REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BUREAU OF INTERNAL REVENUE represented by COMMISSIONER CAESAR R. DULAY, Petitioner,	**CTA CASE NO. 10101**
	Members:
-versus-	DEL ROSARIO, P.J., Chairperson, FABON-VICTORINO, and MANAHAN, JJ.
HON. MENARDO I. GUEVARRA in his capacity as SECRETARY OF JUSTICE and MYRA EVANGELISTA SANTIAGO, Respondents.	Promulgated: JUL 09 2020 3:36pm

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DECISION

DEL ROSARIO, P.J.:

Before the Court is the Petition for Certiorari[1] under Rule 65 of the Rules of Court filed by the Bureau of Internal Revenue (BIR or petitioner) on July 1, 2019 against the Secretary of Justice (public respondent) and Myra Evangelista Santiago (private respondent). It prays that the Resolution dated March 28, 2019 issued by authority of the Secretary of Justice (which affirmed the January 29, 2016 Resolution of the Department of Justice Task Force on BIR Cases) be reversed and that public respondent be directed to file an Information indicting private respondent for violation of Sections 254, 255, and 275 in relation to 236 (G) of the National Internal Revenue Code (NIRC) of 1997, as amended.

The dispositive portion of the assailed Resolution dated March 28, 2019 states:

[1] Docket, pp. 8-229.

> **"WHEREFORE, the Motion for Reconsideration is DENIED and the Resolution dated 29 January 2016 issued by the DOJ Task Force on BIR Cases is AFFIRMED.**
>
> **SO ORDERED."** [2]

On the other hand, the dispositive portion of the Resolution dated January 29, 2016[3] states:

> "**WHEREFORE**, it is respectfully recommended that the instant resolution be **APPROVED** and the complaint filed against respondent Myra Evangelista Santiago be **DISMISSED** for lack of probable cause."

THE PARTIES

Petitioner is the government agency mandated to administer and enforce tax laws, rules and regulations. It is represented by the incumbent Commissioner of Internal Revenue, Hon. Caesar R. Dulay.

Public respondent, Hon. Menardo I. Guevarra, is the incumbent Secretary of Justice. He heads the Department of Justice (DOJ), the government's prosecution arm. By his authority, the assailed Resolution was issued.

Private respondent, Myra Evangelista Santiago, was doing business under the name and style Buildcraft Fabrication at the time of the alleged commission of the offenses.[4]

THE FACTS

On February 17, 2014, petitioner, through then Commissioner Kim S. Jacinto-Henares, issued to private respondent Letter of Authority (LOA) No. LOA-211-2014-00000058,[5] authorizing the examination of her books of accounts, and other accounting records for all internal revenue taxes including documentary stamp taxes for the period from January 1, 2009 to December 31, 2012.[6]

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[2] Issued by Undersecretary Adrian Ferdinand S. Sugay; Docket, pp. 46-47.
[3] Issued by Assistant State Prosecutor Karla Torres Cabel with recommending approval of Senior Assistant State Prosecutor and DOJ Task Force on BIR Cases – Chairperson Susan F. Dacanay and approved by Prosecutor General Claro A. Arellano, Docket, pp. 90-95.
[4] Paragraph 5, Memorandum (For the Bureau of Internal Revenue), Docket, p. 346.
[5] Docket, p. 111.
[6] Paragraph 2, Memorandum (For the Bureau of Internal Revenue), Docket, p. 319.

In the course and conduct of petitioner's investigation, access letters were issued to: *(i)* Monolith Construction & Development Corporation (Monolith), requesting for a certification as to, among others, the income payments made by it to private respondent doing business under the name Buildcraft Fabrication;[7] *(ii)* BIR Revenue District Office (RDO) No. 26, requesting for certified true copies of tax returns that were filed by private respondent;[8] and (iii) Information Systems Development and Operations Service (ISDOS) of the BIR, requesting for information on whether private respondent had filed Annual Income Tax Returns (ITRs) and Value-Added Tax (VAT)/Percentage Tax Returns for taxable years (TYs) 2009 to 2011.[9]

In reply to petitioner's access letter, Monolith provided petitioner with a Certification[10] detailing the payments it made to private respondent and/or Buildcraft Fabrication for TYs 2009 to 2011, summarized as follows:[11]

TAXABLE YEAR	GROSS AMOUNT OF INCOME PAYMENT
2009	Php 6,035,960.00
2010	Php 12,063,912.08
2011	Php 8,536,258.17

On January 9, 2014, the ISDOS issued a Certification[12] stating that per information extracted from the BIR database, private respondent was only able to file ITR, percentage tax return and VAT return for TY 2011.[13]

On March 4, 2014, RDO No. 26 furnished petitioner with certified true copies of private respondent's tax returns for TYs 2009 and 2010

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[7] Docket, p. 112; Paragraph 3, Memorandum (For the Bureau of Internal Revenue), Docket, p. 319.
[8] Docket, p. 116; Paragraph 5, Memorandum (For the Bureau of Internal Revenue), Docket, p. 320.
[9] Docket, p. 117; Paragraph 6, Memorandum (For the Bureau of Internal Revenue), Docket, 320.
[10] Docket, pp. 113-115.
[11] Paragraph 4, Memorandum (For the Bureau of Internal Revenue), Docket, pp. 319-320.
[12] Docket, p. 118.
[13] Paragraph 7, Memorandum (For the Bureau of Internal Revenue), Docket, p. 320.

and issued a Certification[14] stating that it has no record of any tax returns filed by private respondent with their office for TY 2011.[15]

After evaluation and comparison of documents, petitioner found that private respondent allegedly deliberately failed to declare her true tax base, thus, failed to supply correct and accurate information by substantially underdeclaring her true income in her annual income tax returns for TYs 2009 and 2010, as follows: [16]

TAXABLE YEAR	TOTAL PAYMENTS RECEIVED	GROSS INCOME PER RETURNS	UNDERDECLARED/UNDECLARED GROSS INCOME	% OF UNDERDECLARATION
2009	Php 6,035,960.00	Php 826,442.50	Php 5,209,517.00	630.35%
2010	12,063,192.08	1,815,570.05	10,248,342.03	564.47%
2011	8,536,258.17	--	8,536,258.17	100%

In the Letter dated April 24, 2014,[17] then CIR Henares referred to the DOJ for preliminary investigation and the filing of appropriate action, the Joint Complaint-Affidavit of Revenue Officer (RO) Nilda T. Se, RO Marites P. Arias and RO Josephine D. Madera,[18] recommending the criminal prosecution of private respondent for the following offenses:

1. Willful Attempt to Evade or Defeat Tax for TYs 2009, 2010 and 2011;

2. Willful Failure to Supply Correct and Accurate Information in her Income Tax Returns (ITRs) for TYs 2009 and 2010

3. Failure to File her ITR for TY 2011;

4. Failure to Register as VAT taxpayer for TYs 2009 and 2011; and,

5. Failure to File Quarterly VAT Returns for TYs 2009 to 2011.

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[14] Docket p. 155.
[15] Paragraph 8, Memorandum (For the Bureau of Internal Revenue), Docket, p. 320.
[16] Paragraph 9, Memorandum (For the Bureau of Internal Revenue), Docket, pp. 320-321.
[17] Docket, pp. 100-102.
[18] Docket, pp. 103-159.

The Joint Complaint-Affidavit was assigned NPS Docket No. XVI-INV-14D-00134.

Private respondent filed her Counter Affidavit[19] with the DOJ on June 13, 2014. Petitioner also filed a Joint Reply-Affidavit[20] on June 20, 2014 and in reply thereto private respondent filed a Rejoinder Affidavit[21] on July 4, 2014. Thereafter, the case was submitted for resolution.[22]

In the **Resolution dated January 29, 2016**,[23] the Joint Complaint-Affidavit was dismissed by the DOJ Task Force on BIR Cases. Petitioner sought the reconsideration of the dismissal of the complaint but the same was denied in the **Resolution dated October 11, 2016**.[24]

On January 11, 2017, petitioner filed a Petition for Review[25] with the Office of the Secretary of Justice praying that the Resolutions dated January 29, 2016 and October 11, 2016 be set aside and reconsidered, and a new one be entered indicting private respondent for violations of the NIRC of 1997, as amended.

In the **July 4, 2017 Resolution**,[26] the Petition for Review was dismissed for being filed beyond the reglementary period pursuant to the 2000 NPS Rule on Appeal. Petitioner moved[27] for the reconsideration of the Resolution dated July 4, 2017 but it was denied in the **Resolution dated March 28, 2019**.[28]

Unfazed, petitioner filed the present Petition for Certiorari on July 1, 2019. As aforestated, petitioner prays therein that public respondent's **March 28, 2019 Resolution**, affirming the **January 29, 2016 Resolution** which dismissed the complaint against private respondent, be reversed and set aside.

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[19] Docket, pp. 160-188.
[20] Docket, pp. 189-202.
[21] Docket, pp. 203-215.
[22] Paragraph 11, Petition for Certiorari, Docket, p. 20.
[23] Docket, pp. 90- 96.
[24] Docket, pp. 97-98.
[25] Docket, pp. 71-89.
[26] Docket, pp. 63-65.
[27] Motion for Reconsideration (on the Resolution of the Office of the Secretary dated July 4, 2017, Docket, pp. 49-62.
[28] Resolution dated March 28, 2019, Docket, pp. 46-48.

On September 13, 2019, private respondent posted her Answer [Re: Petition for Certiorari dated 28 June 2019),[29] which the Court treated as her comment on the Petition for Certiorari per its Order dated November 14, 2019.[30]

On January 31, 2020, the case was submitted for decision of the Court considering the Memorandum (For the Bureau of Internal Revenue)[31] and private respondent's Memorandum, both filed on December 16, 2019.

THE ISSUES

Petitioner submits the following issues, for consideration of the Court.:

"I

THE HONORABLE COURT OF TAX APPEALS HAVE JURISDICTION TO LOOK INTO WHETHER THE DEPARTMENT OF JUSTICE COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE PROSECUTOR'S RESOLUTION ON APPEAL

II

THE SECRETARY OF JUSTICE COMMITTED GRAVE ABUSE OF DISCRETION BY WAY OF DISMISSING THE CRIMINAL COMPLAINT FOR VIOLATION OF SECTIONS 254, 255 AND 275 IN RELATION TO SECTION 236 (G) OF THE NIRC OF 1997 AGAINST PRIVATE RESPONDENT FOR LACK OF PROBABLE CAUSE

III

THERE IS NO PLAIN, SPEEDY AND ADEQUATE REMEDY AS CONTEMPLATED UNDER RULE 65 OF THE 1997 RULES OF COURT AVAILABLE TO PETITIONER"[32]

Private respondent, on the other hand, proffers the following issues:

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[29] Docket, pp. 268-288.
[30] Docket, pp. 312-313.
[31] Docket, pp. 318-343.
[32] Petition for Certiorari, Docket, p. 22.

A.

WHETHER OR THE NOT THE INSTANT PETITION FOR CERTIORARI SHOULD BE GIVEN DUE COURSE.

B.

WHETHER OR NOT THE HONORABLE SECRETARY OF JUSTICE COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ISSUED THE RESOLUTIONS DATED 4 JULY 2017 AND MARCH 28, 2019.[33]

THE PARTIES' ARGUMENTS

Petitioner's arguments

Petitioner submits that the Court of Tax Appeals (CTA) has jurisdiction to look into whether public respondent committed grave abuse of discretion in dismissing the criminal complaint against private respondent by affirming the prosecutor's resolution on appeal. It believes that it has presented sufficient evidence to clearly establish that private respondent committed tax fraud. It contends, among others, that:

1. While the determination of probable cause is an executive function, it is settled that courts, in a proper case, may reverse the Secretary of Justice's findings and conclusion on the matter of probable cause in case of grave abuse of discretion;

2. In *Filadams Pharma, Inc. vs. Honorable Court of Appeals and Antonio Feria*,[34] the Supreme Court even went further and considered errors, to be covered by exceptions where the courts may interfere in the conduct of preliminary investigation;

3. In *Bureau of Internal Revenue vs. Hon. Leila M. De Lima, in her capacity as Secretary of Justice and George Erwin M. Garcia*,[35] the CTA ruled that it has jurisdiction over the Petition for Certiorari assailing the resolution of the Secretary of Justice;

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[33] Docket, p. 354.
[34] G.R. No. 132422, March 30, 2004.
[35] CTA Case No. 9171, March 29, 2017.

4. Petitioner's resort to a petition for certiorari is proper as there is no plain, speedy and adequate remedy as contemplated under Rule 65 of the Rules of Court available to him;

5. By dismissing its appeal outright, public respondent failed to resolve the main issues of the case: whether there exists probable cause to engender a well-founded belief that private respondent attempted to evade the payment of taxes and whether she failed to file and to supply correct and accurate information in her tax return;

6. Public respondent's ruling that there is no evidence on record other than mere 'presumption' that shows that private respondent employed fraud or any scheme to evade payment of any taxes is contrary to its preliminary investigation pursuant to Revenue Memorandum Order No. 27-2010 which established a *prima facie* evidence of fraud or tax evasion;

7. Prior assessment is not a condition *sine qua non* for the filing of criminal complaint for tax evasion;

8. The factual determination of the DOJ should be threshed out during trial instead of during the preliminary investigation;

9. The period to assess private respondent's tax liabilities for TYs 2009, 2010 and 2011 has not yet prescribed, as it falls under the exception provided in Section 222 (a) of the NIRC of 1997, as amended, pertaining to false or fraudulent return, in view of private respondent's substantial underdeclaration;

10. Private respondent's lack of knowledge to register as a VAT-registered entity is evidentiary in nature; and,

11. There is criminal liability for failure to register as VAT-registered entity.

Private respondent's arguments

Private respondent argues that public respondent did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when he issued the Resolutions dated July 4, 2017 and March 8, 2019. She explains that:

1. Petitioner should not expect that the DOJ will simply accept the results of the BIR investigation as the DOJ, being an independent body, has the obligation to conduct its own investigation on the matter;

2. The Resolution dated July 4, 2017, dismissing petitioner's Petition for Review, was based on petitioner's failure to file the said Petition for Review within the reglementary period. Its failure to exercise its privilege to file an appeal within the reglementary period should not prejudice her in this case. Interestingly, this July 4, 2017 Resolution is not among the resolutions specified by petitioner as subject of his Petition for Certiorari before this Court;

3. Petitioner should have included the basis for the dismissal of the Petition for Review by the DOJ that fraud or any scheme to evade tax payments was not supported by evidence and not only the findings of public respondent in his Resolution dated March 28, 2019;

4. The results of third-party verification are self-serving and should not be the basis of any legal or factual conclusion;

5. She did not commit any act that would make her criminally liable for any possible crime;

6. Her right to due process was violated when she was not informed of the results of the investigation conducted pursuant to the LOA dated February 17, 2014; and,

7. The right of petitioner to question the ITRs for TYs 2009, 2010 and 2011 and Percentage Tax Return for TY 2011 has prescribed.

Private respondent also posits that the Petition for Certiorari is dismissible for being procedurally defective since petitioner failed to state the material dates as required under Section 3, Rule 46[36] of the

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[36] Rule 46, Section 3. *Contents and filing of petition*; *effect of noncompliance with requirements*. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of denial thereof was received.

Rules of Court and to attach the certified true copies of all relevant pleadings and documents mandated by Paragraph 2, Section 1, Rule 65[37] of the Rules of Court.

THE COURT'S RULING

While the Court has certiorari jurisdiction over resolutions of the DOJ on preliminary investigation involving tax offenses, the present Petition for Certiorari must nonetheless fail for being utterly without merit.

Certiorari as a remedy to challenge determination of probable cause by the DOJ allegedly tainted with grave abuse of discretion as would amount to lack of jurisdiction

It is trite that *certiorari* will issue only to correct errors of jurisdiction and that no error or mistake committed by a tribunal, court or officer will be corrected by certiorari unless said tribunal, court or officer acted without jurisdiction or in excess thereof or with such grave abuse of discretion as would amount to lack of jurisdiction.[38] An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, and which error is correctible only by the extraordinary writ of certiorari.[39]

The determination of probable cause to file a criminal complaint or information in court is exclusively within the competence of the Executive Department, through the Secretary of Justice.[40] The determination by the DOJ of the existence of probable cause is not a

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The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

[37] Rule 65, Section 1. xxx

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

[38] *National Home Mortgage Finance Corporation vs. Florita C. Tarobal*, G.R. No. 206345, January 23, 2017.

[39] *Willian T. Toh vs. Hon. Court of Appeals and Decon Construction*, G.R. No. 140274, November 15, 2000.

[40] *Marie Callo-Claridad vs. Philip Ronald P. Esteban and Teodora Alyn Esteban*, G.R. No. 191567, March 20, 2013.

quasi-judicial proceeding. However, the actions of the Secretary of Justice in affirming or reversing the findings of prosecutors may still be subject to judicial review if it is tainted with grave abuse of discretion.[41]

Thus, petitioner's filing of the present Petition for Certiorari under Rule 65 of the Rules of Court is an appropriate remedy to question the assailed Resolution of public respondent, provided that grave abuse of discretion purportedly committed by the latter is properly established.

Jurisdiction of the CTA over petitions for *certiorari*

In *Bureau of Customs vs. The Honorable Agnes VST Devanadera, Acting Secretary, et al.*,[42] the Supreme Court has settled that the CTA has original jurisdiction over a petition for *certiorari* assailing a DOJ resolution in a preliminary investigation involving tax and tariff offenses. Said the Supreme Court:

> "*Apropos* is *City of Manila v. Hon. Grecia-Cuerdo* where the Court en banc declared that the CTA has appellate jurisdiction over a special civil action for *certiorari* assailing an interlocutory order issued by the RTC in a local tax case, despite the fact that there is no categorical statement to that effect under R.A. No. 1125, as well as the amendatory R.A. No. 9282. Thus:
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>> x x x Section 5 (1), Article VIII of the 1987 Constitution grants power to the Supreme Court, in the exercise of its original jurisdiction, to issue writs of *certiorari*, prohibition and *mandamus*. With respect to the Court of Appeals, Section 9 (1) of Batas Pambansa Blg. 129 (BP 129) gives the appellate court, also in the exercise of its original jurisdiction, the power to issue, among others, a writ of *certiorari*, whether or not in aid of its appellate jurisdiction. As to Regional Trial Courts, the power to issue a writ of *certiorari*, in the exercise of their original jurisdiction, is provided under Section 21 of BP 129.
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>> The foregoing notwithstanding, while there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or**

[41] *Secretary Leila De Lima, et al. vs. Mario Joel T. Reyes*, G.R. No. 209330, January 11, 2016.
[42] G.R. No. 193253, September 8, 2015.

not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* in these cases.

Indeed, **in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari.* In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.**

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Furthermore, Section 6, Rule 135 of the present Rules of Court provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer.

If this Court were to sustain petitioners' contention that jurisdiction over their *certiorari* petition lies with the CA, this Court would be confirming the exercise by two judicial bodies, the CA and the CTA, of jurisdiction over basically the same subject matter - precisely the split-jurisdiction situation which is anathema to the orderly administration of justice. The Court cannot accept that such was the legislative motive, especially considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power. Thus, **the Court agrees with the ruling of the CA that since appellate jurisdiction over private respondents' complaint for tax refund is vested in the CTA, it follows that a petition for *certiorari* seeking nullification of an interlocutory order issued in the said case should, likewise, be filed with the same court. To rule otherwise would lead to an absurd situation where one court decides an appeal in the main case while another court rules on an incident in the very same case.**

Stated differently, it would be somewhat incongruent with the pronounced judicial abhorrence to split jurisdiction to conclude that the intention of the law is to divide the authority over a local tax case filed with the RTC by giving to the CA or this Court jurisdiction to issue a writ of *certiorari* against interlocutory orders of the RTC but giving to the CTA the jurisdiction over the appeal from the decision of the trial court in the same case. It is more in consonance with logic and legal soundness to conclude that the grant of appellate jurisdiction to the CTA over tax cases filed in and decided by the RTC carries with it the power to issue a writ of *certiorari* when necessary in aid of such appellate jurisdiction. The supervisory power or jurisdiction of the CTA to issue a writ of *certiorari* in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC, in order to have complete supervision over the acts of the latter.

A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

> Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.
>
> Based on the foregoing disquisitions, it can be reasonably concluded that the authority of the CTA to take cognizance of petitions for *certiorari* questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction.

Since the Court ruled in *City of Manila v. Hon. Grecia-Cuerdo*[31] that the CTA has jurisdiction over a special civil action for *certiorari* questioning an interlocutory order of the RTC in a local tax case via express constitutional mandate and for being inherent in the exercise of its appellate jurisdiction, <u>it can also be reasonably concluded based on the same premise that the CTA has original jurisdiction over a petition for *certiorari* assailing the DOJ resolution in a preliminary investigation involving tax and tariff offenses.</u>

If the Court were to rule that jurisdiction over a petition for *certiorari* assailing such DOJ resolution lies with the CA, it would be confirming the exercise by two judicial bodies, the CA and the CTA, of jurisdiction over basically the same subject matter - precisely the split-jurisdiction situation which is anathema to the orderly administration of justice. The Court cannot accept that such was the legislative intent, especially considering that R.A. No. 9282 expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power.

Concededly, there is no clear statement under R.A. No. 1125, the amendatory R.A. No. 9282, let alone in the Constitution, that the CTA has original jurisdiction over a petition for *certiorari*. By virtue of Section 1, Article VIII of the 1987 Constitution, vesting judicial power in the Supreme Court and such lower courts as may be established by law, to determine whether or not there has been a grave abuse of

> discretion on the part of any branch or instrumentality of the Government, in relation to Section 5(5), Article VIII thereof, vesting upon it the power to promulgate rules concerning practice and procedure in all courts, the Court thus declares that **the CA's original jurisdiction over a petition for *certiorari* assailing the DOJ resolution in a preliminary investigation involving tax and tariff offenses was necessarily transferred to the CTA pursuant to Section 7 of R.A. No. 9282, and that such petition shall be governed by Rule 65 of the Rules of Court, as amended.** Accordingly, it is the CTA, not the CA, which has jurisdiction over the petition for *certiorari* assailing the DOJ resolution of dismissal of the BOC's complaint-affidavit against private respondents for violation of the TCCP." *(Citations omitted; boldfacing and underscoring supplied)*

It is unmistakable, on the basis of the foregoing doctrine, that the CTA has jurisdiction over the present Petition for Certiorari assailing public respondent's Resolution which affirmed the dismissal by the DOJ Task Force on BIR Cases of the Joint-Complaint Affidavit filed against private respondent.

Timeliness of the Petition

The Court shall now proceed to determine the timeliness of the filing of the present Petition for Certiorari.

Section 4, Rule 65 of the Rules of Court, pertinently state in part:

> "SEC. 4. When and where to file Petition.- The petition shall be filed **not later than sixty (60) days from notice of the** judgment, order or **resolution**. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. xxx" *(Boldfacing supplied)*

Petitioner allegedly received the assailed Resolution dated March 28, 2019 on April 30, 2019. Pursuant to the afore-quoted Rule, it had until July 1, 2019[43] within which to file its Petition for Certiorari.

With the filing of the present Petition for Certiorari on July 1, 2019, the Court finds that it was made within the reglementary period provided under Section 4, Rule 65 of the Rules of Court.

[43] June 29, 2019 was a Saturday.

The Petition for Certiorari is procedurally infirm

As pointed out by private respondent, the present Petition for Certiorari failed to state the material dates and not all copies of pleadings and documents relevant or pertinent thereto as required by Section 3, Rule 46 of the Rules of Court and Paragraph 2, Section 1, Rule 65 of the Rules of Court are attached.

Under Section 3, Rule 46 of the Rules of Court, a petition for certiorari filed under Rule 65 shall indicate the **material dates** showing **when notice of the judgment or final order or resolution subject thereof was received**, **when a motion for new trial or reconsideration, if any, was filed and when notice of denial thereof was received.**

While the present Petition for Certiorari indicated petitioner's receipt of the Resolution dated March 28, 2019 which denied its motion for reconsideration of the Resolution dated July 4, 2017,[44] **the Petition for Certiorari failed to contain as an attachment a copy of petitioner's alleged Motion for Extension of Time dated December 23, 2016, allegedly filed on December 27, 2016,**[45] which is **material (in fact, most critical) in determining the timeliness of the filing of its Petition for Review with public respondent as well as the propriety of its subsequent dismissal**.

The requirement in Section 1 of Rule 65 of the Rules of Court to attach relevant pleadings and documents to the petition is read in relation to Section 3, Rule 46, which states that failure to comply with any of the documentary requirements, such as the attachment of relevant pleadings and documents, shall be sufficient ground for the dismissal of the petition.[46]

Section 1, Rule 65 of the Rules of Court, provides:

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[44] The July 4, 2017 Resolution of public respondent dismissed the Petition for Review filed by petitioner which assails the dismissal by the DOJ Task Force on BIR Cases of the Joint Complain-Affidavit of ROs Se, Arias and Madera.
[45] Paragraph 3, Petition for Review, Docket, p. 72.
[46] *Radio Philippines Network, Inc. et al. vs. Ruth F. Yap, et al.*, G.R. No. 187713, August 1, 2012, citing *Phil. Agila Satellite, Inc. v. Usec. Trinidad-Lichauco*, 522 Phil. 565, 582 (2006).

"RULE 65

***Certiorari*, Prohibition and Mandamus**

Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The **petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and <u>documents relevant and pertinent thereto</u>**, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46." *(Boldfacing and underscoring supplied)*

Sections 2 and 3, Rule 46 of the Rules of Court, state that:

"RULE 46

Original Cases

"Section 2. *To what actions applicable.* — This Rule shall apply to original actions for ***certiorari,*** prohibition, mandamus and *quo warranto*.

Except as otherwise provided, the actions for annulment of judgment shall be governed by Rule 47, for *certiorari*, prohibition and mandamus by Rule 65, and for *quo warranto* by Rule 66.

Section 3. *Contents and filing of petition; effect of noncompliance with requirements.* — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, **and shall be accompanied by a clearly legible duplicate original or**

> **certified true copy of the judgment, order, resolution, or ruling subject thereof, <u>such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto</u>**. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.
>
> The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.
>
> The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.
>
> **The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition**." *(Boldfacing supplied)*

The afore-quoted provisions are plain and unequivocal. Failure to comply with the requirement that the petition be accompanied by, among others, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto is sufficient ground for the dismissal of said petition.

In the present case, there can be no denying that petitioner's alleged Motion for Extension of Time dated December 23, 2016 is of utmost relevance. Truly, petitioner's failure to attach a copy thereof is an omission and infirmity that cannot simply be ignored as it justifies the outright dismissal of the Petition for Certiorari.

Absence of grave abuse of discretion on the part of public respondent

Grave abuse of discretion has been defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law."[47]

There is grave abuse of discretion when an act is (1) done contrary to the Constitution, the law or jurisprudence, or (2) executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.[48]

In ascertaining whether public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in his determination of the existence of probable cause, the party seeking the writ of certiorari must be able to establish that public respondent exercised his executive power in an arbitrary and despotic manner, by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law.[49]

In *Metropolitan Bank & Trust Co. (Metrobank), represented by Rosella A. Santiago vs. Antonino O. Tobias, III*,[50] the Supreme Court explained that unless grave abuse of discretion is clearly demonstrated, the intervention of the court is disallowed in deference to the doctrine of separation of powers:

> "Under the doctrine of separation of powers, the courts have no right to directly decide matters over which full discretionary authority has been delegated to the Executive Branch of the Government, or to substitute their own judgments for that of the Executive Branch, represented in this case by the Department of Justice. **The settled policy is that the courts will not interfere with the executive determination of probable cause for the purpose of filing an information, in the absence of grave abuse of discretion.** That abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. xxx" *(Boldfacing supplied)*

While public respondent has the authority and discretion to review the actions of his subordinate, he is nonetheless guided by the

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[47] *Marvin Cruz and Francisco Cruz, in his capacity as Bondsman, vs. People of the Philippines*, G.R. No. 224974, July 3, 2017.
[48] *Commissioner of Internal Revenue, vs. Court of Tax Appeals, Third Division and Wintelecom, Inc.*, G.R. No. 203403, November 14, 2018.
[49] *Supra note 41.*
[50] G.R. No. 177780, January 25, 2012.

pertinent provisions of DOJ Department Circular No. 70 dated July 3, 2000, otherwise known as the 2000 NPS Rule on Appeal, in issuing the assailed Resolution.

Sections 3, 6 and 12 of the 2000 NPS Rule on Appeal, provide:

> "SEC. 3. *Period to appeal.* - The appeal shall be taken within fifteen (15) days from receipt of the resolution, or of the denial of the motion for reconsideration/reinvestigation if one has been filed **within fifteen (15) days from receipt of the assailed resolution.** Only one motion for reconsideration shall be allowed."
>
> xxx xxx xxx
>
> "SEC. 6. *Effect of failure to comply with requirements.* The failure of the petitioner to comply with any of the foregoing requirements shall constitute **sufficient ground for the dismissal of the petition.**"
>
> xxx xxx xxx
>
> "SEC. 12. Disposition of the appeal. The Secretary may reverse, affirm or modify the appealed resolution. **He may, motu proprio or upon motion, dismiss the petition for review on any of the following grounds:**
>
> (a) **That the petition was filed beyond the period prescribed in Section 3 hereof**;
>
> (b) That the procedure or any of the requirements herein provided has not been complied with;
>
> (c) That there is no showing of any reversible error;
>
> (d)That the appealed resolution is interlocutory in nature, except when it suspends the proceedings based on the alleged existence of a prejudicial question;
>
> (e) That the accused had already been arraigned when the appeal was taken;
>
> (f) That the offense has already prescribed; and
>
> (g) That other legal or factual grounds exist to warrant a dismissal." *(Boldfacing supplied)*

In the case at bar, petitioner received the Resolution dated October 11, 2016 denying its Motion for Reconsideration of the Resolution dated January 29, 2016 dismissing the Joint Complaint-Affidavit for lack of probable cause on December 9, 2016. Pursuant to Section 3 of the 2000 NPS Rule on Appeal, petitioner had until

December 27, 2016,[51] to file a petition for review with the Secretary of Justice. Petitioner was only able to file his appeal on January 11, 2017 or fifteen (15) days beyond the period prescribed.

In view of petitioner's late filing of its appeal, public respondent judiciously dismissed it in accordance with Section 12 of the 2000 NPS Rule on Appeal. Said public respondent:

> "A perusal of the petition shows that complainant-appellant filed the petition beyond the reglementary period. It appears that complainant-appellant received a copy of the assailed resolution on 9 December 2016, thus, counting fifteen (15) days therefrom, the last day for filing the same was on 24 December 206. Complainant-appellant filed the instant petition only on 11 January 2017, clearly, beyond the reglementary period. **The motion for extension of time is untenable as the period of fifteen (15) days to file the petition is inextendible.**"[52] *(Boldfacing supplied)*

It is worth emphasizing that an appeal is neither a natural nor a constitutional right, but is merely statutory. The implication of its statutory character is that the party who intends to appeal must always comply with the procedures and rules governing appeals; or else, the right of appeal may be lost or squandered. Neither is the right to appeal a component of due process. It is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law.[53]

Anent petitioner's Motion for Extension of Time dated December 23, 2016, allegedly filed on December 27, 2016, asking for an additional period of 15 days or until January 11, 2017 within which to file its Petition for Review,[54] it appears that the same is proscribed as the period to file an appeal is non-extendible, as public respondent opined. More importantly, at the time the motion for extension was filed, there was no more time to extend as the period to file a petition for review has already expired on December 24, 2016. Besides, even assuming that the motion may be allowed, the additional fifteen (15) days prayed for should have been reckoned on December 24, 2016 the last day for filing of the appeal and not December 27, 2016, the next working day from the last day of filing the appeal.

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[51] December 24 to 26, 2016 were holidays; December 27, 2016 was the next working day.
[52] Page 2 of July 4, 2017 Resolution, Docket, p. 64.
[53] *Duty Free Philippines vs. Bureau of Internal Revenue et. al*, G.R. No. 197228, October 8, 2014.
[54] Paragraph 3, Petition for Review, Docket, p. 72.

There is more. Perusal of the records shows that petitioner's Motion for Reconsideration (on the Resolution of the Office of the Secretary dated July 4, 2017)[55] was likewise belatedly filed. Section 13 of the 2000 NPS Rule on Appeal[56] provides that the aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal. Petitioner totally ignored the rules and assumed that it had fifteen (15) days from receipt of the Resolution, to seek its reconsideration. Allegedly, it received the Resolution dated July 4, 2017 on July 17, 2017.[57] Yet, pursuant to the Rule, it only had until July 27, 2017 within which to seek its reconsideration but its Motion for Reconsideration was filed only on July 31, 2017 or four (4) days late.

Under the foregoing circumstances, no grave abuse of discretion can be attributed to public respondent in dismissing petitioner's appeal as his actions are consistent with the DOJ's pertinent rules.

Truth to tell, the Secretary of Justice would be committing a serious dereliction of duty if he orders or sanctions the filing of an information based upon a complaint where he is not convinced that the evidence warrants the filing of the action in court.[58]

In fine, the dismissal of petitioner's Petition for Review by public respondent which effectively sustained the State Prosecutor's finding that there is no probable cause to indict private respondent for violations of the NIRC of 1997, as amended, is in accordance with the 2000 NPS Rule on Appeal. Consequently, such finding by public respondent deserves respect by this Court there being absence of clear showing that he acted with grave abuse of discretion.

WHEREFORE, premises considered, the Petition for Certiorari filed on July 1, 2019 is hereby **DENIED** for lack of merit.

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[55] Docket, pp. 49-56.

[56] SECTION 13. Motion for reconsideration. The aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal, furnishing the adverse party and the Prosecution Office concerned with copies thereof and submitting proof of such service. No second or further motion for reconsideration shall be entertained.

[57] Paragraphs 2 and 3, Motion for Reconsideration (on the Resolution of the Office of the Secretary dated July 4, 2017), p. 49.

[58] *Gilbert G. Guy vs. Asia United Bank*, G.R. No. 174874, October 4, 2007.

OM

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice