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,

- versus -

HI-BUILD CONSTRUCTION, INC., (Lot 1, Block 7, Mercado Village, Pulong, Sta. Rosa, Laguna), ROMEO P. AALA (Don Jose, Sta. Rosa, Laguna), RONALD P. SADSAD (Pulo, Cabuyao, Laguna),
Respondents.

CTA *EB* CRIM. NO. 131
(CTA Crim. Case No. O-980)

Present:

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

Promulgated:

JUL 15 2025 10:56 a.m.

x - x

RESOLUTION

CUI-DAVID, J.:

Before the Court *En Banc* is petitioner's *Motion for Reconsideration (of the Decision dated October 29, 2024)*[1] filed *via* registered mail on November 19, 2024, and *via* e-mail on November 20, 2024, assailing the Decision[2] promulgated on October 29, 2024, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the *Verified Petition for Review (of the Resolution dated July 26, 2023)* is **DENIED** for lack of merit.
>
> Accordingly, the assailed Resolutions dated April 25, 2023 and July 18, 2023, both rendered by this Court's First Division in CTA Crim. Case No. O-980, are **AFFIRMED**.

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[1] *En Banc* Docket, pp. 106–120.
[2] *Id.*, pp. 78–96.

SO ORDERED.

The assailed Decision upheld the ruling of the Court in Division, which dismissed the case filed against respondent on the ground of prescription.

In moving for the reconsideration of the assailed Decision, petitioner maintains that the prescriptive period was interrupted when the complaint for preliminary investigation was filed with the Department of Justice (DOJ).

Petitioner further argues that in resolving the present case, the ruling in *Tupaz v. Ulep*[3] ("*Tupaz*") should prevail over the ruling in *Lim, Sr. v. Court of Appeals*[4] ("*Lim*") for the following reasons:

(1) *Tupaz* was decided in 1999, or nine years after the Supreme Court decided *Lim*; and

(2) *Tupaz* applied Section 281 of the National Internal Revenue Code (NIRC), as amended, while *Lim* interpreted Section 354 of the old NIRC.

After a careful examination of the record and a meticulous evaluation of petitioner's arguments in its *Motion for Reconsideration*, the Court *En Banc* finds no sufficient or cogent reason to disturb its ruling in the assailed Decision dated October 29, 2024.

The arguments stated in the said *Motion* have already been thoroughly discussed and passed upon, first by the Court in Division and subsequently on appeal by the Court *En Banc*. A reiteration of these discussions would serve no purpose other than to needlessly consume the time and resources of the Court.

WHEREFORE, there being no new matters and issues advanced that will merit reconsideration, let alone modification of the assailed Decision dated October 29, 2024, petitioner's *Motion for Reconsideration (of the Decision dated October 29, 2024)* is **DENIED** for lack of merit.

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[3] G.R. No. 127777, October 1, 1999 [Per J. Pardo, First Division].
[4] G.R. Nos. L-48134-37, October 18, 1990 [Per C.J. Fernan, Third Division].

x---x

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With Separate Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

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SEPARATE OPINION

BACORRO-VILLENA, J.:

With due respect, I am compelled to write this Opinion to qualify my concurrence in the Decision dated 29 October 2024[1] (**assailed Decision**).

The assailed Decision affirmed the twin Resolutions dated 25 April 2023[2], and 18 July 2023[3] (**assailed Resolutions**), both rendered by this Court's First Division, and ruled that the right of the government to institute the case

[1] *Rollo*, pp. 78-96.
[2] Id., pp. 32-38.
[3] Id., pp. 40-42.

against the accused had already prescribed. Such declaration has been made upon findings that when the Information was filed before this Court on 05 December 2022, the five (5) year prescriptive period to indict the accused for failure to pay deficiency tax had already lapsed.

My concurrence in the assailed Decision rests solely on the ground that the Petition for Review filed on 10 August 2023[4] suffers a procedural *faux pas* that warrants an outright dismissal.

Below are the legal bases for my position.

In *Mamerto Austria v. AAA and BBB*[5] (**Austria**), the Supreme Court held:

> ...
>
> 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:
>
>> Section 35. *Power 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 service of a lawyer. It shall have the following specific power 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.
>
> 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

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4 Id., pp. 1-20.
5 G.R. No. 205275, 28 June 2022.

> 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 <u>*private complainant*</u> may file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his or her interest in the <u>*civil aspect of the case*</u>. Hence, the Court dismissed for lack of legal standing or personality the appeals or petitions for *certiorari* filed by the private offended parties <u>*before the SC and CA, without the consent or conformity of the OSG*</u>, questioning the dismissal of the criminal case or acquittal of the accused.[6]
>
> ...

The same is likewise provided in Section 10, Rule 9 of the Revised Rules of the Court of Tax Appeals[7] (**RRCTA**):

> ...
>
> SEC 10. *Solicitor General as counsel for the People and government officials sued in their official capacity.* - The Solicitor General shall represent the People of the Philippines and government officials sued in their official capacity in all cases brought to the Court in the exercise of its appellate jurisdiction. The former may deputize the legal officers of the Bureau of Internal Revenue in cases brought under the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, or the legal officers of the Bureau of Customs in cases brought under the Tariff and Customs Code of the Philippines or other laws enforced by the Bureau of Customs, to appear in behalf of the officials of said agencies sued in their official capacity: *Provided, however*, such duly deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General.
>
> ...

The *Austria* guidelines can be summarized as follows:[8]

(1) The private complainant has the legal personality to appeal the civil liability of the accused or to file a petition for *certiorari* to preserve his or her interest in the civil aspect of the criminal case. The appeal

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[6] Citations omitted, emphasis in the original text, italics and underscoring supplied.
[7] A.M. No. 05-11-07-CTA.
[8] *AAA261422, a minor and represented by YYY261422 v. XXX261422 [formerly UDK 17206]*, G.R. No. 261422, 13 November 2023.

or petition for *certiorari* must allege the specific pecuniary interest of the private offended party. The failure to comply with this requirement may result in the denial or dismissal of the remedy.

The reviewing court shall require the OSG to file comment within a non-extendible period of thirty (30) days from notice if it appears that the resolution of the private complainant's appeal or petition for *certiorari* will necessarily affect the criminal aspect of the case or the right to prosecute (*i.e.*, existence of probable cause, venue or territorial jurisdiction, elements of the offense, prescription, admissibility of evidence, identity of the perpetrator of the crime, modification of penalty, and other questions that will require a review of the substantive merits of the criminal proceedings, or the nullification/reversal of the entire ruling, or cause the reinstatement of the criminal action or meddle with the prosecution of the offense, among other things). The comment of the OSG must state whether it conforms or concurs with the remedy of the private offended party. The judgment or order of the reviewing court granting the private complainant's relief may be set aside if rendered without affording the People, through the OSG, the opportunity to file a comment.

(2) The private complainant has no legal personality to **appeal** or file a petition for *certiorari* to question the judgments or orders involving the criminal aspect of the case or **the right to prosecute**, **unless made with the OSG's conformity**.

The private complainant must request the OSG's conformity within the reglementary period to appeal or file a petition for *certiorari*. The private complainant must attach the original copy of the OSG's conformity as proof in case the request is granted within the reglementary period. Otherwise, the private complainant must allege in the appeal or petition for *certiorari* the fact of pendency of the request. If the OSG denied the request for conformity, **the Court shall dismiss the appeal or petition for *certiorari* for lack of legal personality of the private complainant.**

(3) The reviewing court shall require the OSG to file comment within a non-extendible period of 30 days from notice on the private complainant's petition for *certiorari* questioning the acquittal of the accused, the dismissal of the criminal case, and the interlocutory orders in criminal proceedings on the ground of grave abuse of discretion or denial of due process.

Here, the Bureau of Internal Revenue (**BIR**) raised the following issue in his or her Petition for Review:[9]

> ...
> THE CTA - FIRST DIVISION ERRED WHEN IT DISMISSED THE CASE AGAINST RESPONDENT HI-BUILD AND ITS RESPONSIBLE OFFICERS FOR VIOLATION OF SECTION 255 OR DELIBERATE FAILURE TO SUPPLY CORRECT AND ACCURATE INFORMATION FOR THE TAXABLE YEAR 2012 ON THE GROUND OF PRESCRIPTION.
> ...

The foregoing, without a doubt, aims to appeal the very right of the State to prosecute. It then follows that the Petition must be filed with the conformity of the OSG.

There is no gainsaying that the BIR has a clear interest in the prosecution of violations of the National Internal Revenue Code (**NIRC**) as explicitly provided under Section 220 of the NIRC of 1997, as amended - "[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** ..." However, in the case of *People of the Philippines v. Court of Tax Appeals-Third Division, L.M. Camus Engineering Corporation, and Lino D. Mendoza*[10], the Supreme Court made it abundantly clear that the NIRC of 1997, as amended, did not do away with the rule in requiring the OSG to represent the interest of the Republic in appellate proceedings before this Court.

A perspicacious review of the Petition for Review and its attachments reveals no such participation on the part of the OSG. The OSG was neither a signatory nor even furnished a copy of the Petition for Review. While the caption reads "PEOPLE OF THE PHILIPPINES, as represented by the Solicitor General through the [BIR]", and a Memorandum of Agreement (**MOA**) between the OSG and BIR was annexed, these are insufficient to confer standing absent actual deputation.

The act of deputation is an exception to the general rule that the OSG shall represent the government in criminal proceedings. Such exception is subject to certain conditions precedent - **first**, there must be an express

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[9] Supra at note 4. p. 7.
[10] G.R. Nos. 251270 and 251291-301, 05 September 2022.

authorization by the OSG, **naming therein the legal officers who are being deputized**; **second**, the cases must involve the respective offices of the deputized legal officers; and **finally**, despite such deputization, the OSG should retain supervision and control over such legal officers with respect to the cases.[11]

In fact, Paragraph B(2)(b) of Revenue Memorandum Circular (**RMC**) No. 025-10[12], which circularizes the MOA between BIR and OSG, mandates that for appealed cases before this Court, the BIR must submit the name of the lawyer to be deputized, with the OSG retaining direct control and supervision throughout the proceedings. The mere assertion that the BIR acts "through the Solicitor General" in the caption of the Petition does not suffice to confer legal standing in the absence of actual deputation.

Here, no such deputation has been shown. The Petition was signed by Greghvon A. Matol (**Matol**), but there is no record or indication that he was ever deputized by the OSG to appear and act on its behalf in this case. Even more telling is the BIR's failure to furnish the OSG with a copy of the Petition—a procedural lapse that betrays the absence of coordination, and more gravely, of authority.

Moreover, the "Motion for Reconsideration (of the Decision dated October 29, 2024"[13] (**Motion for Reconsideration**) was likewise filed by Matol without the requisite conformity of the OSG, despite the OSG having received a copy of the assailed Decision as early as 05 November 2024.[14]

All told, I vote to **DENY** petitioner's Motion for Reconsideration for want of legal personality to file.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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11 *Republic of the Philippines, represented by Philippine Economic Zone Authority v. Heirs of Cecilio and Moises Cuizon,* G.R. No. 191531, 06 March 2013.

12 Publishing the Full Text of the Memorandum of Agreement Between the Bureau of Internal Revenue (BIR) and the Office of the Solicitor General.

13 Filed on 19 November 2024, *rollo*, pp. 106-119.

14 Id., pp. 98-100.