REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, as represented by the Solicitor General through the Bureau of Internal Revenue, *Petitioner,*	**CTA *EB* SCA No. 0004** (CTA Crim Case Nos. O-877 & O-878)
	Members:
-versus-	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ.*
SWEE KIM TAN GO, Proprietor of LIANA'S TRADING and COURT OF TAX APPEALS, SPECIAL THIRD DIVISION, *Respondent.*	Promulgated: OCT 02 2025 4:10 pm

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RESOLUTION

On June 16, 2025, petitioner filed the present ***Petition for Certiorari (of the Resolution dated April 10, 2025),*** assailing the *Resolution* dated April 10, 2025 issued by the Court's Special Third Division, which affirmed the *Resolution* dated April 27, 2023 of the Court's Third Division granting respondent-accused's *Demurrer to Evidence* and ordering the dismissal of the criminal cases.

The dispositive portions of the assailed Resolutions read:

Resolution dated April 27, 2023

> **WHEREFORE**, premises considered, the Demurrer to Evidence filed by the accused is hereby **GRANTED**. The above-captioned case against the accused is hereby **DISMISSED** for insufficiency of evidence.

SO ORDERED.

Resolution dated April 10, 2025

ACCORDINGLY, plaintiff's Motion for Reconsideration (of the Resolution dated April 27, 2023), filed via registered mail on May 23, 2023 is hereby **DEEMED NOT FILED** for being a prohibited motion. The assailed Resolution, dated April 27, 2023, is **AFFIRMED** and now **FINAL AND EXECUTORY**.

As per Rule 14, Section 6 of the Revised Rules of the Court of Tax Appeals, as amended, and considering no valid appeal or motion for reconsideration was raised here, let the Resolution, dated April 27, 2023, be entered into the book of judgments.

SO ORDERED.

Subsequently, the Bureau of Internal Revenue (**BIR**) transmitted the case records to the Office of the Solicitor General (**OSG**) for appropriate action. However, in a *Letter* dated June 14, 2025,[1] the OSG returned the case to the BIR, stating that it was "**of the opinion that the CTA Third Division's *Resolutions* were not tainted with grave abuse of discretion and are, in fact, in accord with prevailing law, rules, and jurisprudence.**"[2]

Despite the OSG's opinion and decision not to elevate the case, the BIR, through its Prosecution Division, proceeded to file the present *Petition for Certiorari*, claiming that "public respondent CTA Special Third Division committed grave abuse of discretion amounting to lack or excess of jurisdiction."[3]

After careful consideration, the Court resolves to dismiss this *Petition for Certiorari motu proprio* for **lack of legal standing**.

The instant case mirrors the factual milieu in *People v. Court of Tax Appeals-Third Division, L.M. Camus Engineering Corporation,*[4] where the petition was likewise filed by the Prosecution Division of the BIR instead of the OSG. Similarly, the OSG declined to initiate the action because it was of the opinion that the CTA Division did not commit grave abuse of

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[1] Petition for Review, par. 18.
[2] Docket, p. 73, Petition for Review, Annex "E".
[3] Petition for Review, par. 19.
[4] G.R. Nos. 251270 & 251291–301, September 5, 2022 [Per J. Dimaampao, Third Division].

discretion in rendering the assailed *Resolutions*. The Supreme Court, in said case, explained:

> The Court takes this opportunity to caution both the BIR and the OSG that the doctrine in *Orbos* is not an absolute rule. In fact, in the succeeding case of *Commissioner of Internal Revenue vs. La Suerte Cigar & Cigarette Factory*, the Court held that the NIRC did not do away with the established rule in requiring the OSG to represent the interest of the Republic in appellate proceedings before this Court. This is the clear import of the provisions of the Executive Order No. 292, or the Revised Administrative Code, which provides in detail the duties of the OSG, *viz.*:
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> > SECTION 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:
> >
> > (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.
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> As an independent office, the Court has recognized that the Solicitor General has a wide discretion in the management of cases, *i.e.*, "[h]e may start the prosecution of the case by filing the appropriate action in court or he may opt not to file the case at all. He may do everything within his legal authority but always conformably with the national interest and the policy of the government on the matter at hand." Nevertheless, given the mandatory nature of the above-quoted provision as evident in the use of the word "shall" in the first paragraph thereof, the Court has held that the Solicitor General cannot refuse to perform his duty to represent the government, its agencies, instrumentalities, officials, and agents without a just and valid reason. In the same case of *Orbos*, it was

edifyingly pronounced that "the Court appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his opinion inconsistent with the Government or any of its agents he is expected to represent. The Court must be advised of his position just as well."

Necessarily, the Solicitor General is reminded of his solemn duty to still file a manifestation before this Court of his position, even if the same is inconsistent with that of the government agency he is mandated to represent.

All the same, the jugular issued now posed for this Court's resolution is **whether or not the BIR may persist in questioning the CTA's acquittal of herein private respondents despite the OSG's assessment that there is no valid ground to do so**.

The Court answers in the negative.

There is no gainsaying that the BIR is the primary agency tasked to administer and enforce the NIRC, which necessarily includes the penal provisions therein, such as Sections 254 and 255. There is also no quibble that Section 220 of the NIRC explicitly provides that "[c]ivil 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 . . ." Hence, the BIR undoubtedly has a clear interest in the prosecution of violations of the Tax Code.

However, **this authority should be tempered by other laws that find equal application, such as the provisions of Republic Act No. 10071, or the Prosecution Service Act of 2010, which provides that the National Prosecution Service under the DOJ "shall be primarily responsible for the preliminary investigation and prosecution of all cases involving violations of penal laws . . ." Undoubtedly, the prosecution of criminal tax cases necessitates coordination between the two bodies.** This is evident in the issuances that the BIR has passed on the prosecution of tax evasion cases, such as the Run After Tax Evaders (RATE) Program which recognized that the prosecution of criminal cases must be done in coordination with the DOJ.

In actual fact, in this particular instance, the OSG also cites the absence of a favorable endorsement from the DOJ as a ground to deny the BIR's request for representation. It noted that "the endorsement for criminal cases intending to be

> assailed through Petition for Certiorari under Rules 65 of the 1997 Revised Rules on Civil Procedure before the Supreme Court should be issued by the Department of Justice (DOJ) Head Office in Padre Faura, City of Manila, aptly signed by the Honorable Prosecutor General."
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> A perspicacious review of the Petition and its attachments confirm that no such endorsement or delegation of authority from the DOJ can be found to pursue the instant case. The attached Office Orders from the Office of the Prosecutor General only further confirm the BIR's lack of authority to institute the present case as they visibly limit the deputization of the BIR to prosecute tax criminal cases to those "in the first and second level courts and the Court of Tax Appeals," with no mention of cases instituted before this Court.
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> **On this ground alone, the Petition may already be dismissed**. (*Emphasis and underscoring supplied)*

This pronouncement applies not only to criminal tax cases but to criminal proceedings in general. In *Austria v. AAA*,[5] the Supreme Court stated:

> In any criminal case or proceeding, only the OSG may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State before the Supreme Court (SC) and the CA. This is explicitly provided under Section 35 (1), Chapter 12, Title III, Book III of the 1987 Administrative Code of the Philippines, thus:
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> ... ...
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> The rationale behind this rule is that in a criminal case, the state is the party affected by the dismissal of the criminal action and not the private complainant. The interest of the private offended party is restricted only to the civil liability of the accused. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal on the criminal aspect may be undertaken only by the State through the OSG. The private offended party may not take such appeal, but may only do so as to the civil aspect of the case. Differently stated, the private offended party may file an appeal without the intervention of the OSG, but only insofar as the civil liability of the accused is concerned. Also, the private complainant may file a special civil action for certiorari even without the intervention of the OSG, but only to the end

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[5] G.R. No. 205275, June 28, 2022 [Per J. M. Lopez, *En Banc*].

> of preserving his or her interest in the civil aspect of the case. Hence, the Court dismissed for lack of legal standing or personality the appeals or petitions for certiorari filed by the private offended parties before the SC and CA, without the consent or conformity of the OSG, questioning the dismissal of the criminal case or acquittal of the accused.

Accordingly, and in line with the above rulings, the instant *Petition for Certiorari* must be dismissed for having been filed without the conformity or participation of the OSG, resulting in the BIR's lack of legal standing to institute the same.

WHEREFORE, in light of the foregoing, petitioner's *Petition for Certiorari (of the Resolution dated April 10, 2025)*, is **DISMISSED** for lack of legal standing.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

x---x

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice