

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

PEOPLE OF THE PHILIPPINES,	THE Petitioner,	CTA EB CRIM. NO. 061 (CTA CRIM. CASE NOS. O-589 & O-590)
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Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, J.J.

-versus-

HERNANE A. AYON,
(Purok 4, Lumbo, Valencia
City, Bukidnon and/or P-12
Malingon, Bagontaas, Valencia
City, Bukidnon)
Respondent.

Promulgated:

FEB 07 2019

3:19 p.m.

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R E S O L U T I O N

On September 18, 2018, the Court of Tax Appeals (CTA) First Division promulgated a Resolution, which granted accused's Demurrer to Evidence and dismissed the criminal cases against him for insufficiency of evidence.¹

October 15, 2018, petitioner-plaintiff People of the Philippines, through the Prosecution Division of the BIR National Office, filed a Motion for Reconsideration (of the Resolution dated September 18, 2018).

On November 27, 2018, the People of the Philippines, this time through the Office of the Solicitor General (OSG), filed a Petition for Certiorari under Rule 65 of the Rules of Court with the Supreme Court.² The petition assailed

¹ Annex A, Petition for Review, Rollo, pp. 28-49.

² CTA Web Portal / Case History, CTA Case No. 9107, <http://cta.judiciary.gov.ph/history2>, last accessed January 22, 2019. Division Docket (Crim. Case No. O-589), Vol. II, pp. 880-919.

the September 18, 2018 Resolution for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. *A copy of the petition was also furnished to the Prosecution Division of the BIR National Office.*³

On December 12, 2018, the CTA First Division promulgated a Resolution⁴ which denied for lack of merit plaintiff's Motion for Reconsideration of the September 18, 2018 Resolution.⁵

On January 7, 2019, the instant Petition for Review was filed by the People of the Philippines, through the Prosecution Division of the BIR National Office.⁶ *The Court notes, however, that the notarized Verification / Certification lacks any disclosure on the petition previously filed with the Supreme Court by the OSG.*⁷

Forum shopping is the act of a party litigant against whom an adverse judgment has been rendered in one forum seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of certiorari, or the institution of two or more actions or proceedings grounded on the same cause or supposition that one or the other court would make a favorable disposition. *Forum shopping* happens when, in the two or more pending cases, there is identity of parties, identity of rights or causes of action, and identity of reliefs sought. Where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other, there is forum shopping. For *litis pendentia* to be a ground for the dismissal of an action, there must be: (a) identity of the parties or at least such as to represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (c) the identity in the two cases should be such that the judgment which may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.⁸

In this case, there is clearly forum shopping where the *same party*, i.e. People of the Philippines, filed two pending cases with *identical* causes of action and *identical* reliefs sought before two forums:

1. A Petition for Certiorari under Rule 65 with the Supreme Court assailing the September 18, 2018 Resolution of the Court's First Division which granted the accused's Demurrer to Evidence, dismissed the criminal cases for insufficiency of evidence and ruled that plaintiff failed to establish by preponderance of evidence that

³ Affidavit of Service attached to the Petition for Certiorari, Division Docket (Crim. Case No. O-589), Vol. II, p. 920.

⁴ Annex B, Petition for Review, Rollo, pp. 23-26.

⁵ Annex A, Petition for Review, Rollo, pp. 28-49.

⁶ Rollo, pp. 8-30.

⁷ Rollo, p. 21.

⁸ *In Re: Reconstitution of Transfer Certificates of Title Nos. 303168 and 303169 and Issuance of Owners Duplicate Certificates of Title In Lieu of Those Lost, Rolando Edward G. Lim*, G.R. No. 156797, July 6, 2010; citations omitted.

accused should be held civilly liable. The petition prayed for the nullification and setting aside of the resolution.⁹

2. A Petition for Review under Rule 43 with the CTA *En Banc* also assailing the September 18, 2018 and December 12, 2018 Resolutions of the Court's First Division. The petition sought to reverse the *civil aspect* of the September 18, 2018 Resolution and order the accused to pay deficiency income tax plus the interest, surcharge and penalty charges.¹⁰

Since the Petition for Certiorari raised issues which covered *not only* the criminal aspect *but also* the civil aspect of the September 18, 2018 Resolution,¹¹ the decision of the Supreme Court thereon may constitute as *res judicata* on the issues raised before the CTA *En Banc*.

Furthermore, in failing to disclose the Supreme Court petition in the Verification/Certification attached to the instant petition filed with the Court, petitioner violated Sections 6 and 7 of Rule 43 of the Rules of Court in relation to Sections 3(b) and 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) which provide:

“Sec. 6. *Contents of the petition.* --- The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

Sec. 7. *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 should accompany the petition shall be sufficient ground for the dismissal thereof.” (underscoring supplied)

⁹ Division Docket (Crim. Case No. O-589), Vol. II, p. 913.

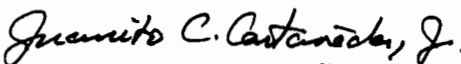
¹⁰ Petition for Review, Rollo, p. 19.

¹¹ Petition for Certiorari, Division Docket (Crim. Case No. O-589), Vol. II, pp. 902-913.

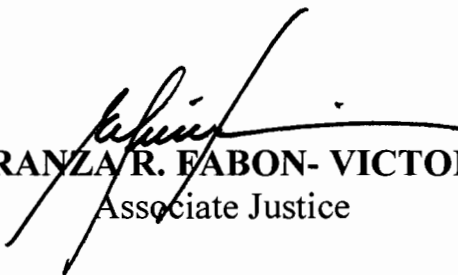
Accordingly, in view of the foregoing and as a matter of judicial deference, the instant petition is **DISMISSED** on the ground of forum shopping.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON- VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice