REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. CASE No.013
(CTA Crim. Case No. O-187)

-versus-

Present:
Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

ALEXANDER HWAM,
c/o NAM-O INTERNATIONAL CORP.,
formerly of 1417 Perez Street, Paco, Manila
and/or Bermudez Resort Compound,
Sta. Rosa, Laguna,
Respondent.

Promulgated:

APR 17 2012 2:15 p.m.

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D E C I S I O N

CASTAÑEDA, JR., *J.* :

Petitioner People of the Philippines ("petitioner", for brevity), by the Special Prosecutors, filed for review before this Court the Petition for Review *en banc* on May 23, 2011 assailing the January 20, 2011 Resolution[1] and the May 2, 2011 Resolution[2] promulgated by the First Division of the Court of Tax Appeals (CTA First Division) in the case entitled "*People of the Philippines vs. Alexander Hwam (c/o NAM-O INTERNATIONAL, formerly of 1417 Perez St., Paco, Manila and/or Bermudez Resort Compound, Sta. Rosa, Laguna)*" docketed as CTA Criminal Case No. O-187 for violation of Sec. 255, in relation to Sec. 253 (d) and 256, Tax Code of 1997.

Petitioner prays to set aside the assailed Resolutions dated January 20, 2011 and May 2, 2011 and that a new resolution be issued declaring the existence of probable cause for violation of Section 255 of the Tax Code of 1997 and that a corresponding Warrant of Arrest be issued against the accused.

The dispositive portion of the January 20, 2011 Resolution reads:

> In view thereof, this case is hereby DISMISSED, for failure to prosecute.
>
> SO ORDERED.

The dispositive portion of the May 2, 2011 Resolution provides, as follows:

> WHEREFORE, the Motion for Reconsideration belatedly filed by the prosecution is hereby DENIED, for lack of merit.
>
> **SO ORDERED.** Jr

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[1] signed by all the members of the CTA First Division; *Rollo*, pp. 16-17.
[2] Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred by Associate Justice Erlinda P. Uy. Presiding Justice Ernesto D. Acosta was on leave; *Rollo*, pp. 18-21.

THE FACTS

Petitioner People of the Philippines is represented by complainant Bureau of Internal Revenue (BIR), the government agency primarily tasked to collect internal revenue taxes for the support of the government.[3]

Respondent Alexander Hwam is the General Manager and responsible officer of Nam-O International Corp., with registered business address at 1417 Perez Street, Paco, Manila, and his last known address is at Bermuda Resort Compound, Sta. Rosa, Laguna.[4]

On September 29, 2010, an Information[5] for Violation of Section 255 in relation to Section 253 (d) and Section 256 of the Tax Code of 1997 was filed in the Court of Tax Appeals against Alexander Hwam (accused), the accusatory portion of which reads:

> "That on or about March 18, 2003, in the City of Manila, Philippines, the said accused, being then the General Manager of NAM-O INTERNATIONAL located at 1417 Perez Street, Paco, this City, having filed in their internal revenue tax for the year 1999, and after an examination and audit of the same, it has been found that there is due and collectible from said NAM-O INTERNATIONAL the amount of P2,079,376.21 and P675,321.03, respectively as deficiency income tax and value added tax, under BIR Assessment Notice No. 34-99, did then and there willfully and unlawfully fail, refuses or neglect to pay said deficiency income tax and value added tax and without formally protesting against or appealing the same, despite due assessment, notice and demand to do so, to the damage and prejudice of the Republic of the Philippines in the total amount of P2,754,697.24, Philippine Currency.
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> Contrary to law."

On October 8, 2010, the CTA First Division granted the prosecution a period of ten (10) days from notice to submit the required approval of the

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[3] *Rollo*, p. 2.
[4] *Ibid.*
[5] Division Docket, pp. 1-2.

Commissioner of Internal Revenue to file the case. Pending compliance, the determination of the existence of probable cause was held in abeyance.[6]

On October 22, 2010, the prosecution filed a "Motion for Extension of Time to Comply with the Resolution promulgated on October 8, 2010 of the Honorable Court of Tax Appeals (1st Division)".[7]

On November 2, 2010, the special counsel for the Commissioner of Internal Revenue, as special prosecutor under the direct supervision and control of the State Prosecutor, filed an "Entry of Appearance with Leave to Admit Attached Compliance and Manifestation" (with annexes and attachments).[8]

In a Resolution[9] dated November 9, 2010, the CTA First Division admitted the required approval of the Commissioner of Internal Revenue and noted the Entry of Appearance filed by Atty. Ramon B. Lorenzo.

On November 2, 2010, the Prosecution filed a "Compliance with Manifestation"[10] which the CTA First Division received on November 12, 2010. In an Order[11] dated November 22, 2010, the CTA First Division noted the said Compliance with Manifestation, indicating that the prosecution had submitted the required approval of the Commissioner of Internal Revenue to file the case. *Jr*

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[6] *Ibid.*,pp. 12-13.
[7] *Ibid.*, pp.14-16.
[8] *Ibid.*, pp. 19-31.
[9] *Ibid.*, pp. 33-34.
[10] *Ibid.*, p.36-37.
[11] *Ibid.*, p. 38.

In a Resolution[12] dated December 1, 2010, the CTA First Division ordered the prosecution to submit the copy of the DOJ Resolution and the complete record of the preliminary investigation, within five (5) days from notice, with warning that non-compliance will cause the dismissal of the case. In the meantime, the determination of the existence of probable cause for the issuance of warrant of arrest was held in abeyance. The said Resolution was received by the Legal Division of the BIR on December 3, 2010 and by the City Prosecutor's Office on December 6, 2010.

Per Record's Verification[13] dated January 12, 2011, the counsel for prosecution failed to submit the DOJ Resolution and the Complete Record of the Preliminary Investigation.

In the assailed Resolution[14] dated January 20, 2011, the CTA First Division dismissed the case for failure to prosecute. More than a month had elapsed from receipt of the Resolution dated December 1, 2010 still there was no compliance on the part of the prosecution.

On February 9, 2011, complainant Commissioner of Internal Revenue, thru the special prosecutor, filed a Motion for Reconsideration (Re: Resolution dated January 20, 2011).[15]

On February 17, 2011, the accused was granted a period of fifteen (15) days from notice within which to file comment to the Motion for Reconsideration (Re: Resolution dated January 20, 2011).[16]

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[12] *Ibid.*, pp. 40-41.
[13] *Ibid.*, p. 42.
[14] *Ibid.*, p. 44-45.
[15] *Ibid.*, pp. 46-49.
[16] *Ibid.*, p. 57.

In the assailed Resolution[17] dated May 2, 2011, the CTA First Division denied for lack of merit the Motion for Reconsideration. The said resolution was received by the BIR and the City Prosecutor's Office on May 6, 2011.

On May 23, 2011, petitioner filed the Petition for Review[18] *en banc*.

On June 16, 2011, the Court *en banc* resolved to require respondent to file Comment, not a motion to dismiss, within ten (10) days from receipt of the resolution. Upon submission of the requisite comment or the expiration of the period for filing the same, the petition shall be deemed submitted for resolution, unless the Court *en banc* decided to require the parties to submit simultaneous memoranda.[19] However, per Officer's Return[20] dated August 3, 2011, the original copy of the Notice of Resolution was returned unserved because the accused had moved out already according to the caretaker of the resort compound and to the neighbor of the accused at the given address.

In a Resolution[21] dated September 5, 2011, this Court gave petitioner a period of ten (10) days from receipt of the said resolution to submit before the Court any other available address of respondent to enable the Court to appropriately notify and serve further orders or resolutions of this Court. Meanwhile, a copy of the Resolution dated June 16, 2011 was sent through registered mail to respondent at "NAM-O INTERNATIONAL CORP., 1417 Perez Street, Paco, Manila" and "Bermudez Resort Compound, Sta. Rosa, Laguna", as stated in the Petition.

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[17] *Ibid.*, pp. 60-64.
[18] *Rollo*, pp.1-9.
[19] *Ibid.*, p. 24.
[20] *Ibid.*, at the back of p. 26.
[21] *Ibid.*, pp. 31-32.

However, the said Resolution dated June 16, 2011 still were returned unserved.[22]

Per *en banc* Records Verification Form[23] dated October 14, 2011, petitioner failed to submit any other available address of respondent.

On October 25, 2011, the petition was deemed submitted for resolution.[24]

Hence, this decision.

ISSUES

The issues to be resolved are as follows:

1. Whether or not there exist probable cause to hold the respondent for trial

2. Whether or not respondent Alexander Hwam has violated Section 255 in relation to Sections 253(d) and 256, of the Tax Code of 1997.[25]

Petitioner assigned the following errors of fact and law:

1. THE HONORABLE COURT OF TAX APPEALS-FIRST DIVISION ERRED IN RENDERING THE ASSAILED RESOLUTION DATED JANUARY 20, 2011 DISMISSING THE CASE FOR FAILURE TO PROSECUTE.

2. THE HONORABLE COURT OF TAX APPEALS-FIRST DIVISION ERRED IN HOLDING, IN ITS RESOLUTION DATED MAY 02, 2011, THAT PETITIONER'S MOTION FOR RECONSIDERATION WAS FILED BEYOND THE REGLEMENTARY PERIOD.[26]

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[22] *Ibid.*, pp. 33-34.
[23] *Ibid.*, p. 35.
[24] *Ibid.*, pp. 37-38.
[25] *Ibid.*, p. 6.
[26] *Ibid.*

With respect to the first issue to be resolved as enumerated in the petition for review, it is not for the court to determine whether there exist probable cause to hold the respondent for trial.

Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, i.e., whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.[27]

As to the second issue, it needs a full blown trial in the CTA division in order to establish whether the respondent has violated Section 255 in relation to Sections 253(d) and 256, of the Tax Code of 1997.

The issues, therefore, in this petition are the petitioner's assigned errors of fact and law.

THIS COURT'S RULING

The petition is denied.

We will first determine whether petitioner's motion for reconsideration was filed within the reglementary period before we discuss the other assigned error of fact and law. *gc*

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[27] *Ho vs. People of the Philippines et al.,* G.R. No. 106632, and *Narciso vs. People of the Philippines et al.,* G.R. No. 106678, October 9, 1997 (280 SCRA 365).

Petitioner's Motion for Reconsideration was timely filed

With respect to the prosecution's Motion for Reconsideration on the CTA First Division's Resolution dated January 20, 2011, petitioner alleges that it was timely filed on February 9, 2011 because the filing of the said motion was still within the fifteen-day period allowed by the Rules.[28]

Pertinent to this is Section 1 of Rule 15 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, which reads, 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 by filing a motion for reconsideration or new trial **within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question**. *(a) (Emphasis Supplied).*

After a careful review of the records, We agree with petitioner that the Motion for Reconsideration was filed within the reglementary period to file an appeal. As correctly pointed out by petitioner, the assailed Resolution dated January 20, 2011 was received by the Legal Division of the BIR and the City Prosecutor's Office on January 25, 2011[29]. Counting fifteen (15) days from date of receipt of the said Resolution is February 9, 2011, the last day to file an appeal. Clearly, prosecution's Motion for Reconsideration filed on February 9, 2011 was timely filed.

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[28] *Rollo,* p. 7.
[29] Division Docket, p. 43.

Dismissal for failure to prosecute

After determining that petitioner's Motion for Reconsideration on the assailed Resolution dated January 20, 2011 was filed on time, we will now proceed to the crux of the controversy on whether dismissal for failure to prosecute is proper.

In its filed Motion for Reconsideration, petitioner alleges the following:

> " xxx xxx xxx
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> 1. On December 03, 2010, undersigned special prosecutor received a copy of the Court's Resolution dated December 01, 2010**. Immediately, he coordinated with the Assistant City Prosecutor** who conducted the preliminary investigation, ACP Adela Masigan, and furnished her a copy of the said Resolution for her compliance. **Unfortunately, she was not around that time. He returned the following week only to be told that ACP Masigan was on leave**.
>
> 2. **Undersigned special prosecutor was able to communicate with ACP Masigan before the Christmas vacation** but he was told that the required records of the preliminary investigation were already attached to the Information filed with the Court of Tax Appeals.
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> 3. Per verification with the Court's records of this case, undersigned special prosecutor was able to determine that, indeed, there are attachments to the Information, such as the Resolution of ACP Masigan dated September 16, 2008, the referral letter to the City Prosecutor of Manila dated November 02, 2004, and the affidavit of Luis S. Sorreta, Jr. and its Annexes.
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> 4. On January 25, 2011, ACP Masigan handed to the undersigned special prosecutor certified xerox copies of the following records of preliminary investigation in I.S. No. 05C-04774, to wit:
>
>   1. Memo of Preliminary Investigation (Annex "A")
>   2. Minutes of the Preliminary Investigation (Annex "B")
>   3. Subpoena issued (Annexes "C", "D", "E" and "F"
>   4. Proof of Mailing (Annex "G") gr

> 5. The prosecution with leave, is submitting herewith the aforesaid documents in compliance with the Resolution of the Honorable Court dated December 01, 2010."[30] *(Emphasis supplied)*

Based on the foregoing, as stated in paragraph 1 of the motion, petitioner's justification in its failure to comply with the CTA First Division's Resolution dated December 1, 2010 (which orders the prosecution to submit the copy of the DOJ Resolution and the complete record of the preliminary investigation, within five (5) days from notice, with warning that non-compliance will cause the dismissal of the case) is the unavailability of the Assistant City Prosecutor.

After a careful evaluation of the justification given by petitioner, We find that there is no justifiable cause to excuse the non-compliance of petitioner with the Court's order. A stated in paragraph 2 of the said motion, the special prosecutor was able to communicate with ACP Masigan before the Christmas vacation. Noteworthy of emphasis is that the assailed Resolution dismissing the case for failure to prosecute was promulgated on January 20, 2011. As soon as the Assistant City Prosecutor is available, compliance with the Court's order could have been done, however, the prosecution failed to do so.

In its petition for review, petitioner alleges that "Considering the seriousness of the findings of the Honorable Court of Tax Appeals-First Division when it said that, contrary to the prosecution's claim, the DOJ Resolution dated September 16, 2008 is not in the record or among those

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[30] *Ibid.*, p. 47.

attached to the Information, and that 'this misrepresentation on the part of the prosecution cannot be countenanced and should not be tolerated'," the special prosecutor verified once more on May 12, 2011 from the Court records of CTA Criminal Case No. O-187.[31] Petitioner alleges that a copy of the required DOJ Resolution, as verified, was already attached to the Court docket (duplicate). Petitioner explained that the Office of the City Prosecutor of Manila, though, may have inadvertently failed to attach a copy of the same in the original court docket and that the other records of the preliminary investigation were subsequently submitted to the Honorable Court.[32]

As correctly pointed out by petitioner, there is indeed a copy (photocopy) of the required DOJ Resolution in the duplicate Court docket. Although We agree that there is no "misrepresentation on the part of the prosecution" and that it is just a mere inadvertence, we still find that a photocopy of the DOJ Resolution attached to the duplicate docket is still non-compliance with the order of the CTA First Division.

Once a complaint or information is filed in Court, any disposition of the case as its dismissal or the conviction or acquittal rests in the sound discretion of the Court.[33] Every court has the power to enforce and compel obedience to its orders, judgments, and processes in all proceedings pending before it.[34]

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[31] *Rollo, pp.5-6.*
[32] *Ibid.*, p. 7.
[33] *Flores vs. Gonzalez*, G.R. No. 188197, August 3, 2010, 626 SCRA 661, 671 citing *Crespo vs. Mogul*, L-53373, June 30, 1987, 235 Phil. 465, 476.
[34] *Vicoy vs. People*, G.R. No. 138203, July 3, 2002, 383 SCRA 707, 710 citing the Rules of Court, Rule 135, Section 5.

Pertinent to this are Sec. 4, Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, and Section 8 of Rule 112 of the Rules of Court which read, as follows:

RULE 9
PROCEDURE IN CRIMINAL CASES

> SEC. 4. *Warrant of arrest.* — Within ten days from the filing of the information, the Division of the Court to which the case was raffled **shall evaluate the resolution of the public prosecutor and its supporting evidence**. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairperson of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice. *(a) (Emphasis Supplied).*

RULE 112

PRELIMINARY INVESTIGATION

> SEC. 8. *Records.* —(a) *Records supporting the information or complaint.* — An information or complaint filed in court **shall** be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence and the resolution on the case.
>
> (b) *Record of preliminary investigation.* — The record of preliminary investigation, whether conducted by a judge or a prosecutor, shall not form part of the record of the case. However, the court, on its own initiative or on motion of any party, may order the production of the record or any of its part when necessary in the resolution of the case or any incident therein, or when it is to be introduced as an evidence in the case by the requesting party. *(Emphasis supplied)*

Based on the foregoing provisions, it is mandatory that the information filed in court be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence and the resolution on the case. With respect to the record of preliminary investigation, although it shall not form part of the record of the case, the court may order the production of the record or any of its part when necessary in the resolution of the case or any incident therein.

In this case, the CTA First Division ordered the prosecution to submit the DOJ Resolution and the record of preliminary investigation which are necessary in the determination of probable cause in the issuance of warrant of arrest. However, without justifiable cause, the prosecution failed to comply within the period given.

Settled is the rule that jurisdiction over the person of the accused is acquired upon his arrest or voluntary appearance.[35] In this case, this Court has not yet acquired jurisdiction over the person of the respondent(accused). There was even no arraignment in this case. Consequently, We rule that the dismissal for failure to prosecute be without prejudice.

Based on the foregoing discussion, We find that the CTA First Division, did not err nor did it abuse its discretion in dismissing the case for failure to prosecute.

WHEREFORE, premises considered, the petition for review is hereby **DENIED**. Accordingly, the assailed Resolutions of the CTA First Division dated January 20, 2011 and May 2, 2011 are **AFFIRMED with MODIFICATION that the DISMISSAL is without prejudice .**

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[35] *People vs. Pangilinan*, G.R.No. 171020, March 14, 2007, 518 SCRA 358, 371 citing *Miranda vs. Tuliao*, G.R. No. 158763, March 31, 2006, 486 SCRA 377, 389; *Alva vs. Court of Appeals*, G.R. No. 157331, April 12, 2006, 487 SCRA 146, 169.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

(On Wellness Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Wellness Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice