

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,

Petitioner,

C.T.A. EB CRIM. NO. 018

(C.T.A. Crim. Case No.O-155)

Present:

ACOSTA, Presiding Justice,

CASTAÑEDA, JR.,

BAUTISTA,

UY,

CASANOVA,

PALANCA-ENRIQUEZ,

FABON-VICTORINO,

MINDARO-GRULLA, and

COTANGCO-MANALASTAS, JJ

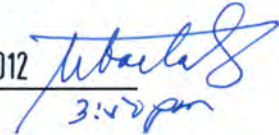
-versus-

GLORIA F. TUYAY,

Respondent.

Promulgated:

JAN 19 2012



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RESOLUTION

PALANCA-ENRIQUEZ, J.:

This is a Petition for Review filed by petitioner People of the Philippines on November 9, 2011 of the Resolution dated October 3, 2011 of the First Division of this Court in C.T.A. Crim Case No. O-155 denying the prosecution's "Motion For Reconsideration" praying for the reconsideration of the Resolution dated July 21, 2011 dismissing the case



against the accused on the ground that the accused is eligible to avail of the Tax Amnesty under RA 9480, which rendered her immune from any prosecution, whether civil, criminal, or administrative arising from her alleged failure to pay any and all internal revenue taxes for the taxable year 2005 and prior years.

A perusal of the Petition for Review shows that petitioner People of the Philippines is represented by the BIR Special Prosecutors, Atty. Romel C. Curiba, Atty. Noel A. Bulaong, and Atty. Monalyn Ann L. Baquiran, and not by the Office of the Solicitor General (OSG).

Basic is the rule that the authority to represent the State in appeals of criminal cases is solely vested in the OSG. *Section 35 (1), Chapter 12, Title III, Book IV of the Administrative Code of 1987* provides:

“SEC. 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:



(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.”

Thus, in the case of *Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory*, 384 SCRA 117, citing *Republic vs. Register of Deeds of Quezon*, 244 SCRA 537, and *CIR vs. S.C. Johnson and Son, Inc.*, 309 SCRA 87, the Supreme Court ruled:

“The **institution or commencement** before a proper court of civil and criminal actions and proceedings arising under the Tax Reform Act which "shall be conducted by legal officers of the Bureau of Internal Revenue" is not in dispute. **An appeal from such court, however, is not a matter of right. Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic. This Court continues to maintain that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.** This pronouncement finds justification in the various laws defining the Office of the Solicitor General, beginning with Act No. 135, which took effect on 16 June 1901, up to the present Administrative Code of 1987.” (Emphasis supplied)

In the recent case of *Carina L. Dacer, et al. vs. Panfilo M. Lacson*, G.R. No. 196209, June 8, 2011, the Supreme Court aptly ruled:

“The right of the petitioners to file the petition for review on *certiorari* to seek on appeal the reversal of the CA's dismissal of the criminal action without the conformity and participation of the OSG is non-existent. Hence, they are



not the real parties in interest to appeal by petition for review.

Basic in procedural law is that every action must be prosecuted and defended in the name of the real party in interest. A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or the *Rules of Court*, every action must be prosecuted or defended in the name of the real party in interest. The rule has two components, to wit: (a) to institute an action, the plaintiff must be the real party in interest; and (b) the action must be prosecuted in the name of the real party in interest.

Necessarily, the purposes of the rule on real party in interest are: (a) to prevent the prosecution of actions by persons without any right, title or interest in the case; (b) to require that the actual party entitled to legal relief be the one to prosecute the action; (c) to avoid a multiplicity of suits; and (d) to discourage litigation and keep it within certain bounds, pursuant to sound public policy.

Interest within the meaning of the rule means a material interest or an interest in the issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved. One having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action. When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action.

The same rule governs on appeal, in that only a party in interest can challenge a decision. A party, in order to appeal, must have a present interest in the subject matter of the litigation and must be aggrieved or prejudiced by the judgment. A party is aggrieved or prejudiced when his interest recognized by law in the subject matter of the lawsuit is injuriously affected by the judgment or order; on the other hand, a party not aggrieved by the decision or

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order may not appeal because he would have no arguable error to assign on appeal. Thus, the prevailing party in a lawsuit is not ordinarily entitled to appeal a decision or order in his favor.

Are the petitioners real parties in interest who may appeal the assailed decision of the CA dismissing Criminal Case No. 10272905 and Criminal Case No. 10272906 as against Senator Lacson?

They are not.

Section 5 of Rule 110 of the *Rules of Court* dictates that all criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the public prosecutor; hence, any private prosecutor assisting the private offended party upon the civil aspect comes under the public prosecutor's authority. Yet, although the *Rules of Court* so permit the offended party to take part in the prosecution of a criminal action, and in certain instances on appeal from the order or judgment of the courts in a criminal action, the permission to take part is true only where the party injured has to protect his pecuniary interest as part of the civil liability of the accused.

Here, however, the petitioners do not appeal to protect their pecuniary interest as offended parties of the crime, but to cause the reinstatement of the criminal action against Senator Lacson that the CA had dismissed on the ground that there was no probable cause to issue the warrant of arrest against Senator Lacson. As such, they have no right to the recourse, because the right exclusively pertained to the OSG in behalf of the People of the Philippines. Indeed, we have ruled in a number of cases that only the Solicitor General may bring or defend actions in behalf of the Republic of the Philippines, or may represent the People or the State in criminal proceedings before the Court and the CA.



The exclusivity lodged in the OSG has statutory basis. Section 35, Chapter 12, Title III, Book IV of the *Administrative Code* of 1987 pertinently so provides, to wit:

Section 35. *Powers and Functions*. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. **The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:**

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The exclusivity vested in the OSG rests on sound theory. The sovereign State has the authority, under its police power, to define and punish crimes and to lay down the rules of criminal procedure. As part of its police power, the State has a large measure of discretion in creating and defining criminal offenses. The right of prosecution and punishment of a crime is one of the attributes that by natural law belongs to the sovereign power instinctively charged by the common will of the members of society to look after, guard, and defend the interests of the community, the individual and social rights and the liberties of every citizen, and guaranty the exercise of his rights. Otherwise stated, every violation of penal laws results in the disturbance of public order and safety which the State is committed to uphold and protect.”

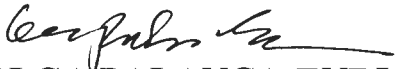


Pursuant to the above decisions of the Supreme Court, the BIR is not the real party-in-interest to appeal by way of Petition For Review the dismissal of C.T.A. Crim. Case No.O-155.

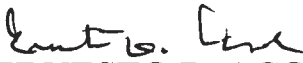
For all the foregoing, we have no recourse, but to deny the petition.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE**, and accordingly **DISMISSED**.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice

(INHIBITED)
LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice



ESPERANZA R. FABON-VICTORINO
Associate Justice



CIELITO N. MINDARO-GRULLA
Associate Justice



AMELIA R. COTANGCO-MANALASTAS
Associate Justice