22-000158-0009

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10833

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

REGIONAL TRIAL COURT, BRANCH 167 PASIG CITY and JEANE CATHERINE LIM NAPOLES,
Respondents.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134, Amorsolo Street, Legazpi Village
Makati City

DE LA PAZ CASTILLO ILAS HERRERA & CO.
Unit H, 7th Floor, Westgate Tower Condominium
1709 Investment Drive, Madrigal Business Park
Barangay Ayala Alabang, Muntinlupa City

SENIOR ASST. CITY PROSECUTOR JEROME T. VICTOR
Office of the City Prosecutor
Pasig City Hall of Justice
Caruncho Avenue, Brgy. San Nicholas
Pasig City, 1600

ATTY. CATHERINE ROSE R. TORTOLES
Bureau of Internal Revenue
Room 704, Prosecution Division, BIR National Office Building
BIR Road, Diliman, Quezon City

HON. ANNIELYN MEDES-CABELIS
Presiding Judge
National Capital Judicial Region
Regional Trial Court
Branch 167, Pasig City

GREETINGS:

You are hereby notified by these presents that on **June 16, 2023,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 20, 2023.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

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PEOPLE OF THE PHILIPPINES,
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-*versus*-

REGIONAL TRIAL COURT, BRANCH 167 PASIG CITY AND JEANE CATHERINE LIM NAPOLES,
Respondents.

CTA Case No. 10833

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
JUN 16 2023; 8:30AM

x- x

D E C I S I O N

MANAHAN, *J.:*

This resolves petitioner's *Petition for Certiorari*[1] dated March 25, 2022 which was filed on April 8, 2022 against respondents Regional Trial Court (RTC)-Branch 167, Pasig City and Jeane (*sic*) Catherine Lim Napoles (Napoles), praying that the instant petition be given due course and that judgment be rendered to: (a) reverse and set aside the *Resolutions* dated January 20, 2022 and February 14, 2022 (Assailed Resolutions) of the RTC-Branch 167, Pasig City in Criminal Case No. 156543 entitled "*People of the Philippines v. Jean Catherine Napoles Y Lim*"; and (b) reinstate the criminal case against respondent Napoles and continue the trial.[2]

THE PARTIES

Petitioner Bureau of Internal Revenue (BIR) is the government agency mandated to collect national internal revenue taxes for nation building. It represents the State/People in instituting the instant petition. Petitioner is likewise tasked to administer and enforce tax laws of the

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[1] Docket, CTA Case No. 10833, pp. 5-36.
[2] *Id.* at pp. 33-34.

State. Its Office address is located at the Prosecution Division, Room 704, 7th Floor, Bureau of Internal Revenue, National Office Building, BIR Road, Diliman Quezon City.[3]

Respondent RTC-Branch 167, Pasig City is the Court which rendered the Assailed Resolutions while respondent Napoles is a duly registered taxpayer with Tax Identification Number (TIN) 267-151-949-000, Filipino, of legal age, and may be served with notices and processes through counsel at Unit H, 7th Flr., Westgate tower Condominium 1709 Investment Drive, Madrigal Business Park, Barangay Ayala Alabang, Muntinlupa City, Metro Manila.[4]

THE FACTS

On March 17, 2015, respondent Napoles was charged in an Information of violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, or her failure to file an Income Tax Return (ITR) and pay income tax in the amount of Php426,866.67, exclusive of surcharge and interest, arising from her alleged acquisition of 1/9th portion of two (2) farm lots located in Bayambang, Pangasinan valued at Php1,493,333.33 during the year 2012.[5]

On May 13, 2015, accused Napoles was arraigned and pleaded not guilty on the offense charged.[6]

After the presentation of prosecutor's witnesses, accused Napoles filed a Demurrer to Evidence which respondent RTC-Branch 167, Pasig City granted under Resolution dated January 20, 2022, the dispositive portion of which, reads as follows:

> "**WHEREFORE**, premises considered, the *Demurrer to Evidence* is GRANTED for being meritorious. Accordingly, this criminal case is DISMISSED for insufficiency of evidence pursuant to Sec. 23, Rule 119 of the Rules on Criminal Procedure.
>
> The Cashier of the Office of the Clerk of Court of this court is DIRECTED to release to the accused the: 1) cash bond paid by the accused under O.R. No. 3201527 dated 1

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[3] Docket, Petition for Certiorari, p. 7.
[4] *Id.* at p. 8.
[5] RTC Docket, Crim. Case No. 156543-PSG, Information, pp. 1-2.
[6] *Id.*, Certificate of Arraignment, p. 190. am

> April 2015 amounting to ₱50,000.00 and 2) travel bond paid by the accused under O.R. No. 4875493 dated 28 March 2017 amounting to ₱50,000.00, subject to accounting and auditing rules.
>
> **SO ORDERED.**"

Aggrieved by said Resolution, the prosecution filed a motion for reconsideration which was denied anew by the respondent court under Resolution dated February 14, 2022, the dispositive portion of which reads as follow:

> **WHEREFORE**, the prosecution's Motion for Reconsidertion (*sic*) is DENIED for not being meritorious.
>
> **SO ORDERED.**"

After the prosecution's receipt of its copy of the Assailed Resolution dated February 14, 2022 on even date via electronic mail, it filed the instant Petition for Certiorari on April 8, 2022, seeking the reinstatement of the criminal case and continuation of the trial against respondent Napoles.

On April 20, 2022, Associate Justice Lanee S. Cui-David inhibited from participating in the proceeding of the instant case.[7] Hence, the case was reassigned to this Court in Division.

On May 16, 2020, respondent Napoles was directed[8] to file her comment[9] on the instant petition which she posted on June 3, 2022 and received by this Court on June 14, 2022. Thus, on June 29, 2022, the instant petition was submitted for decision.

ISSUES

The issue to be resolved in the instant case is:

> Whether or not the Honorable Presiding Judge of RTC-Branch 167, Pasig City committed grave abuse of discretion amounting to lack or excess of

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[7] Docket, CTA Case No. 10833, Order dated April 20, 2022, pp. 283-284.
[8] *Id.*, Resolution dated May 16, 2022, p. 286.
[9] *Id.*, Comment (To Petitioner's Petition for Certiorari dated 25 March 2022), pp. 288-296.

jurisdiction when she granted respondent's Demurrer to Evidence.

Petitioner's Arguments[10]

Petitioner insists that it can file the instant petition since this Court has jurisdiction to hear the case.

Petitioner argues that there is no plain, speedy and adequate remedy as contemplated under Rule 65 of the 1997 Rules of Court available to it, and that respondent RTC-Branch 167, Pasig City committed grave abuse of discretion when it granted private respondent Napoles' Demurrer to Evidence and resolving that its evidence is not sufficient to sustain a conviction.

Respondents' Arguments[11]

Respondent Napoles counter-argues that respondent RTC-Branch 167, Pasig City correctly held that the Information did not allege and the prosecutor did not prove that respondent Napoles is a resident or non-resident citizen and that there was no proof that the latter respondent had earned any income in the year 2012. Respondent Napoles further argues that respondent RTC-Branch 167, Pasig City had carefully scrutinized the evidence presented by the petitioner.

RULING OF THE COURT

The Court shall determine first the Court's jurisdiction on the case at hand and the validity of the filing of the instant petition for certiorari.

Petitioner has no legal personality to file the instant appeal.

The issue of whether this Court has jurisdiction over petitions for *certiorari* has already been settled by the Supreme Court. In *The Philippine American Life and General Insurance*

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[10] *Supra*, Note 1.
[11] Docket, *Comment (To Petitioner's Petition for Certiorari dated 25 March 2022)* posted on June 3, 2022, pp. 288-296.

Company vs. The Secretary of Finance, et al.,[12] the High Court said:

> "In the recent case of *City of Manila v. Grecia-Cuerdo*, the Court en banc has ruled that **the CTA now has the power of certiorari in cases within its appellate jurisdiction.** To elucidate:
>
>> The prevailing doctrine is that the authority to issue writs of certiorari involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law and cannot be implied from the mere existence of appellate jurisdiction. Thus, x x x this Court has ruled against the jurisdiction of courts or tribunals over petitions for certiorari on the ground that there is no law which expressly gives these tribunals such power. It must be observed, however, that x x x these rulings pertain not to regular courts but to tribunals exercising quasi-judicial powers. With respect to the Sandiganbayan, Republic Act No. 8429 now provides that the special criminal court has exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction.
>>
>> In the same manner, 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 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.
>>
>> 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

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[12] G.R. No. 210987, November 24, 2014. *am*

> the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or 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 a partial, not total.**" (*Emphasis and underscoring added*)

Subsequently, in *Banco De Oro, et al. vs. Republic of the Philippines, et al.*,[13] the Supreme Court likewise held:

> "Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of **quasi-judicial agencies** (**Commissioner of Internal Revenue**, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.
>
> In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. **Petitions for writs of certiorari against the acts and omissions of the said**

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[13] G.R. No. 198756, August 16, 2016.

quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals." *(Emphases added)*

However, the Court finds that the appeal was undertaken by the BIR without the intervention of the Office of the Solicitor General (OSG). Petitioner merely cited the Memorandum of Agreement (MOA)[14] between petitioner BIR and the OSG as the former's authority in filing the instant appeal.

Paragraph B(2)(b)[15] of the MOA provides:

> "B. HANDLING CASES
>
> xxx xxx xxx
>
> 2. Cases appealed before the Regional Trial Courts, Court of Appeals and the Court of Tax Appeals *En Banc*:
>
> xxx xxx xxx
>
> b. The BIR shall periodically submit a list of handling lawyers to the OSG for purposes of deputation."

In *Mamerto Austria v. AAA and BBB*,[16] the Supreme Court ruled that it is only the OSG that can file an appeal to reinstate the proceedings or trial of a criminal case, to wit:

> "In any criminal case or proceeding, only the OSG may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State before the Supreme Court (SC) and the CA. This is explicitly provided under Section 35(1), Chapter 12, Title III, Book III of the 1987 Administrative Code of the Philippines, thus:
>
> > Section 35. *Power and Functions.* — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the service of a

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[14] Docket, Petition for Certiorari, Annex "O", pp. 276-280.
[15] *Id.* at p. 277.
[16] G.R. No. 205275, June 28, 2022.

> lawyer. It shall have the following specific power and functions:
>
> (1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Emphasis supplied)

The rationale behind this rule is that in a criminal case, the state is the party affected by the dismissal of the criminal action and not the private complainant. The interest of the private offended party is restricted only to the civil liability of the accused. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that <u>when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal on the criminal aspect may be undertaken only by the State through the OSG</u>. The private offended party may not take such appeal, but may only do so as to the civil aspect of the case. Differently stated, the private offended party may file an appeal without the intervention of the OSG, but only insofar as the civil liability of the accused is concerned. Also, the private complainant may file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his or her interest in the civil aspect of the case. <u>Hence, the Court dismissed for lack of legal standing or personality the appeals or petitions for certiorari filed by the private offended parties before the SC and CA, without the consent or conformity of the OSG, questioning the dismissal of the criminal case or acquittal of the accused</u>.

In *Jimenez v. Sorongon*, the trial court granted the accused's motion for judicial determination of probable cause and dismissed the criminal case for syndicated and large-scale illegal recruitment. The private complainant filed a notice of appeal but the RTC expunged it from the records absent conformity of the OSG. Aggrieved, the private complainant elevated the case to the CA through a petition for certiorari. However, the CA dismissed the petition outright due to the private complainant's lack of personality to represent the People of the Philippines. The Court affirmed the CA's findings considering that the private complainant's main argument is about the existence of probable cause, viz.:

The People is the real party in interest in a criminal case and <u>only the OSG can represent the People in criminal proceedings pending in the CA or in [the] Court</u>. This ruling has been repeatedly stressed in several cases and continues to be the controlling doctrine." (*Underscoring ours*)

In *JCLV Realty & Development Corporation v. Phil Galicia Mangali*,[17] the interest of any entity other than the OSG is limited only to the civil aspect of the criminal case, to wit:

> "As a qualification, however, this Court recognizes that the private offended party has an interest in the civil aspect of the case. Logically, **the capability of the private complainant to question the dismissal of the criminal proceedings is limited only to questions relating to the civil aspect of the case, It should ideally be along this thin framework that we may entertain questions regarding the dismissals of criminal cases instituted by private offended parties**. Enlarging this scope may result in wanton disregard of the OSG's personality, as well as the clogging of our dockets, which this Court is keen to avoid.
>
> **Therefore, the litmus test in ascertaining the personality of herein petitioner lies in whether or not the substance of the certiorari action it instituted in the CA referred to the civil aspect of the case**.
>
> xxx xxx xxx
>
> In *Yokohama Tire Philippines, Inc. v. Reyes*, the petitioner filed a special civil action for certiorari before the RTC seeking to annul the MTC's decision acquitting the respondents. In that case, the petitioner has no authority in filing the petition because if assails the admissibility of evidence which only the State may question, viz.:
>
>> xxx [T]he Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the Solicitor General. <u>As a rule, only the Solicitor General may represent the People of the Philippines on appeal</u>. The private offended party or complainant may not undertake such appeal."
>
> (*Underscoring ours*)

In the case at hand, petitioner, as represented by the BIR, intends to reinstate the criminal case against respondent Napoles and the continuation of the trial of said case. The factual antecedents of the case reveal that the instant petition is already an appeal on the dismissal of the criminal case.

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[17] G.R. No. 236618. August 27, 2020.

Applying the abovementioned cases, this Court, although having a special jurisdiction, is in the same level as the Court of Appeals, hence, it must be the OSG that should have filed the petition. The BIR's interest is limited only to the civil aspect of the case. Thus, the BIR has no legal personality to file the petition precluding this Court from acquiring jurisdiction on the instant case.

In the recent case of *People of the Philippines v. Court of Tax Appeals-Third Division, L.M. Camus Engineering Corporation, and Lino D. Mendoza,*[18] the Supreme Court citing Republic Act No. 10071, otherwise known as the Prosecution Service Act of 2010, ruled that an endorsement from the Department of Justice through the Prosecutor General for the deputization of BIR legal officers is required for OSG's favorable action in order for the BIR to prosecute the case on appeal, to wit:

> "There is no gainsaying that the BIR is the primary agency tasked to administer and enforce the NIRC, which necessarily includes the penal provisions therein, such as Sections 254 and 255. There is also no quibble that Section 220 of the NIRC explicitly provides that "[c]ivil 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**..." Hence, the BIR undoubtedly has a clear interest in the prosecution of violations of the Tax Code.
>
> However, this authority should be tempered by other laws that find equal application, such as the provisions of Republic Act No. 10071, or the Prosecution Service Act of 2010, which provides that the National Prosecution Service under the DOJ "shall be **primarily responsible** for the preliminary investigation **and prosecution of all cases involving violations of penal laws**..." Undoubtedly, the prosecution of criminal tax cases necessitates coordination between the two bodies. This is evident in the issuances that the BIR has passed on the prosecution of tax evasion cases, such as the Run After Tax Evaders (RATE) Program which recognized that the prosecution of criminal cases must be done in coordination with the DOJ.
>
> In actual fact, in this particular instance, the OSG also cites the absence of a favorable endorsement from the DOJ as a ground to deny the BIR's request for representation. It noted that "the endorsement for criminal cases intending to

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[18] G.R. Nos. 251270 and 251291-301, September 05, 2022.

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> be assailed through Petition for Certiorari under Rules 65 of the 1997 Revised Rules on Civil Procedure before the Supreme Court should be issued by the Department of Justice (DOJ) Head Office in Padre Faura, City of Manila, aptly signed by the Honorable Prosecutor General."
>
> A perspicacious review of the Petition and its attachments confirm that no such endorsement or delegation of authority from the DOJ can be found to pursue the instant case. The attached Office Orders from the Office of the Prosecutor General only further confirm the BIR's lack of authority to institute the present case as they visibly limit the deputization of the BIR to prosecute tax criminal cases to those "in the first and second level courts and the Court of Tax Appeals", with no mention of cases instituted before this Court.
>
> <u>On this ground alone, the Petition may already be dismissed</u>.
>
> However, even assuming that this Court turns a blind eye to such procedural *faux pas* and the Petition is not summarily dismissed, as it actually did in *La Suerte Cigar & Cigarette Factory*, the Petition is still doomed to fail." (*Underscoring ours*)

Further, in the cited MOA between BIR and OSG, particularly Paragraph B(2)(b) relative to the appealed cases before this Court, the BIR is required to submit the name of its lawyer who will be deputized by the OSG, hence, there should be a written deputation from OSG.

In the Petition for Review, there are no written deputation from OSG and copy of the endorsement from the DOJ submitted by the BIR to prove its legal personality to file the instant appeal.

In the abovementioned case, the Supreme Court ruled that Appellate Courts may summarily dismiss the case in the absence of such favorable endorsement from DOJ and written deputation from OSG.

Considering that petitioner has no legal personality which precludes this Court from acquiring jurisdiction on the instant case, this Court will no longer discuss the other arguments raised in the instant petition.

WHEREFORE, premises considered, petitioner's *Petition for Certiorari* is hereby **DISMISSED** for lack of personality to file the special civil action.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice