (ACP) of Manila, Gideon C. Mendoza who initiated the filing of the Information against the accused, was properly served with notice of the said Resolution. Thus, the services of notice made to the Office of the City Prosecutor, through ACP Mendoza, and the BIR Main Office, respectively, are deemed proper and are, thus, considered as service of notice to petitioner itself.

In the instant case, it was Assistant State Prosecutor Susan T. Villanueva who filed the Information against the accused on behalf of the Republic. Thus, following the ruling in *Mallari* case, this Court correctly ruled that the receipt by the DOJ and by the BIR main office of the assailed Resolution dated June 1, 2020 on October 14, 2020 and October 20, 2020, respectively, is considered as a notice to all. Moreover, with the advancement of communication technology, availability of private courier service, and possible transmission of the any documents by electronic mail, the Court still could not understand why it took the BIR main office one hundred twenty-nine (129) days to indorse the June 1, 2020 Resolution to plaintiff's special counsels' office, notwithstanding the urgency of the matter involved in the said Resolution and the distance between the BIR main office in Quezon City and the plaintiff's special counsels' office in Makati City.

Thus, this Court maintains its position that it properly reckoned the fifteen (15)-day period to file a motion for reconsideration from

[14] G.R. No. 197164, December 4, 2019.

the time the DOJ and the BIR main office received the Resolution dated June 1, 2020 on June 5, 2020 and June 8, 2020, respectively, especially that, at the time of the issuance thereof, all we have on record are the Information and its supporting documents. Thus, only Assistant State Prosecutor Villanueva was then recognized by the Court as plaintiff's counsel on record. Moreover, there being no motion for reconsideration of the June 1, 2020 Resolution filed within the 15-day reglementary period provided under Section 1, Rule 15 of A.M. No. 05-11-07-CTA, this Court cannot be faulted for declaring the June 1, 2020 Resolution as final and executory in its Resolution dated October 7, 2020.

At this juncture, the Court reiterates the settled rule that "judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The court need not even pronounce the finality of the order as the same becomes final by operation of law."[15]

Thus, the Court is correct in denying the plaintiff's Petition for Relief from Judgment because there was no sufficient allegation of fraud or mistake in the petition.

Even if this Court considers plaintiff's special counsels' Motion for Reconsideration filed on November 3, 2021, as seasonably filed, the same would still fail on its merits.

In the said motion, plaintiff's special counsels argue that the criminal case filed against the accused was primarily meant to collect accused's unpaid taxes, and that the presence of warrant of distraint and/or levy in the instant case has the effect of stopping the running of the five (5)-year prescriptive period, following the ruling of the Supreme Court in *Palanca vs. Commissioner of Internal Revenue*[16]. As such, they do not agree with the application of *Tupaz vs. Ulep* case in dismissing the instant case. According to them, unlike in *Tupaz vs. Ulep* case which became final and executory without any warrant of distraint and/or levy issued, the final and executory assessment in the instant case was accompanied by a warrant of distraint and/or levy, which tolled the running of the five (5)-year prescriptive period to collect.

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[15] *People of the Philippines vs. Benedicta Mallari and Chi Wei-Neng,* G.R. No. 197164, December 4, 2019, citing *Philippine Savings Bank vs. Papa,* G.R. No. 200469, January 15, 2018.
[16] G.R. No. L-16661, January 31, 1962.

Contrary to the claim of plaintiff's special counsels that the criminal case filed against the accused was primarily meant to collect plaintiff's unpaid taxes, the tax evasion case filed by the government against the accused herein has for its purpose, the imposition of criminal liability on the latter,[17] and that is to penalize the taxpayer for violation of the Tax Code.[18] Thus, the Supreme Court's interpretation of the prescriptive period for purposes of instituting criminal tax cases in *Tupaz vs. Ulep* case,[19] which cited the earlier case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[20] (Lim, Sr. vs. Court of Appeals), must be applied in the instant case. As such, the Court reiterates its ruling in the assailed Resolution dated June 1, 2020, to wit:

> "SEC. 281. Prescription for Violations of any Provision of this Code. — All violations of any provision of this Code **shall prescribe after five (5) years**.
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> **Prescription shall begin to run from the day of the commission of the violation of the law**, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
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> **The prescription shall be interrupted when proceedings are instituted against the guilty persons** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
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> The term of prescription shall not run when the offender is absent from the Philippines.' *(Emphasis supplied)*
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> The above provision is clear that the period of prescription for the offense charged is five years. As to the time the period of prescription starts to run, the above provision states that prescription shall begin to run from the day of the commission of the violation of the law, or if the same be not known at the time, from the discovery

[17] *Gaw, Jr. vs. Commissioner of Internal Revenue*, G.R. No. 222837, July 23, 2018.
[18] *Commissioner of Internal Revenue vs. Pascor Realty & Development Corp.*, G.R. No. 128315 June 29, 1999.
[19] G.R. No. 127777, October 1, 1999.
[20] G.R. Nos. L-48134-37, October 18, 1990.

thereof and the institution of judicial proceedings for its investigation and punishment.

Relevantly, in the case of *Tupaz vs. Ulep*, which similarly involves the offense of failure to pay tax despite demand, the Supreme Court determined the day of the commission of the violation of the law and prescription of the criminal action in this manner:

> 'Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. Court of Appeals*, we stated that by its nature **the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. **The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period**. In this case, when the notice of assessment was issued on July 16, 1984, the taxpayer still had thirty (30) days from receipt thereof to protest or question the assessment. Otherwise, the assessment would become final and unappealable. As he did not protest, the assessment became final and unappealable on August 16, 1984. Consequently, when the complaint for preliminary investigation was filed with the Department of Justice on June 8, 1989, the criminal action was instituted within the five (5)-year prescriptive period.' (Emphasis supplied)

Based on the allegation in the Information and its supporting documents, the Final Assessment Notice (FAN) was issued on December 16, 2010 and became final and executory, and demandable after the accused failed to file its protest. Hence, the assessment attained finality on January 15, 2011. Furthermore, the supporting documents attached to the Information show that after the issuance of the

> Preliminary Collection Letter dated March 15, 2011, the complainant Bureau of Internal Revenue (BIR) subsequently issued the Final Collection Letter dated March 28, 2011, indicating that the accused still refused to pay despite demand. Clearly, when the referral letter and complaint affidavit for preliminary investigation was filed before the Department of Justice on May 17, 2019, and the Information was later filed before this Court on February 26, 2020, the five-year prescriptive period provided under Section 281 of the 1997 NIRC, as amended, had already lapsed."

It equally bears noting that even the Court *En Banc* has consistently applied the ruling in *Lim, Sr. vs. Court of Appeals* in disposing similar issues in the following cases:

1. *People of the Philippines vs. Juanchito D. Bernardo, Praxedes P. Bernardo and JDBEC, Incorporated*, CTA EB Crim. No. 078 (CTA Crim. Case No. O-731), September 29, 2021;
2. *People of the Philippines vs. Juanchito D. Bernardo, Praxedes P. Bernardo and JDBEC, Incorporated*, CTA EB Crim. No. 079 (CTA Crim. Case No. O-733), July 7, 2021;
3. *People of the Philippines vs. Ulysses Palconet Consebido*, CTA EB Crim. No. 076 (CTA Crim. Case Nos. O-700, O-702 & O-703), January 27, 2021;
4. *People of the Philippines vs. Ulysses Palconet Consebido*, CTA EB Crim. No. 069 (CTA Crim. Case No. O-701), January 6, 2021; and
5. *People of the Philippines vs. Virgilio B. Castillo,* CTA EB Crim. No. 053 (CTA Crim. Case No. O-663), July 8, 2020.

Thus, until and unless the doctrine laid down in *Lim, Sr. vs. CA* is modified or reversed by the Supreme Court, such doctrine remains to be binding in instituting a criminal case before this Court. After all, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme

Court from whose decisions all other courts should take their bearings[21].

WHEREFORE, premises considered, plaintiff's **Manifestation (Return to Sender of Motion for Reconsideration to Resolution dated September 30, 2021)** is **NOTED**, while plaintiff's **Motion for Reconsideration (to Resolution dated September 30, 2021)** is **DENIED** for lack of merit.

SO ORDERED.

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

[21] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.,* G.R. No. 150947, July 15, 2003.