

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PEOPLE OF THE PHILIPPINES, **CTA *EB* CRIM. NO. 139**
Plaintiff-Appellant, (CTA Crim. Case No. A-17)

Present:

-versus-

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

SKI CONSTRUCTION GROUP,
INC., CLAUDIO B. ALTURA,
ALBERT ALTURA, CORNELIO V.
CAEDO,

Promulgated:

Accused-Appellee.

FEB 17 2025

X -----

DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review, filed via registered mail on February 8, 2024, assailing the Decision, dated July 17, 2023 (“assailed Decision”), and Resolution, dated December 19, 2023 (“assailed Resolution”), both rendered by this Court’s Second Division (“Court in Division”) in CTA Crim. Case No. A-17.

1

The Facts

On February 15, 2018, the Commissioner of Internal Revenue filed a Joint Complaint-Affidavit against accused with the Department of Justice (“DOJ”).¹ The DOJ would eventually recommend the filing of an Information against accused through a Resolution, dated January 30, 2019.²

The prosecution then filed such an Information with the Regional Trial Court, Branch 59, Makati City (“RTC”), on January 15, 2020.³ Eventually, however, the RTC dismissed the Information due to prescription, through Resolutions, dated June 3, 2021,⁴ and September 30, 2022.⁵

Aggrieved, plaintiff-appellant filed an Appellant’s Brief with the Court of Tax Appeals in Division (“Court in Division”) via registered mail on February 27, 2023.⁶ This appeal, however, was denied through the assailed Decision on July 17, 2023, and the assailed Resolution on December 19, 2023.

The DOJ received the assailed Resolution on *December 29, 2023*, while the Bureau of Internal Revenue (“BIR”) received it on January 11, 2024.⁷

Still aggrieved, plaintiff-appellant filed a Motion for Extension of Time to File Petition for Review via registered mail on January 24, 2024.⁸ This Court granted said Motion through a Minute Resolution, dated January 31, 2024,⁹ *on the condition that the Motion was actually filed on time*. Plaintiff-appellant thus filed the instant Petition via registered mail on February 8, 2024.

After accused-appellee Altura filed a Comment to the Petition for Review via registered mail on March 21, 2024,¹⁰ the Court directed the BIR, as plaintiff-appellant’s counsel, to submit proof of their deputization of by Solicitor General.¹¹ Plaintiff-appellant complied with this via a Manifestation, filed via registered mail on August 12, 2024,¹² submitting a copy of *Revenue*

¹ RTC Docket, pp. 14-18; *see also* Investigation Data Form. *id.* at 11; *see also* Letter, dated February 15, 2018, *id.* at 12-13.

² *Id.* at 4-9.

³ *Id.* at 1-3.

⁴ *Id.* at 160-163.

⁵ *Id.* at 189-192.

⁶ Division Docket, pp. 22-36.

⁷ *See* Notice of Resolution, dated December 19, 2023, *id.* at 181.

⁸ *Rollo*, pp. 1-4.

⁹ *Id.* at 6.

¹⁰ *Id.* at 124-128.

¹¹ *See* Resolution, dated August 5, 2024, *id.* at 151-153.

¹² *Id.* at 154-158.

*Memorandum Circular (“RMC”) No. 25-10*¹³ and a Memorandum, dated January 2, 2024.¹⁴

Finding such compliance sufficient, the Court submitted this case for decision via a Minute Resolution, dated October 2, 2024.¹⁵

Hence, this Decision.

The Assigned Errors

The Petition for Review lacks an explicit identification of the errors being attributed to the Court in Division. However, it seems that plaintiff-appellant mainly takes issue with (1) the Court in Division’s denial of its Petition for Review; and (2) the Court in Division’s finding that the government’s right to prosecute the alleged violation has prescribed.

The Arguments

Plaintiff-appellant argues that (1) the complaint for the alleged violation has not yet prescribed;¹⁶ (2) the filing of an Information before a court is not included in the five-year prescriptive period;¹⁷ and (3) the elements of a willful failure to pay tax under *Section 255 of the National Internal Revenue Code of 1997, as amended (“NIRC”)*, is present in this case.¹⁸

Accused-Appellee Altura counters the above by insisting that the complaint has, indeed, prescribed.¹⁹

The Ruling of the Court

The Petition for Review must be dismissed for lack of jurisdiction.

The deputization of assisting prosecutors, such as plaintiff-appellant’s counsel from the BIR here, is mainly governed by *Rule 110, Section 5 of the Revised Rules of Criminal Procedure, as amended*.✓

¹³ *Id.* at 159-164,

¹⁴ *Id.* at 165.

¹⁵ *Id.* at 167.

¹⁶ Petition for Review, pp. 9-10, *id.* at 15-16.

¹⁷ Petition for Review, pp. 10-12, *id.* at 16-18.

¹⁸ Petition for Review, pp. 13-14, *id.* at 19-20.

¹⁹ *Supra* note 10.

Section 5. Who must prosecute criminal actions. — *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 the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.
(Italics supplied.)

The above provision on deputization was conveniently summarized by *DOJ Memorandum Circular No. 25*:²⁰

In connection therewith, the authority of a private prosecutor to prosecute a criminal action is subject to the following conditions, viz:

1. The public prosecutor has a heavy work schedule, or there is no public prosecutor assigned in the province or city;
2. The private prosecutor is authorized by the Regional State Prosecutor (RSP), Provincial or City Prosecutor;
3. The authority must be in writing;
4. The authority of the private prosecutor must be approved by the court;
5. The private prosecutor shall continue to prosecute the case until the end of the trial unless the authority is withdrawn or otherwise revoked by the RSP, Provincial or City Prosecutor; and
6. In case of the withdrawal or revocation of the authority of the private prosecutor, the same must be approved by court.

Strict compliance is hereby enjoined.

This power of the DOJ to deputize private prosecutors would later be integrated into *Rule 9, Section 3 of the Revised Rules of the Court of Tax Appeals, as amended ("RRCTA")*:

²⁰ Subject: *En Banc Resolution of the Supreme Court Re: Amendment to Section 5, Rule 110 of the Revised Rules of Criminal Procedure*, April 26, 2002.

SEC. 3. Prosecution of criminal actions. — *All criminal actions shall be conducted and persecuted under the direction and control of the public prosecutor.* In criminal actions involving violations 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.
(Italics supplied.)

From the above, the DOJ clearly has the power to deputize lawyers from the BIR, who then gain the authority to prosecute a case.

This deputization does *not*, however, result in the DOJ *losing* its status as the lead prosecutor. Under both the *Revised Rules of Criminal Procedure, as amended*, and the *RRCTA*, the public prosecutor is still tasked with directing and controlling the prosecution of a given case, the deputization of assisting lawyers notwithstanding. In other words, the BIR lawyers are merely deputized to assist the DOJ, which remains as the lead prosecutor in appeals brought before the Court of Tax Appeals *En Banc*.

Indeed, the Supreme Court has consistently held that deputized private or special prosecutors remain under the supervision of the public prosecutor. This was pronounced in the landmark case of *National Power Corporation v. National Labor Relations Commission*,²¹ which was later cited in *Commissioner of Customs v. Court of Tax Appeals*²² as follows:

First. Petitioner was represented in the CTA by the Office of the Solicitor General which deputized lawyers in the Legal Service Division of the Bureau of Customs to serve as collaborating counsels. In accordance with this arrangement, lawyers in both offices (Bureau of Customs and the OSG) were served copies of decisions of the CTA. The lawyers at the Bureau received a copy of the decision of the CTA on May 30, 1997, while the OSG received its own on June 5, 1997. As earlier stated, the OSG filed its motion for reconsideration on June 20, 1997. Counted from this date, the motion was seasonably filed, but if the period for appealing or filing a motion for reconsideration were reckoned from the date of receipt of the decision by the lawyers of the Bureau of Customs, then the motion was filed five days late. The Court of Appeals ruled that service of the copy of the CTA decision on the lawyers of the Bureau of Customs was equivalent to service on the OSG, and, therefore, the motion for reconsideration was filed late.

This is error. *In National Power Corp. v. NLRC, it was already settled that although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel, and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive. . . .*

(Emphasis and italics supplied.) ✓

²¹ G.R. No. 90933-61, May 29, 1997.

²² G.R. No. 132929, March 27, 2022.

This was affirmed a few years ago in *Baldovino-Torres v. Torres*:²³

The Court finds no merit in the contention that the OSG filed its Motion for Reconsideration out of time in the RTC. Admittedly, the public prosecutor in charge of the case, who was deputized by the OSG to appear on its behalf, received a copy of the RTC Decision on March 20, 2017. On the other hand, the OSG received its copy only on April 4, 2017.

In the case of *National Power Corporation v. National Labor Relations Commission (NAPOCOR)*, the Court held that *the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG*. In holding so, the Court emphasized that *the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer*. As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.

The NAPOCOR case was cited in the subsequent case of *Commissioner of Customs v. Court of Tax Appeals*, where it was reiterated that *although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive*.

(Emphasis and italics supplied.)

To summarize, the public prosecutor in a criminal case continues to be the principal counsel even if private or special prosecutors are deputized. The period for filing a Petition for Review with the Court *En Banc* to appeal a ruling of the Court in Division, then, should be counted from receipt by the DOJ of a copy of said adverse ruling. The date on which the *BIR* receives such ruling is immaterial, following the jurisprudence cited above.

In the case at bar, the DOJ received the assailed Resolution on December 29, 2023. Counting 15 days from said date, plaintiff-appellant had until January 15, 2024,²⁴ within which to file a Petition for Review before this Court *En Banc*. Plaintiff-appellant only filed its Motion for Extension of Time to File Petition for Review via registered mail on January 24, 2024. Given that said Motion was only granted on the condition that it was actually filed on time, the Motion must be deemed denied. Consequently, plaintiff-appellant failed to file any Petition for Review, or Motion to extend the period for filing the same, within the allowable period.

Considering the above, the assailed Resolution of the Court in Division has become final and executory. The Court *En Banc* concomitantly lacks jurisdiction over this case and must dismiss the instant Petition. ✓

²³ G.R. No. 248675, July 20, 2022.

²⁴ While January 13, 2024, was the actual deadline, said date fell on a Saturday.

ACCORDINGLY, the Petition for Review, filed via registered mail on February 8, 2024, is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.


Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice

WE CONCUR:



ROMAN G. DEL ROSARIO

Presiding Justice



MA. BELEN M. RINGPIS-LIBAN

Associate Justice



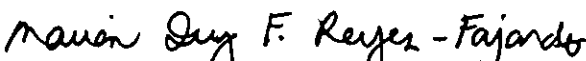
CATHERINE T. MANAHAN

Associate Justice



JEAN MARIE A. BACORRO-VILLENA

Associate Justice



MARIAN IVY F. REYES-FAJARDO

Associate Justice



LANEE S. CUI-DAVID

Associate Justice



CORAZON G. FERRER-FLORES

Associate Justice



HENRY S. ANGELES

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.

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', with a large, stylized initial 'R'.

ROMAN G. DEL ROSARIO

Presiding Justice