REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

## THIRD DIVISION

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| **PEOPLE OF THE PHILIPPINES,** *Plaintiff,* | **CTA CRIM. CASE NO. O-1161** |
| | (NPSD No. XVI-INV-151-00354) |
| - *versus* - | For: Violation of Section 254 of the 1997 NIRC (Attempt to Evade/Defeat Tax) |
| **JCLN GLOBAL PROPERTIES DEVELOPMENT CORP.** (Address: G6 Dakota Residences, Gen. Malvar St. Corner Adriatico Street, Malate Manila), | Members: **MANAHAN**, *Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.* |
| **JAMES CHRISTOPHER L. NAPOLES** (At-Large / Address: D Lafayette Condo, Libis, Quezon City), and | |
| **JO CHRISTINE L. NAPOLES** (At-Large / Address: No. 635 San Isidro Street, Ayala Alabang, Muntinlupa City) *Accused.* | Promulgated: OCT 24 2025 10:25 am |

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# RESOLUTION

On October 03, 2024, the Court issued a Notice of Resolution,[1] with the attached Resolution dated October 02, 2024[2] (assailed Resolution), dismissing the present case for lack of probable cause to

[1] Division Docket, p. 318.
[2] *Id.* at 319-324.

issue a warrant of arrest on the ground of prescription of the offense charged. The Department of Justice (DOJ) received a copy of the assailed Resolution on October 08, 2024.

Reckoned from such receipt, the plaintiff had until October 23, 2024, within which to seek reconsideration. Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

**RULE 15**
**MOTION FOR RECONSIDERATION OR NEW TRIAL**

> SECTION 1. *Who may and when to file motion.* – **Any aggrieved 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 **<u>within fifteen (15) days</u> from the date of receipt of notice of** the decision, **resolution** or order **of the Court** in question.[3] (Emphasis and underscoring supplied)

However, it was only on October 28, 2024, that the counsels sought to be deputized by the DOJ caused the filing, through registered mail, of their *Formal Entry of Appearance with Motion for Reconsideration*,[4] the hard copies of which were received by the Court on November 05, 2024. The corresponding electronic transmission[5] thereof was effected the following day, or on October 29, 2024.

In the instant *Motion*, the counsels of the BIR National Office Prosecution Division (NOPD), claiming deputation, now contend that the reckoning date should be from the BIR's receipt of the assailed Resolution on October 10, 2024.[6] This contention, however, appears to emanate solely from their asserted deputation as special prosecutors by Prosecutor General Benedicto A. Malcontento, as indicated in their *Formal Entry of Appearance*.[7]

Verily, the deputation of other prosecutors, such as those from the BIR NOPD, must be effected in writing by the Chief of the Prosecution Office or the Regional State Prosecutor. Such deputation, moreover, is not self-executory but remains subject to the approval of the Court. These requirements find firm basis in Section 5, Rule 110 of the Revised Rules of Criminal Procedure, as amended by A.M. No. 02-2-07-SC, which provides:

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3 Revised Rules of the Court of Tax Appeals (RRCTA), Rule 15, Section 1.
4 Division Docket, unpaginated.
5 *Id.*, unpaginated.
6 *Id.*, Formal Entry of Appearance with Motion for Reconsideration, Annex "B."
7 *Id.*, unpaginated.

> Section 5. *Who must prosecute criminal actions.* — **All criminal actions either commenced by complaint or by information shall be prosecuted <u>under the direction and control of a public prosecutor</u>. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutor, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case <u>subject to the approval of the court</u>.** Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court. (Emphasis and underscoring supplied)

Indeed, DOJ Memorandum Circular No. 25[8] reiterates, in no uncertain terms, the requisites of written authorization and prior court approval, among others, and underscores the necessity of their strict observance, *viz.*:

> In connection therewith, the authority of a private prosecutor to prosecute a criminal action is subject to the following conditions, *viz.*:
>
> 1. The public prosecutor has a heavy work schedule, or there is no public prosecutor assigned in the province or city;
> 2. The private prosecutor is authorized by the Regional State Prosecutor (RSP), Provincial or City Prosecutor;
> 3. The authority must be in writing;
> 4. **<u>The authority of the private prosecutor must be approved by the court</u>**;
> 5. The private prosecutor shall continue to prosecute the case until the end of the trial unless the authority is withdrawn or otherwise revoked by the RSP, Provincial or City Prosecutor; **<u>and</u>**
> 6. In case of the withdrawal or revocation of the authority of the private prosecutor, the same must be approved by court.
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> **Strict compliance is hereby enjoined.** (Emphasis and underscoring supplied)

Similarly, Section 3, Rule 9 of the RRCTA acknowledges the authority of the DOJ to deputize prosecutors, as follows:

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[8] April 26, 2002.

> SEC. 3. *Prosecution of criminal actions.* — **All criminal actions shall be conducted and persecuted under the direction and control of the public prosecutor. In criminal actions involving violations of the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue**, and violations of the Tariff and Customs Code or other laws enforced by the Bureau of Customs, **the prosecution may be conducted by their respective duly deputized legal officers.**[9] (Emphasis and underscoring supplied)

At this juncture, it bears emphasis that, when the Court issued its Notice of Resolution dated October 03, 2024[10] with the attached assailed Resolution,[11] dismissing the case, the counsels of record remained to be the prosecutors from the DOJ. No deputation of the BIR NOPD had been submitted to, much less approved by, the Court. Accordingly, when the intended deputized special prosecutors from the BIR NOPD filed their *Formal Entry of Appearance with Motion for Reconsideration*,[12] such appearance was legally infirm, their deputation not having received the requisite imprimatur of this Court. It thus devolved upon the DOJ prosecutors to properly address the Court's Notice of Resolution of October 03, 2024.[13] Regrettably, they failed to act within the period prescribed by the rules.

Put differently, absent the Court's approval, the plaintiff cannot unilaterally assume that the purported special prosecutors may already appear as counsels of record, much less file a *Motion for Reconsideration*, or any other pleading as a matter of right. To hold otherwise would render nugatory the indispensable requirement of prior judicial approval in the deputation of private or special prosecutors.

Considering, therefore, that no motion for reconsideration was filed by the DOJ prosecutors, as the counsels of record, the instant *Motion* must perforce fail.

**WHEREFORE**, in view of the foregoing premises, the *Motion for Reconsideration (To the Resolution dated October 0[2], 2024)* is hereby **DENIED**. The *Formal Entry of Appearance* of the BIR NOPD counsels as deputized special prosecutors for the plaintiff is merely **NOTED.**

**SO ORDERED.**

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[9] RRCTA, Rule 9, Section 3.
[10] *Supra* note 1.
[11] *Supra* note 2.
[12] *Supra* note 4.
[13] *Supra* note 1.

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice

Marian Ivy F. Reyes-Fajardo

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**HENRY S. ANGELES**
Associate Justice