REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-804**
	Members:
- versus -	**DEL ROSARIO**, *PJ, Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
COSCO PETROLEUM COMPANY, INC., MICHAEL C. COSAY, Santiago, Pili, Camarines Sur, *Accused.*	Promulgated: JAN 10 2023 ; 1:20 P.M.

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RESOLUTION

REYES-FAJARDO, *J.*:

On September 21, 2022, a Decision was rendered, the dispositive portion of which reads:

> **WHEREFORE**, accused Michael C. Cosay is **ACQUITTED** of the crime charged under the Information in CTA Crim. Case No. O-804 on the ground of reasonable doubt. No pronouncement as to civil liability.
>
> The cash bail bond of accused Michael C. Cosay is **CANCELLED** and ordered **RELEASED**, upon accused Michael C. Cosay's presentation of proper documents, in accordance with accounting rules and regulations.
>
> **SO ORDERED.**

We found Cosco Petroleum Company, Inc. (COSCO) *not* mandated by law to pay its IT due for taxable year (TY) 2008; hence, its president, accused Michael C. Cosay may *not* be held criminally liable for the offense charged in this case. The reasons are: *one,* the

Bureau of Internal Revenue (BIR) conducted an illegal examination against COSCO in TY 2008; *two*, the prosecution failed to present in evidence, the Final Assessment Notice issued by the BIR against COSCO; and *three*, no valid service of the Formal Letter of Demand dated January 9, 2013 was made by the BIR against COSCO.

In its bid [1] to reconsider the above Decision, petitioner maintains that: *one*, the audit and examination, leading to the issuance of the final assessment against COSCO for TY 2008 was performed by Revenue Officer (RO) El-Se H. Vida, a person named in the Letter of Authority dated May 7, 2010; *two*, the lack of due dates in the final assessment is *not* required, for it to be binding upon COSCO; and *three*, the taxpayer's denial of a person's authority to receive the BIR notices on its behalf may be overcome by the presumption that the BIR personnel regularly performed their official duty, including the service of the BIR notices against the taxpayer.

Taking the opposite view,[2] accused states that the BIR failed to validly serve its mailed notices to COSCO, or its duly authorized representative, offensive of COSCO's right to due process on assessment.

OUR RULING

The Motion is denied.

We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable.[3] This principle is animated by the constitutional prohibition on double jeopardy enshrined in Section 21, Article III of the 1987 Constitution, which states:

> **Section 21.** No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

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1 Motion for Reconsideration (of the Decision dated September 21, 2022) dated October 3, 2022. Docket, unpaged.

2 Comments to Motion for Reconsideration. *Id.* at pp. 628-632.

3 See *People of the Philippines v. Uy*, G.R. No. 158157, September 30, 2005.

People of the Philippines v. Dela Torre[4] elucidated on the *rationale* for the protection afforded by our Fundamental Law against double jeopardy in this wise:

> **Double jeopardy provides** three related **protections**: (1) **against a second prosecution for the same offense after acquittal**, (2) against a second prosecution for the same offense after conviction, and (3) against multiple punishments for the same offense.
>
> ...
>
> The ban on double jeopardy is deeply rooted in jurisprudence. The doctrine has several avowed purposes. Primarily, it prevents the State from using its criminal processes as an instrument of harassment to wear out the accused by a multitude of cases with accumulated trials. **It also serves the additional purpose of precluding the State, following an acquittal, from successively retrying the defendant in the hope of securing a conviction.** And finally, it prevents the State, following conviction, from retrying the defendant again in the hope of securing a greater penalty.[5]

As it stands, the proscription against double jeopardy presupposes that an accused has been previously charged with an offense, and the case against him is terminated either by his acquittal or conviction, or dismissed in any other manner without his consent. As a general rule, the following requisites must be present for double jeopardy to attach: (1) a valid indictment, (2) before a court of competent jurisdiction, (3) the arraignment of the accused, (4) a valid plea entered by him, and (5) the acquittal or conviction of the accused, or the dismissal or termination of the case against him without his express consent.[6]

Here, accused was prosecuted under a valid information[7] for violation of Section 255[8] in relation to Section 253(d)[9] and 256[10] of the

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4 G.R. Nos. 137953-58, April 11, 2002.

5 Boldfacing supplied.

6 See *Saldariega vs. Hon. Panganiban*, G.R. Nos 211933 & 211960, April 15, 2015.

7 Docket, pp. 5-6.

8 SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - **Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax,** make a return, keep any record, or supply correct and accurate information, who **willfully fails to pay such tax,** make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer

1997 National Internal Revenue Code, as amended, *i.e.*, accused, as president of COSCO, deliberately failed to pay the latter's income tax liability for TY 2008 based on a final and executory assessment amounting to ₱23,935,637.23,[11] over which we have jurisdiction,[12] and to which he entered a plea of not guilty.[13] After trial, we rendered a judgment of acquittal in favor of accused.[14]

Clearly, all the requisites for the application of the constitutional prohibition on double jeopardy are present. Therefore, any attempt by the prosecution to reconsider said judgment must fail.

We, too, are mindful of the exceptions on the rule against jeopardy, namely: (1) where there has been deprivation of due process and where there is a finding of a mistrial, or (2) where there has been a grave abuse of discretion under exceptional circumstances.[15] Yet, these two (2) circumstances are not present in this case. To be precise, the prosecution was afforded ample

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imprisonment of not less than one (1) year but not more than ten (10) years. (Boldfacing supplied)

9 **SEC. 253.** ***General Provisions.*** -

...

(d) **In the case of** associations, partnerships or **corporations**, the **penalty** shall be imposed on the partner, **president**, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation (Boldfacing supplied).

10 **SEC. 256.** ***Penal Liability of Corporations.*** - **Any corporation**, association or general co-partnership liable for any of the acts or omissions penalized under this Code, **in addition to the penalties imposed herein upon the responsible corporate officers**, partners, or employees **shall, upon conviction** for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000). (Boldfacing supplied)

11 This is exclusive of increments and penalties.

12 Sec. 7. Jurisdiction. - The CTA shall exercise:

...

b. Jurisdiction over cases involving criminal offenses as herein provided:

1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate....

13 Certificate of Arraignment/ With Waiver of the Reading of the Information. Docket, p. 335.

14 *Id.* at pp. 604-626.

15 See *People of the Philippines v. Arcega*, G.R. No. 237489, August 27, 2020.

opportunity to present evidence in support of its cause. It simply fell short in sustaining a conviction against accused.

WHEREFORE, plaintiff's Motion for Reconsideration (of the Decision dated September 21, 2022) dated October 3, 2022, is **DENIED**. The Decision dated September 21, 2022 is **AFFIRMED**.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice