

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

SECOND DIVISION

**BUREAU OF INTERNAL
REVENUE represented by
COMMISSIONER CESAR R.
DULAY,**

Petitioner,

- versus -

**HON. MENARDO I. GUEVARRA
in his capacity as SECRETARY
OF JUSTICE and FERDINAND
SANTOS in his capacity as
president of Camp John Hay
Hotel Corp.,**

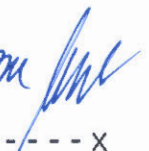
Respondents.

CTA CASE NO. 10298

Members:

**CASTAÑEDA, JR., Chairperson,
BACORRO-VILLENA, and
CUI-DAVID, JJ.**

Promulgated:

FEB 08 2022 2:10 PM 

x ----- x

RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is petitioner's **Motion for Reconsideration (of the Decision promulgated October 15, 2021)** filed on November 8, 2021, with private respondent Ferdinand Santos' **Opposition (to the Motion for Reconsideration dated 21 October 2021)** filed on November 19, 2021.

On October 15, 2021, the Court promulgated a Decision dismissing petitioner's *Petition for Certiorari*, finding that there was still an appeal and adequate remedy in the ordinary course of law, and that there was no grave abuse of discretion on the part of the public respondent when he dismissed the complaint against the private respondent, the dispositive portion of which states: *gr*

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"WHEREFORE, in light of the foregoing considerations, the instant *Petition for Certiorari* is **DISMISSED.**

SO ORDERED."

In its Motion, petitioner reiterates that public respondent committed grave abuse of discretion by dismissing his criminal complaint for violation under Section 226 in relation to Section 5(C) of the National Internal Revenue Code (NIRC) of 1997, as private respondent failed to produce the documents enumerated in the *subpoena duces tecum*.

It insists that the filing of a petition for certiorari under Rule 65 of the Rules of Court is the right and proper remedy since the Secretary of Justice committed grave abuse of discretion, and there was no more appeal or other remedy available in the ordinary course of law. Petitioner cites the cases of *Judge Adoracion G. Angeles v. Hon. Manuel E. Gaite, et al.*,¹ and *Arnel C. Alcaraz v. Ramon C. Gonzalez*,² to bolster its argument.

Petitioner further argues that the ordinary course of filing an appeal to the Office of the President (OP) is prohibited in the present case pursuant to the doctrine of qualified political agency, in relation to OP Memorandum Circular No. 58. It explains that the said Circular states that "no appeal from or petition for review of decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by reclusion perpetua to death xxx."

On the other hand, in his opposition, private respondent avers that petitioner's arguments are misleading. He expounds that petitioner's reliance on OP Memorandum Circular No. 58, as well as the foregoing cited jurisprudence, are all misplaced in view of the fact that the cases involved therein pertains to ordinary criminal offenses and not offenses committed in violation of the NIRC. He even draws attention to petitioner's *Petition for Certiorari*, when it specifically argued that criminal complaints involving offenses under the NIRC should be distinguished from ordinary criminal offenses. Now, private respondent questions that petitioner cannot credibly go 

¹ G.R. No. 176596, March 23, 2011.

² G.R. No. 164715, September 20, 2006.

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back on its position in its *Petition for Certiorari* and state that the same rule on appeal applies to all criminal complaints.

Private respondent also claims that the Court correctly concluded that an agency decision is ordinarily subject to an appeal. As such, he then maintains that petitioner simply has no excuse for ignoring Section 25, Chapter 4, Book VII of Executive Order No. 292, s. 1987, or the "Administrative Code of 1987," by failing to file a petition for review before this Court or the Regional Trial Court, as the case may be, to review the determination of probable cause by herein public respondent. Corollary, private respondent reiterates that a petition for certiorari is not a substitute for a lost appeal.

More so, private respondent asserts that the public respondent did not commit grave abuse of discretion in the present case, as errors of judgment are beyond the scope of a petition for certiorari.³ Relatively, errors in appreciation of evidence and application of legal principles are all matters of judgment which does not fall within the ambit of a special civil action for certiorari. Accordingly, private respondent claims that perusal of petitioner's pleadings would reveal that it is essentially complaining public respondent's supposed error of judgment in appreciating the letter dated July 9, 2014 together with the other evidence submitted in the proceedings *a quo*, which as earlier discussed cannot be reviewed in the said special civil action.

After a due consideration, the Court finds the instant Motion for Reconsideration bereft of merit.

Notably, the arguments raised by petitioner in the instant Motion are mere reiterations of matters, which have already been considered, weighed, and resolved by the Court in the assailed Decision.

Again, it is worth stressing that a certiorari may not issued if the error can be subject of an ordinary appeal.⁴ With emphasis, a writ of *certiorari* is not a substitute for a lost appeal. When an appeal is available, *certiorari* will not prosper especially if the appeal was lost because of one's own negligence or error in the choice of remedy, even if the ground is grave abuse of discretion.⁵ *Je*

³ *Evelyn L. Miranda v. Sandiganbayan, et al.*, G.R. 144760-61, August 2, 2017.

⁴ *Marvin Cruz, et al. v. People of the Philippines*, G.R. No. 224974, July 3, 2017.

⁵ *Bureau of Internal Revenue, et al. v. Hon. Ernesto D. Acosta et al.*, G.R. No. 195320, April 23, 2018.

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In the present case, considering that the remedy of appeal was available to petitioner at that time, it should have filed an appeal rather than a petition for certiorari. Unfortunately, by failing to do so the dismissal of the present case is warranted.

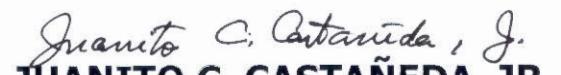
With regard to petitioner's reliance on OP Memorandum Circular No. 58 and the cited jurisprudence, the Court finds the same erroneous. As correctly pointed out by private respondent, the cases involved therein are all ordinary criminal offenses and not offenses under the NIRC. Simply put, the present case should have been filed to this Court under ordinary appeal via a petition for review instead of availing the special civil action of certiorari.

The Court also reiterates that there was no grave abuse of discretion on the part of the public respondent since there was no evidence presented by petitioner to refute the findings of the Court in the assailed Decision. As a matter of fact, without convincing evidence to show private respondent's failure to submit the other subpoenaed documents, the Court upholds the resolutions of the investigating prosecutor and the Department of Justice (DOJ) that petitioner has not given sufficient proof to warrant the filing of an Information against private respondent.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised in petitioner's Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on October 15, 2021.

WHEREFORE, in light of the foregoing considerations, petitioner's Motion for Reconsideration (of the Decision promulgated October 15, 2021) is **DENIED** for lack of merit.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

We concur:


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


LANEE S. CUI-DAVID
Associate Justice