REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, **Plaintiff,** **- versus –** **MACARIO LIM GAW, JR., (No. 5 David Street, Corinthian Gardens, Quezon City),** **Accused.**	**CTA Crim. No. O-206** **(I.S. No. XVI-INV-10H-00256)** **For: Violation of Section 255 of the NIRC of 1997, as amended.**
PEOPLE OF THE PHILIPPINES, **Plaintiff,** **- versus –** **MACARIO LIM GAW, JR., (No. 5 David Street, Corinthian Gardens, Quezon City),** **Accused.**	**CTA Crim. No. O-207** **(I.S. No. XVI-INV-10H-00256)** **For: Violation of Section 255 of the NIRC of 1997, as amended.**
MACARIO LIM GAW, JR., **Petitioner,** **- versus –** **COMMISSIONER OF INTERNAL REVENUE,** **Respondent.**	**CTA Case No. 8503** **Members:** **Uy, *Acting Chairperson, and*** **Fabon-Victorino, *JJ.*** **Promulgated:** MAR 01 2013, 4:20p.m.

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RESOLUTION

UY, *J.*:

Submitted for resolution are the following:

1. Petitioner, Macario Lim Gaw, Jr.'s **"EXTREMELY URGENT VERIFIED MOTION FOR SUSPENSION OF COLLECTION OF TAXES (With Application for Waiver of Deposit or Bond Requirement)"** filed on January 17, 2013 (hereinafter referred to as "Urgent Motion") in CTA Case No. 8503; and

2. Respondent, Commissioner of Internal Revenue's **"MOTION TO DISMISS"** filed on January 25, 2013, with petitioner's **"COMMENT/OPPOSITION (Re: Respondent's *Motion to Dismiss* dated 22 January 2013)"** filed on January 28, 2013 in CTA Case No. 8503.

In his Urgent Motion, petitioner Macario Lim Gaw, Jr. prays as follows:

1. That this Court restrain the respondent Commissioner of Internal Revenue, her representatives and agents, from committing any or all acts to collect the alleged deficiency taxes under the Final Decision on Disputed Assessment No. 2012-0001 dated May 18, 2012 (FDDA), including but not limited to enforcing the Warrant of Distraint and/or Levy dated January 11, 2013, until such time that the legality of the FDDA has been resolved with finality; and

2. That this Court, in suspending the collection of the disputed deficiency taxes, waive the requirement of depositing with the Court an amount in cash equal to the value of the property or goods under dispute or filing with the Court of an acceptable surety bond in an amount not more than double the disputed amount or value.

In support of the first prayer, petitioner argues, *inter alia*, that this Court's positive declaration in the Resolution dated January 3, 2013 that petitioner paid the tax due in relation to the tax computations made by none other than the BIR officers themselves, at the very least, constitutes *prima facie* proof that petitioner paid the correct taxes, and to now issue a Warrant which presupposes that petitioner did not pay the correct taxes is tantamount to disregarding this Court's word on the matter.

Petitioner likewise contends that respondent undermined the National Internal Revenue Code (NIRC) of 1997, wherein Section 207 thereof authorizes the use of summary remedies of distraint and/or levy only on taxes which are "delinquent". According to petitioner, a taxpayer is considered delinquent if the assessed deficiency tax became final and executory, and since petitioner timely appealed the subject FDDA before this Court, the Warrant does not lie against petitioner.

Moreover, petitioner asserts that respondent could not have issued the Warrant if proper reference to Section 206 of the NIRC of 1997, in connection with Revenue Memorandum Circular No. 5-2001, was duly given. Applying the test provided thereon, petitioner is: (a) not retiring from any business subject to tax; (b) not intending to leave the Philippines; (c) not intending to remove his property therefrom or to hide or conceal his property; or (d) not intending to perform any act tending to obstruct the proceedings for collecting the tax due or which may be due from him.

Petitioner also stresses that the FDDA stemmed from a Letter of Authority which was null and void. Hence, the Warrant, which was allegedly issued pursuant to the said FDDA, was issued precipitately and not in accordance with law, and thus, is likewise void. Petitioner avers that if respondent is not enjoined from enforcing the Warrant, petitioner's prayers stated in the instant Petition for Review will be effectively mooted; and that petitioner would practically be bankrupt by reason of respondent's arbitrary acts.

Furthermore, as regards the second prayer, petitioner alleges that considering the gargantuan amount of the alleged tax deficiency, it would be difficult for petitioner to deposit cash or post a bond pursuant to Section 6, Rule 10 of the Revised Rules of the Court of Tax Appeals (RRCTA), should this Court require one. It invokes the case of *Commissioner of Internal Revenue vs. Reyes*,[1] wherein the Supreme Court upheld this Court's resolve to do away with the bond requirement altogether when it suspended the collection of the subject tax deficiency, owing to the questionable legality of the manner employed by the Bureau of Internal Revenue (BIR).

On the other hand, in her Motion To Dismiss, respondent argues that this Court did not acquire jurisdiction over the instant Petition for Review, and that failure to pay the required docket fee is a jurisdictional defect.

In response to said Motion to Dismiss, petitioner, in his Comment, counter-argues that this Court, upon acquiring jurisdiction over a criminal action brought under the NIRC of 1997, necessarily acquired jurisdiction over the civil action for the recovery of civil liability for taxes and penalties without the need to file a separate civil action. According to petitioner, there is nothing in the law or the rules which require the payment of docket fees

[1] G.R. No. L-8685, January 31, 1957.

before this Court could acquire jurisdiction over the civil action for the recovery of civil liability for taxes and penalties that is already deemed instituted in the criminal cases.

In addition, petitioner points out that this Court rendered a solomonic resolution by acknowledging that the civil action for the recovery of the alleged deficiency taxes for 2008 under the FDDA was deemed instituted already in the consolidated criminal cases, while at the same time acknowledging that the petitioner is required to file a Petition for Review so as not to render the FDDA final and executory. Petitioner then goes on to say that judiciously, the Court imposed upon the petitioner a suspensive obligation to pay docket fees, one that is conditioned upon the Court's finding that there is a misclassification of the properties subject of the 2008 deficiency assessment.

Lastly, petitioner contends that respondent cannot now re-open the matters subject of the final Resolution dated June 6, 2012, in the misleading guise of raising a "jurisdictional issue" involving non-payment of docket fees. Petitioner opines that while it may be true that matters of jurisdiction may be raised at any time, it is equally true, under the "law of the case" doctrine, that matters already raised and resolved by the court with finality could no longer be re-litigated in the same proceeding.

THE COURT'S RULING

For an orderly disposition of the parties' respective motion, We shall first rule on respondent's Motion to Dismiss because it raises matters relating to the jurisdiction of this Court.

Respondent's Motion To Dismiss is anchored on the ground that this Court did not acquire jurisdiction over the instant Petition for Review for failure of petitioner to pay the required docket fee in CTA Case No. 8503, which is allegedly a jurisdictional defect.

Admittedly, petitioner did not pay the pertinent docket fees when it filed his Petition for Review in CTA Case No. 8503. Petitioner, nevertheless, seeks justification for such non-payment on the following grounds: (1) the Court's acquisition of jurisdiction over the criminal actions (CTA Crim. Nos. O-206 and O-207) necessarily goes therewith the acquisition of jurisdiction over the civil action for the recovery of civil liability for taxes and penalties, since the latter action is deemed instituted therein; (2) the Court imposed upon petitioner a suspensive obligation to pay said docket fees, conditioned upon the finding that there is a misclassification of the subject properties; and (3) the doctrine of the "law of the case".

This Court, however, finds the said grounds untenable.

Section 3 of Rule 6 of the Revised Rules of the Court of Tax Appeals provide as follows:

> "Sec. 3. *Payment of docket fees*. **The Clerk of Court shall not receive a petition for review for filing unless the petitioner submits proof of payment of the docket fees.** Upon receipt of the petition or the complaint, it will be docketed and assigned a number, which shall be placed by the parties on all papers thereafter filed in the proceeding. The Clerk of Court will then issue the necessary summons to the respondent or defendant." *(Emphasis supplied)*

Suppletorily[2], Section 5, Rule 141 of the Revised Rules of Court, as amended, provides:

> "SEC. 5. *Fees to be paid by the advancing party.*—The fees of the clerk of the Court of Appeals, Sandiganbayan, and the Court of Tax Appeals or of the Supreme Court shall be paid by him at the time of the entry of the action or proceeding in the court by the party who enters the same. The clerk shall in all cases give a receipt for the same and shall enter the amount received upon his book, specifying the date when receive, person from whom received, name of action in which received and the amount received. **If the fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the appeal or the action or proceedings."** *(Emphasis supplied)*

Furthermore, Section 3, Rule 42 of the same Revised Rules of Court, states:

> "SEC. 3. *Effect of failure to comply with requirements.*— The failure of the petitioner to comply with any of the foregoing requirements **regarding the payment of the docket and other lawful fees**, the deposit for costs, proof of service of the petition, and the contents of and the documents which

[2] Section 3, Rule 1 of the Revised Rules of the Court of Tax Appeals.

> should accompany the petition **shall be sufficient ground for the dismissal thereof.**" *(Emphasis supplied)*

In the case of *Gegare vs. Court of Appeals, et al.*[3], the Supreme Court ruled that:

> "The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal (Dorego *v.* Perez, 22 SCRA 8 [1968]; Bello *v.* Fernandez, 4 SCRA 135 [1962]). **In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees** as held in *Acda v. Minister of Labor*, 119 SCRA 306 (1982). **The requirement of an appeal fee is by no means a mere technicality of law or procedure. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal was filed at all. The right to appeal is merely a statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provision of the law.**" *(Emphasis supplied)*

It is a doctrinal rule that the perfection of appeals in the manner and within the period permitted by law is not only mandatory but also jurisdictional. Thus, the payment of docket fees within the prescribed period for taking an appeal is mandatory for the perfection of an appeal. Anyone seeking exemption from the application of this Rule has the burden of proving that exceptionally meritorious instances exist which warrant such departure.[4]

Hence, in view of the aforequoted procedural rules and jurisprudence, most especially those to the effect that the docket fees shall be paid *"at the time of the entry of the action or proceeding"* and that *"the payment of docket fees* ***within the prescribed period for taking an appeal*** *is mandatory for the perfection of an appeal",* the statements made by the ponente at the hearing held on June 6, 2012 in CTA Crim. No. O-206 and O-207, cannot be invoked by petitioner to exempt him from paying the required docket fees as it will contravene the aforementioned procedural rules and jurisprudence.

Additionally, it must be emphasized that the statements made by the ponente during the hearing held on June 6, 2012 were notably not definitive

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[3] G.R. No. 132264, October 8, 1998, citing *Rodillas vs. Commission on Elections*, 245 SCRA 702, 705-706 (1995).

[4] *Tamayo, et al. vs. Tamayo, Jr., et al.*, G.R. No. 148482, August 12, 2005.

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pronouncements that can bind the Court because of the words "***it will all depend***", and "***suggestion***", to wit:

> "JUSTICE UY:
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> However, if it is deemed instituted, **it will all depend** on the finding of this Court if there is civil liability, was there a misclassification. So, if indeed there is misclassification, they will need to pay the docket fees. So, **our suggestion**, file a Petition for Review Ad Cautelam so that the same will be file(d) within the thirty (30) day period and we will take note of that reservation to pay the docket fees should there be a refindings*(sic)* so that your right to come to this Court will not be taken away from you, it will not become final and executory."[5]

Furthermore, as a corollary, in this Court's confirming Resolution dated June 6, 2012 in the said criminal cases, which is a definitive ruling made by the Court, there is no indication that this Court imposed upon petitioner a suspensive obligation to pay the prescribed docket fees. The dispositive portion of the said Resolution reads:

> "**WHEREFORE**, in light of the foregoing considerations, the prosecution's Motion for Leave of Court to Amend Information and Admit Attached Amended Information filed on May 16, 2012, is **GRANTED**. Accordingly, the Amended Information for CTA Crim. No. O-206 attached thereto is hereby ADMITTED. Re-arraignment of accused in said case is set on **June 13, 2012 at 9:00 a.m.**
>
> As regards, accused's Urgent Motion (With Leave of Court for Confirmation that the Civil Action for Recovery of Civil Liability for Taxes and Penalties is Deemed Instituted in the Consolidated Criminal Cases)" filed on May 30, 2012, the same is hereby **GRANTED**. The civil action for recovery of the civil liabilities of accused for taxable year 2008 stated in the Final Decision on Disputed Assessment (FDDA) dated May 18, 2012 is **DEEMED INSTITUTED** with the instant consolidated criminal cases, **without prejudice to the right of the accused to avail of whatever additional legal remedy he may have, to**

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[5] Transcript of Stenographic Notes at the hearing held on June 6, 2012 for CTA Crim. Nos. O-206 and O-207, pp. 158 to 159.

prevent the said FDDA from becoming final and executory for taxable year 2008.

Additionally, accused is not precluded from instituting a Petition for Review to assail the assessments for taxable year 2007, as reflected in the said FDDA dated May 18, 2012.

SO ORDERED."[6]

Clearly, the aforequoted confirming resolution considered the civil action for the recovery of the civil liabilities of accused for taxable year 2008 as **deemed instituted** with the instant consolidated CTA Crim. Case No. O-206 and O-207**, without prejudice to the right of the accused to avail of whatever additional legal remedy he may have, to prevent the said FDDA from becoming final and executory for taxable year 2008.**

In this connection, Section 2, Rule VII of the Internal Rules of the Court of Tax Appeals must be recalled, *viz*:

> "SEC. 2. *Resolution on interlocutory or incidental matters.*— **Rulings on all written motions on interlocutory or incidental matters submitted to the Court *en banc* or in Division for resolution shall be reached in consultation among and by majority vote of the Justices participating in the consideration thereof:** *Provided*, however, that rulings on oral motions or objections made in the course of the trial or hearing shall be made by the Presiding Justice or by the Chairperson of the Division: ***Provided, further*, that oral motions or objections on substantial but interlocutory or incidental matters may be ordered reduced into writing and shall likewise be resolved by the majority vote of the Justices of the Court *en banc* or in Division."** *(Emphasis and underscoring supplied)*

Considering that the supposed ruling on accused's reservation or alleged "suspensive obligation" to pay the prescribed docket fees was done orally by the ponente in CTA Crim. Case Nos. 0-206 and 0-207 during the hearing held on June 6, 2012, accused should have moved that the same be reduced into writing because this was not included in the Court's confirming Resolution dated June 6, 2012. As it stands, there is no showing that the ponente's oral pronouncement was *"reached in consultation among and by*

[6] Docket (CTA Crim. Nos. O-206 and O-207)- Vol. V, p. 3108.

majority vote of the Justices participating in the consideration" of the pertinent motion. Hence, it cannot be said that the statements made by the ponente during the hearing held on June 6, 2012 in CTA Crim. Case Nos. O-206 and O-207 was a ruling made by the Court in accordance with the aforequoted provision of the Internal Rules of the CTA.

Moreover, said statements made in CTA Crim. Case Nos. 0-206 and 0-207 cannot at all bind the respondent Commissioner of Internal Revenue in CTA Case No. 8503, because she is not a party in the said criminal cases, so as to prevent her from questioning the non-payment of the prescribed docket fees in CTA Case No. 8503.

Thus, in light of the foregoing considerations alone, CTA Case No. 8503 must perforce be dismissed, not only for petitioner's failure, but also for his apparent reluctance, to pay the prescribed docket fees.

Moreover, petitioner cannot find solace for his non-payment of docket fees in CTA Case No. 8503 on the fact that the corresponding civil action for the recovery of civil liability for taxes and penalties are already deemed jointly instituted in the criminal actions (*i.e.*, CTA Crim. Nos. O-206 and O-207).

Without doubt, the corresponding civil actions were indeed deemed jointly instituted in the said criminal actions, in accordance with the last sentence of Section 7(b)(1) of Republic Act No. (RA) 1125, as amended by RA 9282, and Section 11, Rule 9 of the RRCTA, which respectively provide:

> Section 7(b)(1) of Republic Act No. (RA) 1125, as amended by RA 9282 reads:
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> "Sec. 7. *Jurisdiction.* – The CTA shall exercise:
>
> xxx xxx xxx
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:
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> xxx xxx xxx Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding

by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

Section 11, Rule 9 of the RRCTA reads:

"SEC. 11. *Inclusion of civil action in criminal action.*— In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized."

It must be emphasized that what was deemed instituted in the said criminal cases was the right of People of the Philippines, the plaintiff in CTA Crim. Case Nos. 0-206 and 0-207, to recover the supposed civil liabilities, if any, of accused Macario Lim Gaw, Jr., and the latter's right to controvert the same, if he so desires. It must be remembered though that accused opted to move for the dismissal of said CTA Crim. Case Nos. 0-206 and 0-207 through the filing of a "Motion for Leave (*To File Attached Demurrer to Evidence)*" with the Demurrer to Evidence attached thereto, on September 18, 2012, praying for the dismissal of both the criminal and civil aspects of said consolidated Criminal Cases[7].

On the other hand, it must be clarified that the right of Macario Lim Gaw, Jr. to assail the subject FDDA and prevent it from becoming final and executory was NOT DEEMED INSTITUTED in said CTA Crim. Case Nos. 0-206 and 0-207, as it entails different procedural requirements mandated under Section 228 of the NIRC of 1997[8], in relation to Section 11 of

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[7] Demurrer to Evidence filed on September 18, 2012, at p. 35.

[8] "SEC. 228. *Protesting of Assessment.*— xxx

xxx xxx xxx

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Republic Act No. 1125, as amended by Republic Act No. 9282.[9]

To reiterate, CTA Crim. Case Nos. O-206 and O-207 (which includes the civil action to recover the supposed civil liabilities, if any, from the accused therein) are **separate and distinct** from CTA Case No. 8503, although said criminal cases and civil case were subsequently consolidated. Definitely, the acquisition of jurisdiction by this Court over the said criminal actions did not automatically carry with it the acquisition of jurisdiction by the same Court over the said Petition for Review.

The dichotomy of CTA Crim. Case Nos. O-206 and O-207 vis-à-vis the Petition for Review in CTA Case No. 8503 is apparent in the respective composition of the parties in said cases, in their nature, and in whom the burden of proof rests, to wit:

The Parties:

The said criminal actions were filed by the People of the Philippines, through the Department of Justice (DOJ) against petitioner, while the Petition for Review in CTA Case No. 8503 was filed by petitioner against the Commissioner of Internal Revenue to assail the subject FDDA No. 2012-0001 dated May 18, 2012.

The Nature of the Cases:

CTA Crim. Case Nos. 0-206 and 0-207 involve the supposed prosecution of accused for an act or omission punishable by the NIRC of 1997,[10] and entails the commencement of the tax collection process through judicial action;[11] while CTA Case No. 8506 is an

[9] "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*— Any party adversely affected by a decision, ruling, or inaction of the Commissioner of Internal Revenue, xxx may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx."

[10] This proceeds from the definition of the term "criminal action" as "one by which the State prosecutes a person for an act or omission punishable by law" under *Section 3(b), Rule 1 of the 1997 Rules of Civil Procedure.*

[11] Section 205 of the NIRC of 1997 provides:
"SEC. 205. *Remedies for the Collection of Delinquent Taxes.*— **The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be**:(a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and (b) **By civil or criminal action.**
Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: xxx."

appeal on the ground that the Commissioner of Internal Revenue's assessment is erroneous. Hence, the Commissioner is a necessary party to assail the subject FDDA, who is not one in CTA Crim. Case Nos. O-206 and O-207.

The Burden of Proof:

In the said criminal cases, the burden of proof is on the prosecution;[12] while in CTA Case No. 8503, the burden rests upon petitioner, being the taxpayer, to overcome the presumption that determination of the tax deficiency by the Government has *prima facie* validity, and to show to the satisfaction of this Court that the said determination was not correct.[13]

Going back to the requirement of paying docket fees, considering that the advancing party in Crim. Case Nos. 0-206 and 0-207 is the Government, it is exempt from the payment thereof.[14] On the other hand, considering that the advancing party or the petitioner in CTA Case No. 8503 is a private individual, the filing of docket fees is mandatory.

In fact, petitioner is required to pay docket fees pursuant to Section 4(b)(1), Rule 141 of the Revised Rules of Court, as amended by Supreme Court Resolution A.M. No. 04-2-04-SC dated July 20, 2004, which provides as follows:

> "SEC. 4. *Clerks of the Supreme Court, Court of Appeals, Sandiganbayan and Court of Tax Appeals*.
>
> xxx xxx xxx
>
> (b) For filing an action or proceeding with the Court of Tax Appeals
>
> 1. **For filing an action or proceeding**, including petition for intervention, and for all services in the same, **if the sum claimed or the amount of disputed tax** or customs assessment, inclusive of interest, penalties and surcharges, damages of whatever kind and attorney's fees or value of the

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[12] *Marcos vs. Sandiganbayan, et al.*, G.R. No. 126995, October 6, 1998.

[13] Refer to *Coca-Cola Export Corporation vs. Commissioner of Internal Revenue, et al.*, G.R. No. L-23604, March 15, 1974.

[14] Section 22, Rule 141 of the Revised Rules of Court partly provides that the *"Republic of the Philippines, its agencies and instrumentalities, are exempt from paying the legal fees provided in this rule."* (Supreme Court Resolution A.M. No. 04-2-04-SC dated July 20, 2004)

article of property in seizure cases, is:

a) Less than P50,000.00 .... P 750.00
b) P50,000.00 or more but less than P200,000.00 . 1,000.00
c) P200,000.00 or more but less than P400,000.00 ... 1,500.00
d) P400,000.00 or more but less than P600,000.00 2,500.00
e) P600,000.00 or more but less than P800,000.00 4,000.00
f) P800,000.00 or more but less than P1,000,000.00 .... 5,000.00
g) P1,000,000.00 or more but less than P7,500,000.00
   On the first P1,000,000.00, the fee shall be P5,000.00 and for each P1,000.00 in excess of P1,000,000.00 but not more than P7,500,000.00 7.00
h) P7,500,000.00 or more
   On the first P7,500,000.00, the fee shall be P50,500.00 and for each P1,000.00 in excess of P7,500,000.00 10.00
   Provided that for assessments beyond P50 million, the filing fee for the excess shall be the equivalent of one-half (1/2) of one (1%) ***per centum***
i) When the value of the subject matter cannot be estimated 5,000.00."

(Emphases supplied)

Additionally, accused-petitioner Macario Lim Gaw, Jr., failed to take note that in the Resolution dated January 3, 2013, the Court has already pronounced that the civil liability of accused in CTA Crim. Nos. O-207 and O-207 will be threshed out in CTA Case No. 8503, and therefore, the demandability of petitioner's obligation to pay docket fees has become more evident.

At this juncture, it must be clarified that while this Court, in its said Resolution of January 3, 2013, made the following pronouncements:

"However, the extinction of the penal actions does not carry with it the extinction of the civil liability where, *inter alia*, the civil liability of the accused does not arise from the crime of which the accused is acquitted. In the instant cases, the civil liability of accused, if any, would all depend on the proper classification of the subject real properties, whether the same are capital assets or ordinary assets.

Thus, it must be emphasized that the acquittal in the instant criminal cases cannot operate to discharge accused from the duty of paying proper taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged.

This is especially so that a tax assessment against the accused has already been made by the BIR, which assessment is being assailed by accused in CTA Case No. 8503. To the mind of the Court, this assessment constitutes the civil liability of accused in the instant criminal cases, and shall best be threshed out in said case.

To reiterate, while the willfulness of the accused was not established by the prosecution in the instant criminal actions, it becomes necessary to proceed with CTA Case No. 8503 filed by herein accused as the petitioner therein, assailing respondent Commissioner of Internal Revenue's Final Decision on Disputed Assessment (FDDA) No. 2012-0001 dated May 18, 2012 covering the alleged assessments for deficiency income tax and value tax for taxable year 2008." (*Emphasis supplied)*

such pronouncements are still, and have always been subject to the Rules with regard to payment of docket and other lawful fees.

In light of the foregoing, prudence dictates that petitioner should have paid the necessary docket fees in order to avoid the dismissal of CTA Case No. 8503, vis-à-vis the instant Motion to Dismiss, most especially so now that petitioner is seeking an affirmative relief from the Court when he filed his "*Extremely Urgent Verified Motion For Suspension of Collection of Taxes (With Application for Waiver of Deposit of Bond Requirement*" on January 17, 2013. Moreover, the Court notes that in his application for the provisional remedy of suspension of collection of taxes from the Court, petitioner is again seeking exemption from the payment of the necessary bond, which the Court likewise finds untenable.

Lastly, the doctrine of the "law of the case" is inapplicable in this case.

"Law of the case" has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[15]

Expounding on the doctrine of the law of the case, the Supreme Court, in *Villa v. Sandiganbayan,*[16] held:

> "The doctrine has been defined as 'that principle under which determination of questions of law will generally be held to govern a case throughout all its subsequent stages where such determination has already been made on a prior appeal to a court of last resort. **It is 'merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision.** It relates entirely to questions of law, **and is confined in its operation to subsequent proceedings in the same case.'"**

Considering the above-stated definition and coverage of the said doctrine, petitioner's case does not fall thereunder.

For one, the opinion rendered by the Court was never *"delivered on a prior appeal."* Needless to state, the consolidated criminal actions (CTA Crim. Nos. O-206 and O-207), wherein the statements were supposedly made by the ponente are original actions, not a former appeal on CTA Case No. 8503. Viewed differently, such statements were never rendered in any subsequent appeal to CTA Case No. 8503, especially so that the said case was assigned to another co-equal and coordinate Division of this Court, *i.e.*, the Second Division, prior to its consolidation with CTA Crim. Nos. O-206 and O-207 on December 7, 2012.

For another, and as already discussed earlier, the parties in the said M

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[15] 21 C.J.S. 330; *People of the Philippines, et al. vs. Olarte*, G.R. No. L-22465, February 28, 1967.
[16] G.R. No. 87186, April 24, 1992.

consolidated criminal actions (CTA Crim. Nos. O-206 and O-207) and the instant Petition for Review (CTA Case No. 8503) are **not** the same. In the former, the parties are the *"People of the Philippines"*, as plaintiff, and Macario Lim Gaw, Jr. as accused; while in the latter, the parties are Macario Lim Gaw, Jr., as petitioner, and the *"Commissioner of Internal Revenue"*, as respondent. Thus, to reiterate, the consolidated criminal actions (CTA Crim. Nos. O-206 and O-207) and the instant Petition for Review are **not** the same.

At all events, the doctrine *"is merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision."* To sustain petitioner's non-payment of docket fees would result to injustice to party litigants, who are equally required to pay, and have paid, the corresponding docket fees in filing their respective petitions for review questioning the tax assessments respectively issued against them. Especially so, that petitioner failed to show any law, rule, jurisprudence, or any weighty and persuasive reason to exempt him from the said payment.

In fine, petitioner miserably failed to justify its non-payment of the prescribed docket fees in filing the instant Petition for Review. Thus, this Court did not acquire appellate jurisdiction over the instant Petition for Review docketed as CTA Case No. 8503 due to non-payment of the said fees.

And considering that this Court lacks jurisdiction to entertain the instant Petition for Review, the Court is not empowered to resolve petitioner's Urgent Motion.

WHEREFORE, all the foregoing considered, respondent's **"MOTION TO DISMISS"** is hereby **GRANTED** and CTA Case No. 8503 is hereby **DISMISSED**.

Accordingly, petitioner's **"EXTREMELY URGENT VERIFIED MOTION FOR SUSPENSION OF COLLECTION OF TAXES (With Application for Waiver of Deposit or Bond Requirement)"** is hereby **DENIED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice