REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Petitioner,

-versus-

ZIEGFRIED LOO TIAN,
(No. 1013 Juan Luna Street, Barangay 7, Zone 1, Tondo, Manila)
-AT LARGE-
Respondent.

CTA CRIM CASE NO. O-943
(NPS Docket No. XVI-INV-12G-00346)

For: Violation of Section 255, paragraph 1 of the National Internal Revenue Code of 1997, as amended

Members:

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

Promulgated:

FEB 05 2024
9:40 a.m.

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RESOLUTION

For resolution is petitioner's *Motion for Reconsideration (of the Resolution dated August 04, 2023)* filed on October 10, 2023 by registered mail.

To recall the antecedents to this motion, the Court previously dismissed the case on the ground of prescription in its February 1, 2023 *Resolution*.[1] A copy of the Resolution was received by the Department of Justice (DOJ) on February 15, 2023.[2]

On March 6, 2023, a *Records Verification Report* was issued, which stated that no *Motion for Reconsideration* or appeal to the Court of Tax Appeals (CTA) *En Banc* or Supreme Court on the *Resolution* dated February 1, 2023 was filed by the prosecution despite notice.[3]

Accordingly, on March 30, 2023, the Court issued a Resolution, which stated that the February 1, 2023 *Resolution* had become final and executory and, thus, ordered the issuance of an *Entry of Judgment*.[4]

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[1] Docket, pp. 213-220.
[2] *Notice of Resolution* dated February 8, 2023, *Id.*, p. 212.
[3] *Id.*, p. 221.
[4] *Id.*, p. 223.

An *Entry of Judgment* was issued. Copies of the same were received by the BIR National Office Prosecution Division (BIR-Prosecution) on May 3, 2023 and the DOJ on May 23, 2023.[5]

However, on July 10, 2023, the BIR-Prosecution filed a verified *Petition for Relief from Judgment*. In the petition and the attached affidavit, the BIR-Prosecution alleged that:

- It came to know of the February 1, 2023 *Resolution*, which dismissed the case, only on May 3, 2023, when it received a copy of the *Entry of Judgment*.[6]

- In addition, upon securing a copy of the *Notice of Resolution* dated February 1, 2023, the BIR-Prosecution noticed that the same was addressed only to the DOJ.[7] Accordingly, it submitted that the lack of service was a *violation of due process*. This "gross negligence" allegedly prevented it "from filing a Motion for Reconsideration or taking an appeal to the damage and prejudice of the Government of the Republic of the Philippines."[8]

- The BIR-Prosecution prayed for the reconsideration of the February 1, 2023 *Resolution* stating that prescription had not yet set in[9] and there was a *prima facie* case against the accused.[10]

On August 4, 2023, the Court *dismissed* the petition because under Rule 38 of the Rules of Court it was filed *out of time*. Furthermore, the Court ruled that there was *no* denial of due process when, under Rule 13 Section 15 of the Rules of Court, there was clearly *proper service* to the Department of Justice (DOJ) of the February 1, 2023 *Resolution*. Finally, the Court noted that the DOJ also failed to notify and coordinate with the Bureau of Internal Revenue National Office Prosecution Division (BIR-Prosecution) and failed to avail of the remedy of appeal when it did *not* move for reconsideration of the resolution.[11]

Petitioner, represented by BIR-Prosecution, moves for reconsideration of the August 4, 2023 Resolution stating that service to the DOJ of the February 1, 2023 *Resolution* was *not* a valid service to the BIR-Prosecution. It cites Rule 9 Section 3 of the Revised Rules of the Court of Tax Appeals (RRCTA), which allows the deputized legal officers of the BIR to conduct prosecution of criminal actions involving violations of the National Internal Revenue Code (NIRC). However, the BIR-Prosecution once again fails to mention that by virtue of the July 5, 2012 letter, the Commissioner of Internal Revenue (CIR) Kim S. Jacinto-

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[5] *Id.*, pp. 224-225.
[6] Paragraph 2, *Petition for Relief from Judgment, Id.*, p. 226-227.
[7] Paragraph 9, *Affidavit of Merit*, Annex C of *Petition for Relief from Judgment, Id.*, p. 249.
[8] Paragraph 10, *Id., Id.*
[9] Paragraphs 10-31, *Id., Id.*, pp. 249-254.
[10] Paragraph 31, *Id., Id.*, p. 254.
[11] August 4, 2023 *Resolution*, Docket, pp. 265-271.

Henares endorsed the Joint Complaint Affidavit of the BIR revenue officers to the DOJ "for preliminary investigation and (for) filing of an information if evidence so warrants".[12] This acknowledged that the DOJ, which serves as the government's prosecution arm,[13] has direct control and supervision over the prosecution of all criminal actions.[14] Consistently, this is also provided in Rule 9 Section 3 of the RRCTA:

"RULE 9
PROCEDURE IN CRIMINAL CASES

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"SECTION 3. *Prosecution of Criminal Actions.* — All criminal actions shall be conducted and prosecuted under the direction and control of the public prosecutor. In criminal actions involving violation of the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, and violations of the Tariff and Customs Code or other laws enforced by the Bureau of Customs, the prosecution may be conducted by their respective duly deputized legal officers. (Rules of Court, Rule 110, sec. 5, par. 6a)" (*Underscoring supplied*)

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[12] Docket, pp. 21-22.
[13] Executive Order No. 292, Administrative Code of 1987, Book IV, Title III, Chapter I, Sections 1 and 2, state:

SECTION 1. *Declaration of Policy.*— It is the declared policy of the State to provide the government with a principal law agency which shall be both its legal counsel and prosecution arm; administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and administration of the correctional system; implement the laws on the admission and stay of aliens, citizenship, land titling system, and settlement of land problems involving small landowners and members of indigenous cultural minorities; and provide free legal services to indigent members of the society.

SECTION 2. *Mandate.* — The Department shall carry out the policy declared in the preceding section.

[14] Rule 110, Section 5 of the Rules of Court, states:

"Section 5 *Who must prosecute criminal action.* - All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn. xxx"

Rule 9, Section 3 of the Revised Rules of the Court of Tax Appeals, states:

"SECTION 3. *Prosecution of Criminal Actions.* — All criminal actions shall be conducted and prosecuted under the direction and control of the public prosecutor. In criminal actions involving violation of the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, and violations of the Tariff and Customs Code or other laws enforced by the Bureau of Customs, the prosecution may be conducted by their respective duly deputized legal officers. (Rules of Court, Rule 110, sec. 5, par. 6a)" (*Underscoring supplied*)

Even assuming for the sake of argument that the DOJ indeed delegated the prosecution of the case by deputizing the BIR-Prosecution, the BIR-Prosecution is unable to explain why it did not promptly inform the Court of this delegation *after* the DOJ filed the information on October 26, 2022. As noted in the August 4, 2023 *Resolution*, from the time the information was filed, the BIR-Prosecution did not enter its appearance as counsel of record. *After almost a year*, it was only on July 3, 2023 when it filed the *Petition for Relief from Judgment* that it conveniently informed that Court that it was the duly deputized prosecutor and that the service of February 1, 2023 Resolution to the DOJ was defective and resulted in the violation of due process.[15]

Clearly, by the time the prosecution filed the *Petition for Relief from Judgment* it was already *time-barred.*[16]

In *Lasam v. Philippine National Bank*,[17] the Supreme Court dismissed the Rule 65 petition of Lasam and found that since strict compliance with the relevant periods was *not* observed, the Regional Trial Court correctly *dismissed* Lasam's petition for relief from judgement. It emphasized the *strict application* of the reglementary periods in Rule 38 of the Rules of Court, thus:

> "A petition for relief from judgment, order, or other proceedings is an equitable remedy which is allowed only in exceptional circumstances. The petition is the proper remedy of a party seeking to set aside a judgment rendered against him by a court whenever he was unjustly deprived of a hearing, was prevented from taking an appeal, or a judgment or final order entered because of fraud, accident, mistake or excusable negligence.
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> However, as an equitable remedy, strict compliance with the applicable reglementary periods for its filing must be satisfactorily shown because a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order, or proceeding must, at some definite time, attain finality in order to put an end to litigation. As such, it is incumbent upon the petitioner to show that the petition was filed within its reglementary periods, otherwise, the petition may be dismissed outright." (*Citations omitted and underscoring supplied*)

Equally significant is that the February 1, 2023 *Resolution*, which dismissed the case due to prescription, already attained finality on March 9, 2023, since the prosecution opted *not* to ask for reconsideration of the same.[18] By then the Court had already *lost* jurisdiction over the case.

Since no appeal was taken by the prosecution in due time from the resolution of the Court, the same attained finality by mere lapse of time. It is of

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[15] Paragraphs 9-10, *Affidavit of Merit*, Annex C of *Petition for Relief from Judgment, Id.*, p. 249.
[16] *See discussion* in the August 4, 2023 *Resolution*, Docket, pp. 266-268.
[17] *G.R. No. 207433, December 5, 2018.*
[18] *Entry of Judgment*, Docket, p. 225.

no moment that this matter has been brought to the Court's attention by way of motion, for when the questioned February 1, 2023 Resolution became final and executory, *the Court lost jurisdiction to alter said final resolution.*[19]

WHEREFORE, premises considered, the *Motion for Reconsideration (of the Resolution dated August 04, 2023)* is **DISMISSED.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

[19] *Pinlac v. Court of Appeals*, G.R. No. 91486, November 20, 2001 Resolution.