REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus-

BENEDICTA MALLARI and CHI WEI-NENG
Respondent,

CTA EB CRIM. Case No. 009
(CTA Crim. Case No. O-151)

Present:

Acosta, *P.J.*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:

MAY 2 3 2011

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DECISION

COTANGCO-MANALASTAS, J.:

This is a Petition for Review before the Court of Tax Appeals (CTA) *En Banc* seeking a review of the Resolutions of the CTA First Division dismissing CTA Criminal Case No. O-151, entitled *"People of the Philippines vs. Benedicta Mallari and Chi Wei-Neng"*.

THE FACTS[1]

Based on the records, the antecedent facts of the case are as follows:

[1] *Rollo*, CTA EB Crim. Case No. 009, pp. 4-6.

Pursuant to Revenue Delegation Authority Order No. 2-2007 dated March 1, 2007, the Regional Director, Revenue Region No. 6, Bureau of Internal Revenue, Manila, filed the criminal complaint before the Office of the City Prosecutor of Manila against respondents Benedicta Mallari and Chi Wei-Neng, President and General Manager, respectively, of Topsun International Inc., with new business address at JMBC Bldg., Zansibar corner Rockefeller Streets, Brgy. San Isidro, Makati City, for violation of Section 255 in relation to Sections 253(d) and 256 of the Tax Code of 1997 for their failure to pay overdue internal revenue tax obligations of the corporation for the period January to June 2000 in the total amount of P3,852,564.64.

Respondents submitted their counter-affidavit stating that the corporation had no outstanding internal revenue tax liability as of October 15, 2003 as evidenced by the Certificate of No Tax Liability issued by Revenue District Office No. 32.

After the filing of the Reply to Counter-Affidavit and Rejoinder, the parties were required to submit their respective memorandum where they reiterated their legal and factual positions.

After a thorough and careful evaluation of the evidence submitted by the parties, Assistant City Prosecutor (ACP) Gideon C. Mendoza finds that probable cause exist to hold the respondents for trial for the crime charged. He recommended that an Information be filed with the Court of Tax Appeals (CTA).

Thus, on September 25, 2009, an Information was filed with the CTA charging herein respondents, Benedicta Mallari and Chi Wei-Neng, with violation of Section 255 in relation to Section 253(d) and 256 of the 1997 Tax Code.[2]

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[2] Docket, C.T.A. CRIM. Case No. O-151, pp. 1-2.

On October 7, 2009, the CTA First Division issued a resolution ordering plaintiff People of the Philippines, represented by ACP Gideon C. Mendoza, to comply with the following within five (5) days from notice, to wit:

> 1. to make the necessary formal correction in the Information against the accused, Benedicta Mallari and Chi Wei-Neng;
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> 2. to submit the recommendation for criminal prosecution of the accused or approval of the filing of Information with the Court by the Commissioner of Internal Revenue;
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> 3. to present the "Motion to Adopt allegations contained in Counter-Affidavit of Benedicta Mallari" filed by accused Chi Wei-Neng as well as the "Reply to Counter-Affidavit" and its Annexes filed by Atty. Ramon B. Lorenzo; and
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> 4. to present other additional evidence, if any.[3]

No compliance was made by the petitioner, represented by ACP Mendoza, prompting the CTA First Division to issue another Resolution giving petitioner another ten (10) days to comply with the October 7, 2009 Resolution, with a warning that failure to comply will cause the dismissal of the case for failure to obey a lawful order of the Court.[4] Finally, on November 19, 2009[5], petitioner complied with the order by submitting the required pleadings. However, the CTA First Division noted that petitioner only partially complied with the order, thus, on November 26, 2009, it issued another Resolution[6] ordering petitioner to submit the following within five (5) days from notice:

> 1. to submit the recommendation for criminal prosecution of the accused or approval of the filing of Information with the Court by the Commissioner of Internal Revenue (not the Regional Director), pursuant to Section 220 and 221 of the National Internal Revenue Code of 1997, as amended, in relation to Section 2 of Rule 9 of the Revised Rules of the Court of Tax Appeals; and

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[3] Docket, pp. 42-43.
[4] Docket, pp. 45-46.
[5] Docket, pp. 47-65.
[6] Docket, pp. 67-70.

> 2. present the "Motion to Adopt allegations contained in Counter-Affidavit of Benedicta Mallari", filed by accused Chi Wei-Neng; as well as the "Reply to Counter-Affidavit" and its Annexes filed by Atty. Ramon B. Lorenzo, x x x.[7]

Said Resolution again contained the warning that if ACP Mendoza fails to comply, the case shall be dismissed for lack of probable cause and failure to obey a lawful order of the Court.

On December 4, 2009, petitioner filed its compliance and attaching therewith the *Motion to Adopt the allegations contained in Counter-Affidavit of Benedicta Mallari* filed by Chi Wei-Neng and the *Reply to Counter-Affidavit* and its Annexes filed by Atty. Ramon B. Lorenzo. With respect to the recommendation for criminal prosecution or approval of the filing of Information by the Commissioner of Internal Revenue (not the Regional Director), petitioner referred to the copy of Revenue Delegation Authority Order No. 2-2007 dated March 1, 2007 which was previously submitted. Petitioner stated that it is apparent from its provisions that the authority of the Commissioner of Internal Revenue with regard to the institution of civil, administrative, and criminal actions/cases for, among others, the recovery of taxes or the enforcement of any fine, penalty, or forfeiture under the Tax Code may be delegated to officials of the BIR such as the Regional Director.[8]

In its Resolution[9] dated December 14, 2009, the CTA First Division dismissed C.T.A. Crim. Case No. O-151 for failure to obey a lawful order of the Court. The CTA First Division ratiocinated, as follows:

> "In the case at bar, considering that Assistant City Prosecutor Mendoza failed to submit a certified copy of the Memorandum from the Commissioner of Internal Revenue authorizing Regional Director Alfredo V. Misajon to prosecute and conduct criminal proceedings and that he was previously given a non-extendible period of five (5)

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[7] Docket, pp. 69-70.
[8] Docket, p. 71.
[9] *Rollo*, pp. 13-17, also in Docket, pp. 79-83.

> days to submit the said requirement, the Court cannot countenance the repeated failure to comply with the said order.
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> WHEREFORE, for failure to obey a lawful order of the Court, the case-in-caption is hereby DISMISSED."

Petitioner's Motion for Reconsideration was also denied through the CTA Special First Division's Resolution[10] dated March 17, 2010 for being a mere scrap of paper after having been filed out of time.

ISSUES

Petitioner raises the following issues in its petition before the CTA *En Banc*:

1. Whether or not there is probable cause to hold respondents Benedicta Mallari and Chi Wei-Neng for trial for violation of Section 255 in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC).

2. Whether or not petitioner's submission of certified true copies of Revenue Delegation Authority Order No. 02-2007 dated March 1, 2007 and the Memorandum of the Commissioner of Internal Revenue dated March 27, 2007, which authorizes specific BIR Personnel to prosecute and conduct criminal proceedings involving violations of tax laws, is compliance to the provisions of Sections 220 and 221 of the Tax Code of 1997, as amended.

3. Whether or not petitioner's Motion for Reconsideration on the Resolution of the Honorable Court of Tax Appeals – First Division dated December 14, 2009 was really filed out of time.

THE COURT'S RULING

The instant controversy hinges on the dismissal of the criminal case before the CTA First Division for failure to comply with the lawful order of the Court. Thus, the Court will discuss the second and third issues first.

Petitioner failed to submit the Commissioner's approval to file the criminal complaint in court

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[10] *Rollo*, pp. 23-27, also in Docket, pp. 114-118.

The 1997 Tax Code, as amended, provides for the requirement for the Commissioner's approval before any action civil or criminal action is filed, to wit:

> "Section 220. Form and Mode of Proceeding in Actions Arising under this Code. – Civil 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 but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner. (*Underscoring supplied*)
>
> Section 221. Remedy for Enforcement of Statutory Penal Provisions. – The remedy for enforcement of statutory penalties of all sorts shall be by criminal or civil action, as the particular situation may require, subject to the approval of the Commissioner."

The foregoing provisions should be read in conjunction with Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals, which states:

> "Section 2. Institution of criminal actions. – All criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the Tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing." (*Underscoring supplied*)

Pursuant thereto, the Commissioner of Internal Revenue issued Revenue Delegation Authority Order (RDAO) No. 02-2007 dated March 1, 2007 which provides, among others, that:

> "B. The Regional Directors are likewise authorized to approve and sign the same documents as mentioned above, with respect to civil, administrative and criminal actions/cases and other cases of whatever kind and nature, emanating from their respective Regional Offices, with the courts, government agencies or quasi-judicial bodies, pursuant to, and consistent with, the functions of their office x x x."

In a case involving similar circumstances where the Commissioner of Internal Revenue delegated its powers with respect to the institution of civil and criminal actions through Revenue Administrative Order Nos. 5-83 and 10-95, the Supreme Court ruled that:

> "As amended by R.A. No. 8424, the NIRC is now even more categorical. Sec. 7 of the present Code authorizes the BIR Commissioner to delegate the powers vested in him under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher, except the following:
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> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
> (c) The power to compromise or abate under Section 204(A) and (B) of this Code, any tax deficiency: Provided, however, that assessments issued by the Regional Offices involving basic deficiency taxes of five hundred thousand pesos (P500,000.00) or less, and minor criminal violations as may be determined by the rules and regulations to be promulgated by the Secretary of Finance, upon the recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, heads of the Legal, Assessment and Collections Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.
>
> None of the exceptions relates to the Commissioner's power to approve the filing of tax collection cases.[11]

In the case at bar, the recommendation for criminal prosecution was signed by the Regional Director Alfredo V. Misajon without the presentation of Regional Director Misajon's authority to approve and sign the same. Thus, the CTA Division ordered the petitioner to submit the Commissioner's approval to file the criminal action, among others, in its Resolution dated October 7, 2009. As found in the

[11] *Republic of the Philippines, represented by the Commissioner of the Bureau of Internal Revenue vs. Salud V. Hizon*, G. R. No. 130430, December 13, 1999.

records, petitioner failed to comply with Court's Order. However, the CTA Division gave petitioner another chance to comply when it issued its Resolution dated November 19, 2009 ordering petitioner to comply with the orders as contained in the October 7, 2009 Resolution, otherwise the case shall be dismissed for failure to comply with the lawful order of the court. Petitioner partially complied with the CTA Division's resolution by submitting, among other documents, a <u>mere photocopy</u> of RDAO No. 2-2007.

The CTA Division reiterated that petitioner should submit the recommendation for criminal prosecution of the accused or approval of the filing of Information with the Court by the Commissioner of Internal Revenue, not the Regional Director, pursuant to Section 220 and 221 of the 1997 Tax Code, as amended, in relation to Section 2 of Rule 9 of the Revised Rules of the Court of Tax Appeals.[12] The resolution again contained the warning that failure to comply will result to the dismissal of the case.

On December 4, 2009, petitioner filed its Compliance, but with respect to the submission of the Commissioner's approval, petitioner only reiterated its statement in the previous compliance and referred to its previously submitted photocopy of RDAO No. 02-2007.

In the December 14, 2009 resolution which dismissed the case, the CTA First Division even noted that in an ongoing CTA case[13], the submission of certified true copies of the RDAO and Memorandum issued by the BIR Commissioner authorizing certain BIR personnel to prosecute and conduct criminal proceedings were allowed and noted by the CTA. However, despite the repeated opportunities granted to

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[12] Resolution dated November 26, 2009, docket, p. 67-70.
[13] Resolution dated February 4, 2009 in C.T.A. Case No. O-104, *People of the Philippines vs. Robert Sia*.

petitioner to submit the certified true copies of the approval and the Memorandum in the instant case, petitioner failed to do so.[14]

Thus, We agree with the dismissal of the case for failure to obey the order of the court when petitioner failed to submit a certified copy of the Memorandum from the Commissioner of Internal Revenue authorizing Regional Director Alfredo V. Misajon to prosecute and conduct criminal proceedings despite having been given several opportunities to do so.

Petitioner's Motion for Reconsideration was filed out of time

We find no error in the CTA Special First Division's denial of petitioner's Motion for Reconsideration. As contained in the records, the BIR and the Office of the City Prosecutor received the Notice of Resolution, on December 17, 2009 and December 21, 2009 respectively.[15] Therefore, they had until January 4, 2010 and January 5, 2010 to file a motion for reconsideration. However, records also show that the petitioner's motion for reconsideration was filed only on January 18, 2010, or fourteen (14) days beyond the required period.[16] Despite the 14-day delay, petitioner failed to present an adequate explanation for such delay in their Motion for Reconsideration.

Clearly, with the motion for reconsideration filed out of time, the CTA First Division's December 14, 2009 resolution dismissing the case for failure to obey the order of the Court has become final.

In view of the foregoing, the Court no longer finds it necessary to discuss the first issue raised regarding the finding of probable cause.

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[14] *Rollo*, p. 17.
[15] Docket, p. 78.
[16] *Rollo*, p. 26.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

See attached Dissenting & Concurring Opinion

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

-versus-

BENEDICTA MALLARI and CHI WEI-NENG,
Respondents.

C.T.A. EB CRIM. NO. 009
(C.T.A. CRIM. NO. 0-151)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

MAY 2 3 2011 ADApolinario 10:00 a.m.

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DISSENTING AND CONCURRING OPINION

PALANCA-ENRIQUEZ, J.:

Dissenting

With all due respect, I disagree with the Majority in dismissing the instant Petition for Review on the ground that petitioner failed to submit the recommendation for criminal prosecution of the accused or approval of the filing of the Information with the Court by the Commissioner of Internal Revenue.

In the case of *Republic vs. Hizon, 320 SCRA 574*, the Supreme Court ruled that the trial court erred in sustaining respondent's contention that petitioner's complaint was filed without the authority of the BIR Commissioner since the complaint filed by the BIR was not signed by then Commissioner Liwayway Chato. The Supreme Court recognized Revenue Administrative Order No. 10-95, which specifically authorizes the Litigation and Prosecution Section of the Legal Division of regional district offices to institute the necessary civil and criminal actions for tax collection. Since the complaint filed in that case was signed by the BIR's Chief of Legal Division for Region 4 and verified by the Regional Director, there was, therefore, compliance with the law. The Supreme Court further ruled that *Section 7 of the NIRC of 1997, as amended*, authorizes the BIR Commissioner to delegate the powers vested in him under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher, except the following:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate under §204 (A) and (B) of this Code, any tax deficiency: Provided, however, that assessments issued by the Regional Offices involving basic deficiency taxes of five hundred thousand pesos (P500,000.00) or less, and minor criminal violations as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon the recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.

None of the above exceptions relates to the Commissioner's power to approve the filing of tax collection cases.

In the instant case, records show that Revenue Delegation Authority Order ("RDAO") No. 2-2007 dated March 1, 2007, which is a "Delegation of Authority With Regard To Institution Of Civil and Criminal Actions/Cases To Effect Recovery Of Taxes Or The Enforcement Of Any Fine, Penalty Or Forfeiture Under The Tax Code, With Regard To The Defense/s of The Bureau of Internal Revenue In

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Cases/Actions Instituted Against It, and With Regard To Other Cases" was issued by then Commissioner Jose Mario Buñag. *Paragraph B of said RDAO* provides, as follows:

> "B. The Regional Directors are likewise authorized to approve and sign the same documents as mentioned above, with respect to civil, administrative and criminal actions/cases and other cases of whatever kind and nature, emanating from their respective Regional Offices, with the courts, government agencies or quasi-judicial bodies, pursuant to, and consistent with, the functions of their office as defined under Revenue Administrative Order No. 10-2000, including those cases developed for filing under the Run After Tax Evaders (RATE) Program of the BIR within their respective regional offices, if not referred to the National Office for filing."

Considering that the Commissioner of Internal Revenue already delegated his authority as regards the institution of civil, administrative and criminal actions/cases, as well as the recovery of taxes or enforcement of any fine, penalty or forfeiture under the Tax Code, with regard to defenses of the BIR with respect to cases instituted against it, and to approve and sign and authorize the institution of criminal actions/cases, as required by Section 220 thereof, the filing of information in courts, involving violations of the provisions of the Tax Code to Regional Directors, then it is my humble opinion that said *RDAO 2-2007*

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is a sufficient proof of authority given to Regional Director Alfredo V. Misajon to file the Information in this case and to prosecute and conduct criminal case against accused Benedicta Mallari and Chi Wei-neng. Also, petitioner submitted the Memorandum dated March 27, 2007 issued by then Commissioner Jose Mario Buñag pursuant to the letter of the Chief State Prosecutor, which authorizes the Deputation of the BIR Legal Officers to prosecute criminal cases involving violations of tax laws instituted by DOJ State Prosecutors before the Court of Tax Appeals to Atty. Yolanda C. Magsumbol and Atty. Ramon B. Lorenzo, who were designated by Regional Director Alfredo Misajon to represent the BIR in the investigation, prosecution, and/or withdrawal of C.T.A. Crim. No. O-151.

Concurring

However, records show that the BIR and the Office of the City Prosecutor received the Resolution dated December 14, 2009 on December 17, 2009 and December 21, 2009, respectively. Therefore, they had until January 4, 2010 and January 5, 2010 to file a Motion For Reconsideration. However, records also show that petitioner filed the "Motion for Reconsideration" of the Resolution dated December 14, 2009, dismissing C.T.A. Crim. No. O-151 on January 18, 2010 only , 14 days beyond the prescribed period. A perusal of said "Motion for Reconsideration" and "Entry of Appearance with Leave to Admit Attached Motion for Reconsideration" shows that petitioner did not provide any sufficient explanation why it failed to file said motion within the prescribed period. Such omission of petitioner's counsel is fatal since settled is the rule that rules of procedures are not mere technicality but are essential requirements, and non-compliance therewith will oust the Court's jurisdiction over the case.

Petitioner cannot find solace in its contentions that Atty. Ramon Lorenzo was furnished a copy of the Resolution dated December 14, 2009 by Assistant City Prosecutor Gideon Mendoza on January 13, 2010 only and that the BIR of Manila was not furnished with a copy of the aforesaid resolution in justifying its late filing of the Motion for Reconsideration.

Records show that it was Assistant City Prosecutor Gideon Mendoza who signed and filed the Information with this Court. Per Court's record therefore, he is considered the Public Prosecutor on record. In fact, in the subsequent Resolutions dated October 7, 2009 and

November 10, 2009, it was Assistant City Prosecutor Gideon Mendoza who was ordered to comply with the Court's Resolutions and also the one who made compliance with said Resolutions. Hence, the Special First Division is correct in notifying Assistant City Prosecutor Gideon Mendoza and the BIR main office only and not notifying the BIR of Manila of the Resolution dated December 14, 2009 dismissing C.T.A. Crim. No. O-151 since Atty. Ramon Lorenzo of the BIR of Manila entered his appearance on January 18, 2010 only. Thus, Atty. Ramon Lorenzo is considered the Public Prosecutor on record only from the time that his entry of appearance was noted by the Court in a Resolution dated March 17, 2010.

Considering that petitioner's "Motion for Reconsideration" of the Resolution dated December 14, 2009 was filed fourteen (14) days late, the said Resolution dated December 14, 2009 dismissing the case had already become final. I, therefore, vote to dismiss the Petition for Review in C.T.A. EB Crim. No. 009 on this ground only.

OLGA PALANCA-ENRIQUEZ
Associate Justice