REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA *EB* CRIM. NO. 081
(CTA Crim. Case Nos. O-288, O-289, O-290, and O-291)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

-versus-

REX CHUA CO HO,
Respondent.

Promulgated:

FEB 23 2022 3:36 p.m.

x- x

DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by petitioner, as represented by the Commissioner of Internal Revenue (CIR) on July 14, 2020, without respondent's comment[2] despite due notice[3], pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended[4], which prays for the reversal and setting aside of the *Amended Decision* dated October 21, 2019[5] (Assailed Amended Decision) and the *Resolution* dated June 19, 2020[6] (Assailed Resolution)

---

[1] *Rollo*, CTA EB Crim. No. 081, pp. 1-23.
[2] *Id.*, Resolution dated January 29, 2021, pp. 115-116.
[3] *Id.*, Resolution dated October 14, 2020, pp. 74-75.
[4] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[5] *Rollo*, Annex A, pp. 24-39.
[6] *Id.*, Annex C, pp. 51-59.

am

promulgated by the Special Third Division of the Court of Tax Appeals (CTA) under CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291 entitled *"People of the Philippines vs. Rex Chua Co Ho"*, and the rendition instead of a new judgment.

The instant petition pertains only to the civil liability aspect of the Assailed Amended Decision and Assailed Resolution, the dispositive portions of which read as follows:

Amended Decision dated October 21, 2019:[7]

> "**WHEREFORE**, in light of the foregoing considerations, the instant Motion for Reconsideration is **PARTIALLY GRANTED**. The dispositive portion of the Decision dated January 17, 2019 is hereby **AMENDED** to read as follows:
>
> > "**WHEREFORE**, in light of the foregoing, accused Rex Chua Co Ho is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, in **CTA Crim. Cases Nos. O-287, O-288, O-289, O-290, and O-291**. For each of the consolidated criminal cases, he is hereby sentenced to an indeterminate penalty of one (1) year, as minimum, to two (2) years as maximum term of imprisonment, and to pay a fine in the amount of P10,000.00, with subsidiary imprisonment pursuant to Section 280 of the NIRC of 1997, as amended, in the event that accused Co Ho has no property with which to meet the fines imposed upon him, or is unable to pay such fines.
> >
> > With regard to the civil liability, Accused Rex Chua Co Ho, is hereby **ORDERED TO PAY** the total amount of **₱4,167,196,761.50**, for taxable years 2005 to 2009, inclusive of the 50% penalty imposed under Section 248(B) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest and delinquency interest imposed under Sections 248(A) and 249(B) and (C), of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:
> >
> > xxx xxx xxx
> >
> > In addition, accused Rex Chua Co Ho is **ORDERED TO PAY** the delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of January 1, 2014 in the amount of **₱1,962,665,105.39**, as determined above,

---
[7] *Supra*, Note 5.

> computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by RR No. 21-2018.
>
> SO ORDERED."
>
> **SO ORDERED**."

Resolution dated June 19, 2020:[8]

> "**WHEREFORE**, in light of the foregoing considerations, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

The Facts

As culled from the records of this case, respondent is a Filipino citizen with Taxpayer Identification Number (TIN) 901-440-301-000 and doing business as sole proprietor of Rex Gift Shoppe located at No. 952 Ongpin Street, St. Cruz, Manila.[9]

Respondent sold gold and silver to the Bangko Sentral ng Pilipinas (BSP) under its Mint and Refinery Operations Department during the taxable years (TYs) 2005 to 2009.[10]

Respondent filed his Income Tax Return in BIR Revenue District No. 31, Sta. Cruz, Manila for the said years with the following amounts declared as income, to wit:

Taxable Year	Amount of Income Declared
2005	₱ 1,591,797.32
2006	1,895,501.46
2007	1,819,934.40
2008	1,869,879.11
2009	1,217,212.01

[8] *Supra*, Note 6.
[9] Docket, CTA Crim. No. O-287, Decision dated January 17, 2019, p. 8605.
[10] *Id.*

However, the following amounts paid to respondent were discovered in the BSP Certified List of Gold Transactions for the said period, to wit:[11]

Taxable Year	Amount per Certified List of BSP
2005	₱ 207,945,323.17
2006	414,228,805.17
2007	1,240,686,746.34
2008	1,145,350,719.77
2009	1,932,757,566.50

Thus, respondent was charged for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, for his failure to supply correct and accurate information in his Income Tax Return for TYs 2005, 2006, 2007, 2008, and 2009 under CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291, respectively, which were entitled "*People of the Philippines vs. Rex Chua Co Ho*".

After the trial, respondent was found guilty beyond reasonable doubt and was ordered to pay a civil liability amounting ₱8,320,758,893.88, inclusive of surcharges and penalties as of December 31, 2017 and an additional amount of ₱3,918,816,816.41 equivalent to delinquency interest rate of twelve percent (12%) under Section 249(C) of the 1997 NIRC, as amended by Republic Act (RA) No. 10963 and implemented by Revenue Regulations No. 21-2018.

Respondent then moved for reconsideration of said decision which was partially granted, hence, the Assailed Amended Decision which reduced his civil liability.

Petitioner moved for the reconsideration of said Amended Decision but was denied under the Assailed Resolution.

Petitioner then filed the instant Petition for Review on July 14, 2020. However, upon review of said petition, this Court found that it did not comply with Section 4, Rule 7 of the 1997 Rules of Civil Procedure, as amended, hence,

---

[11] Docket, CTA Crim. No. O-287, Decision dated January 17, 2019, pp. 8606-8607.

petitioner was directed to comply with the said provision under the Resolution dated September 8, 2020[12].

On September 21, 2020, petitioner submitted its compliance with the above-mentioned Resolution, thus, respondent was ordered to submit his comment on the instant petition.[13]

Respondent posted a *Motion for Extension of Time*[14] to file his comment on November 3, 2020, which this Court received on November 19, 2020 and the Court granted[15] the extension and gave him until November 18, 2020 to file his comment.

On January 13, 2021, respondent filed a Motion to Admit Comment/Opposition (To BIR's Petition for Review dated July 13, 2020) which this Court denied for being belatedly filed, hence, the instant petition was submitted for decision.[16]

The Issue

The sole issue that will be resolved is:[17]

> Whether the CTA 3rd Division erred when it ruled that Section 2.4(c) of Revenue Memorandum Circular (RMC) No. 23-00 or the "50% Rule" is applicable in the present case, hence, reducing the civil liability to Php4,167,196,761.50 for taxable years 2005 to 2009 and delinquency interest of the rate of 12% on the total unpaid amount as of January 2014 in the amount of Php1,962,665,105.39, computed from 01 January 2018 until full payment thereof.

Argument of Petitioner

Petitioner CIR argues that Section 4 of RMC No. 23-2000 pertaining to the "50% Rule" is not applicable in the present case.

---

[12] *Rollo*, pp. 66-67.
[13] *Rollo*, Resolution dated October 14, 2020, pp. 74-75.
[14] *Id.*, pp. 76-79.
[15] *Id.*, Minute Resolution dated November 23, 2020, p. 81.
[16] *Id.*, Resolution dated January 29, 2021, pp. 115-116.
[17] *Id.*, Petition for Review, p. 17.

ση

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b) of the RRCTA provide that:

> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
>
> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the assailed *Resolution* dated June 19, 2020. The Assailed Resolution was allegedly received by Bureau of Internal Revenue (BIR) on June 26, 2020 while the Department of Justice (DOJ) received the same on July 15, 2020.

In accordance with the abovementioned provisions of the RRCTA, petitioner had fifteen (15) days from June 26, 2020 or until July 11, 2020 within which to file its petition. Considering that the July 11 fell on a Saturday, the next working day was July 13, 2020. Thus, the filing of the instant petition on July 14, 2020 was out of time.

In *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*[18], the Supreme Court ruled that:

> "It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.
>
> The CTA, even if vested with special jurisdiction, is, as courts of general jurisdiction can only take cognizance of such matters as are clearly within its statutory authority. Relative thereto, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim."

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of jurisdiction.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

[18] G.R. No. 185666, February 04, 2015.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice