REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. CASE No. 010
(CTA Crim. Case No. O- 145)

-versus-

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

TESS S. VALERIANO,
Respondent.

Promulgated:
NOV 18 2011 9:00 a.m.

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DECISION

CASTAÑEDA, JR., *J.* :

Before this Court is the petition for review *en banc* filed on July 1, 2010 by petitioner People of the Philippines (petitioner, for brevity) assailing the November 23, 2009 Resolution and the June 1, 2010 Resolution promulgated by the Special First Division of the Court of Tax Appeals (CTA Special First Division[1]) in the case entitled "*People of the Philippines vs. Tess S. Valeriano (The Capital*

[1] Composed of Presiding Justice Ernesto D. Acosta, Associate Justice Lovell R. Bautista (now Chairperson of the CTA Third Division), and Associate Justice Caesar A. Casanova (now a member of the CTA Second Division).

Insurance and Surety Co., Inc., Penthouse I, Prestige Tower, Emerald Avenue, Ortigas Center, Pasig City) "docketed as CTA Criminal Case No. O-145 (I.S. No. 06B-03334).

Petitioner prays to set aside the Resolutions dated November 23, 2009 and June 1, 2010,to hold that there is probable cause to warrant the prosecution of the accused for violation of Section 255 in relation to Sections 253(d) and 256 of the National Internal Revenue Code, and other just and equitable reliefs.

The dispositive portion of the November 23, 2009 Resolution reads:

> **WHEREFORE**, premises considered, CTA Criminal Case No. O-145 entitled, *"People of the Philippines, plaintiff vs. Tess S. Valeriano, accused."* is hereby **DISMISSED** for plaintiff's failure to prosecute.
>
> **SO ORDERED.**

The dispositive portion of the June 1, 2010 Resolution provides, as follows:

> **WHEREFORE**, premises considered, plaintiff's "Motion for Reconsideration' is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

The Facts

On July 9, 2009, an Information[2] for Violation of Section 255 in relation to Section 253 (d) and Section 256 of the National Internal Revenue Code of 1997 (1997 NIRC) was filed in the Court of Tax Appeals against Tess S. Valeriano (accused), the accusatory portion of which reads:

> "That on or about May 26, 2004, and sometime subsequent thereto, in the City of Manila, Philippines, the said accused, being then the President and Authorized Officer of the Capital Insurance and Surety Co. Inc. located at Penthouse 1, Prestige Tower, Emerald Avenue, Ortigas Center, Pasig City, having filed their internal revenue tax for the year 2000, and after an examination and audit of the same, it has been found

[2] Division Docket, pp. 1-2.

out that there is due and collectible from said Capital Insurance and Surety Co. Inc., the following, to wit:

Deficiency Income Tax	P12,541,339.18
Deficiency VAT	16,296,946.70
Deficiency EWT	4,397,619.73
Deficiency DST	17,513,440.24

For the said year, under BIR Assessment Notice No. 34-2000, did then and there willfully and unlawfully fail, refuse and neglect to pay said Deficiency Income Tax, Deficiency Value-Added Tax (VAT), Deficiency Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST) and without formally protesting against or appealing the same, despite due assessment, notice and demand to do so, to the damage and prejudice of the Republic of the Philippines, in the aforesaid amount of P50,903,345.85, Philippine Currency.

Contrary to law"

The documents attached to the filed Information are, as follows:

1. Resolution[3] dated September 26, 2006 of the Assistant City Prosecutor with recommending approval of Chief of the 4th Division, 2nd Asst. City Prosecutor and approved by the City Prosecutor;

2. The letter[4] of the BIR Regional Director dated February 9, 2006 to the City Prosecutor of Manila recommending the immediate criminal prosecution of the accused as President/Authorized Officer and responsible officer of The Capital Insurance & Surety Co., Inc. (taxpayer);

3. Affidavit[5] of Atty. Gerlo C. Cacatian of the Legal Division, Revenue Region No. 6 of the BIR dated February 9, 2006;

4. Annex "A"[6], Assessment Notice No. 34-2000 dated January 14, 2004 for deficiency income Tax in year 2000;

5. Annex "B"[7], Letter of demand and details of the income tax assessment dated January 14, 2004;

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[3] *Ibid.*, p.3.
[4] *Ibid.*, pp. 4-6.
[5] *Ibid.*, pp. 7-9.
[6] *Ibid.*, p. 10.
[7] *Ibid.*, p. 11.

6. Annex "C"[8], Assessment Notice No. 34-2000 dated January 14, 2004 for deficiency VAT in year 2000;

7. Annex "D"[9], Letter of Demand No. 34-2000 dated January 14, 2004 for deficiency VAT in year 2000;

8. Annex "E"[10], Assessment Notice No. 34-2000 dated January 14, 2004 for EWT in year 2000;

9. Annex "F"[11], Letter of Demand No. 34-2000 dated January 14, 2004 for deficiency EWT in year 2000;

10. Annex "G"[12], Assessment Notice No. 34-2000 dated January 14, 2004 for DST in year 2000;

11. Annex "H"[13], Letter of Demand No. 34-2000 dated January 14, 2004 for DST in year 2000;

12. Annex "I"[14], Preliminary Collection Letter dated April 30, 2004;

13. Annex "J"[15], Final Notice before Seizure dated May 26, 2004;

14. Annex "K"[16], Letter of the accused dated June 7, 2004 addressed to the Revenue District officer of the BIR;

15. Annex "L"[17], Warrant of Distraint and/or Levy No. 003A-04;and

16. Annex "M"[18], Letter of the Insurance Commissioner dated December 16, 2004 advising the Board of Directors of the taxpayer that the company was placed under conservatorship.

On August 4, 2009, CTA Special First Division ordered Asst. City Prosecutor Suwerte L. Orfrecio-Gonzales to submit proof that the filing of criminal case against the accused is with the written approval of the

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[8] *Ibid.*, p. 12.
[9] *Ibid.*, pp. 13-14.
[10] *Ibid.*, p. 15.
[11] *Ibid.*, pp. 16-17.
[12] *Ibid.*, p. 18.
[13] *Ibid.*, p. 19.
[14] *Ibid.*, p. 20.
[15] *Ibid.*, p. 21.
[16] *Ibid.*, p. 22.
[17] *Ibid.*, p. 23.
[18] *Ibid.*, p. 24.

Commissioner of Internal Revenue (not by the Regional Director) pursuant to Sec. 220 of the 1997 NIRC, as amended. [19]

In a Resolution[20] dated September 28, 2009, the CTA Special First Division ordered Asst. City Prosecutor Suwerte L. Orfrecio-Gonzales to comply with the August 4, 2009 Resolution, within a final and non-extendible period of five (5) days from receipt of the Resolution.

On November 23, 2009, for failure of the Asst. City Prosecutor to comply with the September 28, 2009 Resolution, CTA Criminal Case No. O-145 entitled, *"People of the Philippines, plaintiff vs.Tess S. Valeriano, accused."* was dismissed for failure to prosecute.[21]

On January 29, 2010, an "Entry of Appearance with Leave to Admit Manifestation and Motion for Reconsideration" was filed by the Special Prosecutor for the Commissioner of Internal Revenue. Attached to the said motion for reconsideration was the verification and certification of the Regional Director of the BIR.

On February 9, 2010, an Order was promulgated requiring the accused to Comment on the "Motion with Leave to Admit Manifestation and Motion for Reconsideration" of the petitioner.

On June 1, 2010, the CTA Special First Division denied petitioner's Motion for Reconsideration for lack of merit.

On June 15, 2010, petitioner filed a Motion for Extension of Time to File Petition for Review which this Court *en banc* granted. *Jc*

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[19] *Ibid.*, p. 27.
[20] *Ibid.*, pp. 29-30.
[21] *Ibid.*, pp.32-33.

On July 1, 2010, petitioner filed the Petition for Review.

On August 9, 2010, this Court ordered accused (respondent) to file Comment. However, no Comment was filed by respondent.

On October 14, 2010, this Court gave due course to the petition and ordered the parties to file Memoranda.

On November 8, 2010, petitioner filed the Memorandum. Per records verification dated December 15, 2010, respondent failed to file the Memorandum.

On January 19, 2011, this Court submitted the case for decision.

Hence, this decision.

Issues

Petitioner alleges the following grounds:

I. THE HONORABLE COURT OF TAX APPEALS-FIRST DIVISION ERRED IN RENDERING THE RESOLUTION PROMULGATED ON NOVEMBER 23, 2009 DISMISSING THE CASE FOR ALLEGED PLAINTIFF'S FAILURE TO PROSECUTE.

II. THE HONORABLE COURT OF TAX APPEALS-FIRST DIVISION ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION.

This Court's Ruling

The petition for review is denied.

Once a complaint or information is filed in Court, any disposition of the case as its dismissal or the conviction or acquittal rests in the sound discretion of the Court.[22] Every court has the power to enforce and compel obedience to its orders, judgments, and processes in all proceedings pending before it.[23]

In this case, petitioner failed to comply with the orders of the court in the Resolutions dated August 4, 2009 and September 28, 2009 within the required period. We quote pertinent portion of the assailed Resolution dated June 1, 2010, as follows:

> It is be noted that from the date the Office of the City Prosecutor received the August 4, 2009 Resolution (which was August 12, 2009) up to the date they received the September 28, 2009 Resolution (which was October 1, 2009) and, adding the non-extendible five (5) day period or up to October 6, 2009, plaintiff failed to comply with the Court's directive to submit the written approval of the Commissioner of Internal Revenue for fifty five (55) days. Even after the Court promulgated the assailed November 23, 2009 Resolution, the prosecution still failed and continues to fail to comply with the Court's directive. This only shows the lack of interest on the part of the plaintiff to prosecute the case against accused-TESS S. VALERIANO.

Clearly, the CTA Special First Division did not abuse its discretion in dismissing the case for failure to prosecute.

Petitioner alleges that the CTA First Division did not officially furnish BIR, Revenue Region 6, Manila copies of its Resolutions dated August 4, 2009 and September 28, 2009 despite the fact that the BIR-Manila initiated the criminal complaint against the respondent. Petitioner also alleges that BIR-Manila has duly furnished the handling prosecutor, Pros. Suwerte L. Ofrecio-Gonzales, with the approval of the Commissioner of Internal Revenue (CIR) to file criminal complaint against the respondent and that a copy of which was duly attached to petitioner's Motion for Reconsideration. Petitioner argues that the failure of the

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[22] *Flores vs. Gonzalez*, G.R. No. 188197, August 3, 2010, 626 SCRA 661, 671 citing *Crespo vs. Mogul*, L-53373, June 30, 1987, 235 Phil. 465, 476.
[23] *Vicoy vs. People*, G.R. No. 138203, July 3, 2002, 383 SCRA 707, 710 citing the Rules of Court, Rule 135, Section 5.

handling prosecutor to respond to the Order of the CTA First Division due to heavy workloads or failure to timely receive the same was not the fault of the BIR. In addition, petitioner alleges that had BIR-Manila timely received said resolutions, it could have timely submitted the required proof of approval of the CIR to prosecute the respondent considering that, as early as July 28, 2006, the CIR has approved the filing of criminal complaint against respondent. With regard to the order of the Court dismissing the complaint, petitioner argues, among others, that BIR did not manifest lack of interest to prosecute the case but failure to comply was due to circumstances beyond the control of the BIR.

The allegations of petitioner are bereft of merit. After a careful review of the records, it was noted that the alleged approval[24] of the Commissioner of Internal Revenue was merely a photocopy and was hardly readable. Still, there was no compliance with the Resolutions dated August 4, 2009 and September 28, 2009 even at the time the lawyer of the BIR deputized as special prosecutor took over the case when the Motion for Reconsideration was filed.

Based on the foregoing discussions, We find no reversible error to disturb the assailed resolutions of the CTA Special First Division.

WHEREFORE, premises considered, the petition for review is hereby **DENIED**. Accordingly, the assailed Resolutions dated November 23, 2009 and June 1, 2010 are hereby **AFFIRMED with MODIFICATION that the DISMISSAL is without prejudice.**

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[24] *Ibid.*, pp.43-44; Rollo, pp. 32-33.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Official Business)
AMELIA R. COTANGCO-MANALASTAS
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