Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA Crim. Case No. 0-299** **For:** Violation of Section 255, paragraph 1, of the National Internal Revenue Code, as amended.
-versus-	**Members:** **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **COTANGCO-MANALASTAS**, *JJ.*
GERARDO C. TEVES, Accused.	**Promulgated:** FEB 0 2 2016 10:55 a.m.

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RESOLUTION

CASANOVA, J.:

For resolution of this Court are the following:

1. Prosecution's Motion for Reconsideration, filed on December 1, 2015, with accused's Comment/Opposition to Motion for Reconsideration, filed on January 4, 2016; and

2. Accused's Manifestation and Request to Enter the Decision into the Book of Judgment, filed on December 9, 2015, with prosecution's Comment/Opposition (on Accused's Manifestation and Request to Enter the Decision into the Book of Judgment), filed on January 11, 2016; and, accused's Motion for Leave of Court to Admit Reply, filed on January 25, 2016.

In its Motion for Reconsideration, the prosecution prays for this Court to reconsider its Decision (Assailed Decision) promulgated on November 16, 2015 and to render a judgment finding accused Gerardo C. Teves guilty as charged of the offense stated in the Information.

The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE,** in view of the foregoing, the criminal case against accused Gerardo C. Teves for violation of paragraph 1, Section 255 of the 1997 National Internal Revenue Code, as amended, is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

We shall first resolve Accused's Motion for Leave of Court to Admit Reply.

Finding the aforesaid Motion meritorious, the Court hereby **GRANTS** accused's Motion for Leave of Court to Admit Reply and **ADMITS** his Reply (to Plaintiff's Comment/Opposition).

We now proceed to the merits of accused's Manifestation and Request to Enter the Decision into the Book of Judgment.

For accused, the instant Motion for Reconsideration filed by the prosecution is a mere scrap of paper as the same did not contain a notice of hearing pursuant to Rule 15 of the 1997 Rules of Civil Procedure. Thus, such Motion did not toll the running of the reglementary period to appeal and the Decision, promulgated on November 16, 2015, became final and executory. By such reason, accused insists that the said Decision must now be entered into the Book of Judgment of the Court in accordance with Rule 14, Section 6 of the Revised Rules of the Court of Tax Appeals.

By way of comment/opposition, the prosecution avers that the three-day notice rule is not absolute. Accordingly, a liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority pursuant to the cases of *Fausto R. Preysler, Jr. vs. Manila Southcoast Development Corporation*[1] and *Jehan Shipping Corporation vs. National Food Authority*[2]. The prosecution also points out that the three-day notice requirement was deemed realized when accused was given an opportunity to file his opposition to the prosecution's Motion for Reconsideration.

The Court disagrees with accused's foregoing contention.a

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[1] G.R. No. 171872, June 28, 2010.
[2] G.R. No. 159750, December 14, 2005.

Sections 4 and 5 of Rule 15 of the 1997 Rules on Civil Procedure provide:

> "SECTION 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
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> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
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> SEC. 5. Notice of hearing.- The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion."

It can be inferred from the foregoing that the Rules of Court requires that every motion must be set for hearing by the movant, except those motions which the court may act upon without prejudicing the rights of the adverse party. The notice of hearing must be addressed to all parties and must specify the time and date of the hearing. The purpose of which is to afford the adverse parties a chance to be heard before a motion is resolved by the court.[3] This requirement equally applies to a Motion for Reconsideration.

In this case, accused was not denied procedural due process as the very purpose of a notice of hearing has been served. Records reveal that accused was able to file his Comment/Opposition for Motion for Reconsideration on January 4, 2016. Thus, the procedural lapse on the part of the prosecution was deemed cured. This is consistent with the pronouncement of the High Court in the case of Douglas F. *Anama vs. Court of Appeals, Philippine Savings Bank, Spouses Saturnina Baria & Tomas Co and the Register of Deeds, Metro Manila, District II*[4], which held that:

> "Likewise, in *Jehan Shipping Corporation v. National Food Authority,* the Court held that despite the lack of notice of hearing in a Motion for Reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be

[3] Vlason Enterprises Corporation vs. Court of Appeals and Duraproof Services, G.R. Nos. 121662-64, July 6, 1999

[4] G.R. No. 187021, January 25, 2012.

heard and had filed pleadings in opposition to the motion. The Court held:

> This Court has indeed held time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading.
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> As an integral component of the procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution of the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.
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> **<u>The test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based</u>**." (Emphases and underscoring supplied)

By such reason, this Court can properly take cognizance of the subject Motion for Reconsideration.

With regard to the accused's Request to Enter the Decision into the Book of Judgment, the same cannot be granted by the Court.

It bears noting that a judgment becomes "final and executory" by operation of law. Its finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period.[5]

[5] Vlason Enterprises Corporation vs. Court of Appeals and Duraproof Services, G.R. Nos. 121662-64, July 6, 1999, citing the cases of City of Manila vs. Court of Appeals, G.R. No. 100626, November 29, 1991; and Amado B. Teodoro vs. Court of Appeals and People of the Philippines, G.R. No. 103174, July 11, 1996.

In this case, the Decision cannot be said to have attained finality considering that the prosecution timely filed its Motion for Reconsideration with this Court within fifteen (15) days after it received the Assailed Decision. Thus, *We* find no valid reason to grant accused's Request to Enter the Decision into the Book of Judgment.

The Court will now resolve the subject Motion for Reconsideration.

Citing the Dissenting Opinion of Associate Justice Juanito C. Castañeda, Jr., Part IV Number II Letter O of the Revised Manual for Prosecutors and the case of *Editha Padlan vs. Elenita Dinglasan and Felicisimo Dinglasan*[6], the prosecution claims that the jurisdiction of courts in criminal cases is determined by the allegations of the complaint or information. It insists that, in order to determine the jurisdiction of the Court in criminal cases, the complaint must be examined for the purpose of ascertaining whether or not the facts set out therein and the punishment provided for by law fall within the jurisdiction of the court where the complaint is filed. Accordingly, the total amount of taxes claimed, although not stated in the Information, is clearly stated in the Joint-Complaint Affidavit of the Revenue Officers. And, if the Court had doubts as to the total amount claimed in the early stage of the proceedings, said doubts became crystal clear upon the presentation of the PAN and FAN.

Accused, on the other hand, claims that the prosecution's Motion for Reconsideration should be denied for the following reasons: (i) it is pro-forma and a scrap of paper for lack of notice of hearing and on the ground that the same was not filed by the Public Prosecutor; (ii) it puts the accused in double jeopardy; and, (iii) even assuming for the sake of argument that the Motion is not pro-forma or a scrap of paper and does not put the accused in double jeopardy, the Court committed no error in dismissing the case for lack of jurisdiction.

The Court finds petitioner's Motion for Reconsideration unmeritorious.

Section 2, Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, explicitly states that "all criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information in the name of the People of the Philippines." By such reason, the Information should still be the basis in ascertaining whether this Court has jurisdiction over the case. After all,

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[6] G.R. No. 180321, March 20, 2013.

the theory of law is that since the accused officially begins to prepare his defense against the accusation on the basis of the recitals in the information read to him during arraignment, then the prosecution must establish its case on the basis of the same information.[7]

Moreover, the Court of Tax Appeals is a court of special jurisdiction. As such, it can only take cognizance of matters that are clearly within its jurisdiction.[8] Thus, there being no allegation in the Information whatsoever of the principal amount of taxes and fees claimed against the accused, specifically, that the principal amount of tax liability is at least one million (P1,000,000.00), We find the Information defective as to vest jurisdiction to this Court.

Thus, this Court has no recourse but to dismiss the instant case on account of lack of jurisdiction. The instant criminal case should therefore be tried by the regular Courts and the jurisdiction of the CTA shall be appellate.

WHEREFORE, premises considered, accused's Manifestation and Request to Enter the Decision into the Book of Judgment and prosecution's Motion for Motion for Reconsideration are both **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
(I maintain my dissenting opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[7] Dr. Joel C. Mendez vs. People of the Philippines and Court of Tax Appeals, G.R. No. 179962, June 11, 2014.

[8] Allied Banking Corporation vs. CIR, G.R. No. 175097, February 5, 2010.