**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SPECIAL THIRD DIVISION

**PEOPLE OF THE PHILIPPINES,**
Plaintiff,

- versus -

**REYNALDO Y. DIA and FRITZ and MACZIOL ASIA, INC.,** (Units 3, 4 & 5, 22nd Zuellig Bldg., Paseo De Roxas cor. Makati Ave., Makati City), (At-Large)
Accused.

**CTA CRIM. CASE NO. O-1003**
For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended

Members:

**RINGPIS-LIBAN,** *Chairperson,*
**MODESTO-SAN PEDRO,** *and*
**FERRER-FLORES,** *JJ.*

Promulgated:

OCT 23 2023
2:02 p.m.

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# RESOLUTION

Before this Court is prosecution's **Motion for Reconsideration (Re: Resolution dated 18 July 2023)** filed *via accredited courier*[1] on September 6, 2023 and received by the Court on September 7, 2023.

To recall, despite several opportunities given by the Court to the prosecution to submit the original or certified true copies of the supporting documents attached in the Information,[2] the latter failed to do so. Thus, the Court dismissed the Information of the instant case without prejudice on May 4, 2023.[3]

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[1] *See* Office of the Court Administrator Circular No. 54-2023 in relation to Sec. 3 of Rule 13 of the Rules of Court, as amended.
[2] Resolutions dated January 25, 2023 and March 16, 2023, Docket, pp. 102 to 104 and 113 to 115, respectively.
[3] Resolution dated May 4, 2023, Docket, pp. 118 to 119.

On June 7, 2023, the prosecution filed a **Manifestation** with an attached **Amended Information**.

In the Resolution dated July 18, 2023, this Court held that a party may file a motion for reconsideration against a dismissal without prejudice before the lapse of the fifteen-day reglementary period. The Court has likewise cited the ruling in the case of *Bañares II vs. Balising,*[4] stating that after the order of dismissal of a case without prejudice has become final, a party who wishes to reinstate the case has no other remedy but to file a new Complaint/Information.

In determining whether the Court can still consider the prosecution's *Manifestation* and the *Amended Information* following the dismissal of the Information without prejudice, the Court resolved to consider the same as a positive act of seeking reconsideration on the dismissal of the case.

Thereafter, the Court proceeded with the determination of probable cause for the issuance of Warrant of Arrest against the accused. In the course of its examination of the record, the Court found that some of the attached annexes of the Complaint-Affidavit[5] were mere photocopies despite the prosecution having been given several opportunities to submit their original or certified true copies. Hence, the Court found that the supporting documents on record were insufficient to establish probable cause.

In its motion, the prosecution argues that there is sufficient ground to issue a warrant of arrest as the evidence presented shows a *prima facie* case against the accused. The prosecution also submits that photocopies are admissible in evidence under the 2019 Amendments to the Revised Rules on Evidence and that the dismissal of a case for failure to attach or provide documents of annexes is reparable.

The motion must be denied for lack of merit.

As observed by the Court in its Resolution dated July 18, 2023, the prosecution received the Court's Resolution dated May 4, 2023 dismissing the instant case without prejudice on May 23, 2023. Counting fifteen (15) days therefrom, the prosecution had until June 7, 2023 within which to file a *motion for reconsideration.*

Instead, the prosecution filed a *Manifestation* with the *Amended Information* on June 7, 2023.

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[4] G.R. No. 132624, March 13, 2000.

[5] Annex A (pages 1 and 3 to 8) and the Tax Returns attached in Annex D.

Nevertheless, the Court gave the prosecution an opportunity to make its case by treating the said *Manifestation* with the *Amended Information* as an act seeking reconsideration of the dismissal of the case. Still, the prosecution was unable to convince the Court that the evidence proffered is sufficient to establish a probable cause.

Indeed, what the law requires as personal determination on the part of the judge is that he should not rely solely on the report of the investigating prosecutor.[6] The judge should consider not only the report of the investigating prosecutor but also the affidavit and the documentary evidence of the parties, the counter-affidavit of the accused and his witnesses, as well as the transcript of stenographic notes taken during the preliminary investigation, if any, submitted to the court by the investigating prosecutor upon the filing of the Information.[7]

Further, Section 7, Rule 15 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

> "SECTION 7. *No second motion for reconsideration or for new trial.* – **No party shall be allowed to file a second motion for reconsideration** or for new trial **of a decision, final resolution or order.**" *(Emphases added.)*

The Court has already extended leniency with the prosecution and allowed its *Manifestation* to stand for its motion for reconsideration; as such, it can no longer entertain the instant motion.

Since the dismissal is without prejudice, the prosecution still has the available remedy of re-filing the Amended Information with complete and correct supporting documents on which the determination of probable cause will be based.

**WHEREFORE**, premises considered, the prosecution's **Motion for Reconsideration (Re: Resolution dated 18 July 2023)** is **DENIED** for lack of merit. Accordingly, the Resolution dated July 18, 2023 dismissing the Amended Information against accused, without prejudice to the re-filing of the same, is hereby **AFFIRMED.**

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

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[6] *AAA vs. Carbonell*, G.R. No. 171465, June 8, 2007.
[7] *Id.*, citing *Okabe vs. Gutierrez*, G.R. No. 150185, May 27, 2004.

**ON LEAVE**

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice