REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

BUREAU OF INTERNAL REVENUE, represented by COMMISSIONER KIM S. JACINTO-HENARES, Petitioner,	**CTA CASE NO. 9171**
- versus -	Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
HON. LEILA M. DE LIMA, in her capacity as SECRETARY OF JUSTICE and GEORGE ERWIN M. GARCIA, Respondents.	Promulgated: MAR 29 2017 7:00 p.m.

x- -x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Certiorari,[1] seeking to annul and set aside the Resolution[2] dated June 10, 2015 issued by the Secretary of Justice in I.S. No. XVI-INV-11I-00344 (assailed Resolution).

The Antecedent Facts

Petitioner Bureau of Internal Revenue (BIR) is the government agency mandated with the duty of assessing and collecting internal revenue taxes.

The BIR initiated an investigation against respondent Garcia after learning from a confidential informant that Garcia admitted in a civil case, then pending

[1] Under Rule 65 of the Rules of Court.

[2] Docket, pp. 39-41.

with the Makati City Regional Trial Court,[3] to purchasing a condominium unit in Makati City worth ₱53,000,000.00 in 2010. For the year 2010, Garcia reported a gross income of ₱1,380,500.00.[4] Using the expenditure method of investigation, the BIR made a preliminary finding that Garcia substantially underdeclared his income for taxable year 2010 by ₱51,967,530.00.[5]

On September 15, 2011, petitioner filed a Joint Complaint-Affidavit[6] claiming that Garcia deliberately failed to file his value-added tax (VAT) return for the same year, in violation of Sections 254 and 255 of the NIRC of 1997, as amended. Petitioner also alleged that Garcia violated Section 275, in relation to Section 236(G), of the same code for his failure to register as a VAT taxpayer, considering that his gross receipts for 2010 exceeded ₱1,500,000.00.[7]

After the preliminary investigation, the Investigating Prosecutor dismissed the criminal complaint for lack of probable cause, thus:

> [W]e find no probable cause to warrant respondent's indictment for the charges being lodged against him. The quantum of evidence required to sustain a finding of probable cause has not been sufficiently established. At the risk of being repetitious, complainant's repeated claim of under-valuation and/or tax evasion based on mere inferences and in the absence of proof as to their actual existence cannot serve to outweigh respondent's exculpatory evidence, *i.e.*, his duly filed 2010 income tax return with the accompanying financial statements, specifically his statements of financial position and cash flow as of December 31, 2010. In the said documents, it has been properly disclosed that the amount of ₱53,000,000.00 has been sourced through loans. x x x
>
> All told, we find no probable cause to warrant indictment of respondent for violation of Sections 254 (attempt to evade or defeat tax), 255 (failure to file return, supply correct and accurate information) and 275, in relation to Section 236(G) (failure to register as VAT taxpayer of the National Internal Revenue Code, as amended.
>
> **WHEREFORE**, it is respectfully recommended that the complaint be **DISMISSED** for lack of probable cause.[8]

---

[3] Docketed as Civil Case No. 11-016, entitled *Stephen Craig Whale, Represented in this act by his authorized representative Ms. Leonor B. Barcelon v. Atty. George Erwin Garcia and the Shang Properties Realty Corporation*; docket, p. 57.

[4] Docket, p. 47.

[5] Docket, p. 43.

[6] Executed by Socrates O. Regala, Cristina E. Asuncion and Josephine D. Duran, revenue officers of the BIR; docket, pp. 43-51.

[7] Docket, p. 40.

[8] Docket, pp. 248-250.

On March 15, 2012, petitioner filed a Motion for Reconsideration,[9] which was denied in a Resolution dated April 12, 2015.[10]

Dissatisfied, petitioner filed a Petition for Review with the Office of the Secretary of Justice on August 28, 2012, in which petitioner reiterated its previous arguments which hinge on the issue of whether the amount of ₱53,000,000.00 is income.

The Ruling of the Secretary of Justice

The Secretary of Justice upheld the findings of the Investigating Prosecutor, and dismissed outright the Petition for Review in accordance with the 2000 NPS Rules on Appeal.[11] The dispositive portion of the assailed Resolution reads:

> **WHEREFORE**, premises considered, the petition for review is hereby **DISMISSED**.
>
> **SO ORDERED**.[12]

Petitioner received a copy of the assailed Resolution on August 18, 2015[13] and filed the present Petition for *Certiorari*[14] before the Court on October 19, 2015.[15]

The Issues

Petitioner raises the following issues:

I.

THE HONORABLE SECRETARY OF JUSTICE COMMITTED GRAVE ABUSE OF DISCRETION BY WAY

---

9 Docket, pp. 253-265.

10 Docket, pp. 282-283.

11 Department Circular No. 70, dated July 3, 2000, in Section 12(c) provides:

SECTION 12. Disposition of the appeal. The Secretary may reverse, affirm or modify the appealed resolution. He may, motu proprio or upon motion, dismiss the petition for review on any of the following grounds: x x x

- That there is no showing of any reversible error; x x x

12 Docket, p. 41.

13 Docket, p. 7.

14 Docket, pp. 5-33.

15 The last day of the 60-day period to file a petition for *certiorari* was on October 17, 2015, which fell on a Saturday.

OF DIMISSING THE CRIMINAL COMPLAINT FOR VIOLATION OF SECITONS 254, 255, AND 275 IN RELATION TO 236(G) OF THE NIRC OF 1997 AGAINST RESPONDENTS ALLEGEDLY FOR INSUFFICIENCY OF EVIDENCE.

II.

THE APPELLATE COURTS HAVE JURISDICTION TO LOOK INTO WHETHER THE DEPARTMENT OF JUSTICE COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE PROSECUTOR'S RESOLUTION ON APPEAL.

III.

THERE IS NO PLAIN, SPEEDY AND ADEQUATE REMEDY AS CONTEPLATED UNDER RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE AVAILABLE TO PETITIONER.[16]

On January 4, 2016, respondent Garcia filed his Comment/Opposition (To: Petition for Certiorari Dated 12 October 2015).

On January 29, 2016, respondent Secretary filed a Manifestation/Compliance stating that considering that the Secretary is being impleaded in an official capacity as public respondent, the DOJ may be excused from filing comment or appearing in the instant case.

On February 24, 2016, the Court issued a Resolution giving due course to the instant case and ordering the parties to submit their respective memoranda.

Petitioner filed its Memorandum on March 30, 2016;[17] while Garcia filed his Memorandum on April 15, 2016.[18] On April 25, 2016, the Court issued a Resolution submitting the instant case for decision.[19]

<u>The Ruling of the Court</u>

We deny the petition.

---

[16] Docket, pp. 17-18.

[17] Docket, pp. 420-439.

[18] Docket, pp. 444-480.

[19] Docket, p. 484.

Certiorari as a Remedy

Certiorari is an extraordinary prerogative writ that is never demandable as a matter of right. It is meant to correct only errors of jurisdiction and not errors of judgment committed in the exercise of the discretion of a tribunal or an officer.[20]

Section 1, Rule 65 of the Rules of Court provides:

> SECTION 1. *Petition for Certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. x x x

In this case, appeal to the Office of the President from the assailed Resolution is not available. Memorandum Circular No. 58 issued by the Office of the President on June 30, 1993 reads:

> In the interest of the speedy administration of justice, the guidelines enunciated in Memorandum Circular No. 1266 (4 November 1983) on the review by the Office of the President of resolutions/orders/decisions issued by the Secretary of Justice concerning preliminary investigations of criminal cases are reiterated and clarified.
>
> 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 x x x.
>
> Henceforth, if an appeal or petition for review does not clearly fall within the jurisdiction of the Office of the President, as set forth in the immediately preceding paragraph, it shall be dismissed outright x x x.

---

[20] *Angeles v. Gutierrez*, G.R. Nos. 189161 & 189173, March 21, 2012.

The Supreme Court has ruled that the correct relief from a resolution of the Secretary of Justice concerning a preliminary investigation is a petition for *certiorari*. In *Angeles v. Gaite*,[21] the Supreme Court held:

> Indeed, petitioner filed her appeal with the DOJ Secretary, but her appeal was dismissed. Petitioner filed her motion for reconsideration which was also dismissed. **As there was no more appeal or other remedy available in the ordinary course of law, her remedy was to file a petition for *certiorari* under Rule 65 of the Rules of Court on the ground of grave abuse of discretion.** x x x (*Emphasis supplied.*)

Hence, petitioner's resort to a petition for *certiorari* is proper. Having established that a petition for *certiorari* is the proper remedy, we now determine whether the Court is vested with jurisdiction over the present petition.

The Court's Jurisdiction

The Court's jurisdiction over cases involving criminal offenses is provided in Section 7 of Republic Act (RA) No. 1125, as amended, which states:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise: x x x
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:
>
> (1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: *Provided, however*, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. 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

---

[21] G.R. No. 176596, March 23, 2011.

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.

(2) Exclusive appellate jurisdiction in criminal offenses:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respective territorial jurisdiction.

(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

The authority to issue writs of *certiorari* involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law and cannot be implied from the mere existence of appellate jurisdiction.[22] Based on Section 7 of RA No. 1125, as amended, it would appear that the Court does not have jurisdiction in this case. However, in *The City of Manila v. Grecia-Cuerdo*,[23] the Supreme Court held that the Court does have the authority to issue writs of *certiorari*:

> [I]t would be somewhat incongruent with the pronounced judicial abhorrence to split jurisdiction to conclude that the intention of the law is to divide the authority over a local tax case filed with the RTC by giving to the CA or this Court jurisdiction to issue a writ of *certiorari* against interlocutory orders of the RTC but giving to the CTA the jurisdiction over the appeal from the decision of the trial court in the same case. It is more in consonance with logic and legal soundness to conclude that the grant of appellate jurisdiction to the CTA over tax cases filed in and decided by the RTC carries with it the power to issue a writ of *certiorari* when necessary in aid of such appellate jurisdiction. The supervisory power or jurisdiction of the CTA to issue a writ of *certiorari* in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the

[22] *The City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014.

[23] Id.

final orders and decisions of the RTC, in order to have complete supervision over the acts of the latter.

Subsequent to the landmark *Grecia-Cuerdo* ruling, the Supreme Court had the opportunity to determine whether the Court has jurisdiction over a petition for *certiorari* assailing the resolution of the Secretary of Justice in a preliminary investigation. In *Bureau of Customs v. Devanadera*,[24] the Supreme Court answered this question in the affirmative and held that –

> Since the Court ruled in *City of Manila v. Hon. Grecia-Cuerdo*[25] that the CTA has jurisdiction over a special civil action for *certiorari* questioning an interlocutory order of the RTC in a local tax case *via* express constitutional mandate and for being inherent in the exercise of its appellate jurisdiction, it can also be reasonably concluded based on the same premise that **the CTA has original jurisdiction over a petition for *certiorari* assailing the DOJ resolution in a preliminary investigation involving tax and tariff offenses.**
>
> If the Court were to rule that jurisdiction over a petition for *certiorari* assailing such DOJ resolution lies with the CA, it would be confirming the exercise by two judicial bodies, the CA and the CTA, of jurisdiction over basically the same subject matter – precisely the split-jurisdiction situation which is anathema to the orderly administration of justice. The Court cannot accept that such was the legislative intent, especially considering that **R.A. No. 9282 expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases <u>without mention of any other court that may exercise such power</u>.**
>
> Concededly, there is no clear statement under R.A. No. 1125, the amendatory R.A. No. 9282, let alone in the Constitution, that the CTA has original jurisdiction over a petition for *certiorari*. By virtue of Section 1, Article VIII of the 1987 Constitution, vesting judicial power in the Supreme Court and such lower courts as may be established by law, to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality of the Government, in relation to Section 5(5), Article VIII thereof, vesting upon it the power to promulgate rules concerning practice and procedure in all courts, **the Court thus declares that the CA's original jurisdiction[26] over a petition for**

[24] G.R. No. 193253, September 8, 2015.

[25] G.R. No. 175723, February 4, 2014.

[26] Section 9(1), BP Blg. 129 – The Court of Appeals shall exercise: (1) Original jurisdiction to issue writs of *mandamus*, prohibition, *habeas corpus*, and *quo warranto* and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction.

> ***certiorari* assailing the DOJ resolution in a preliminary investigation involving tax and tariff offenses was necessarily transferred to the CTA pursuant to Section 7 of R.A. No. 9282, and that such petition shall be governed by Rule 65 of the Rules of Court, as amended**. Accordingly, it is the CTA, not the CA, which has jurisdiction over the petition for *certiorari* assailing the DOJ resolution of dismissal of the BOC's complaint-affidavit against private respondents for violation of the TCCP. *(Emphasis and underscoring supplied.)*

Hence, the Court has jurisdiction over the present petition for *certiorari* assailing the resolution of the Secretary of Justice which dismissed the BIR's Joint Complaint-Affidavit against private respondent for violation of the NIRC.

The Finding of Probable Cause

It is a settled policy that the courts will not interfere in the prosecutor's exercise of discretion in the determination of probable cause in preliminary investigations absent a clear showing of grave abuse of discretion.[27] Absent a showing of grave abuse of discretion, the determination of what constitutes sufficient evidence to establish probable cause is left to the discretion of the prosecutor and the DOJ.[28]

Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.[29]

On the other hand, grave abuse of discretion is the capricious or whimsical exercise of judgment equivalent to lack of jurisdiction.[30] The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[31]

After a careful review of the records, the Court affirms the dismissal of the BIR's Joint Complaint-Affidavit for lack of probable cause.

Petitioner's allegation that Garcia violated Sections 254, 255 and 275 in relation to 236(G) of the NIRC of 1997, as amended, is rooted in the confidential

---

27 *Unilever Philippines, Inc. v. Tan*, G.R. No. 179367, January 29, 2014.
28 *Id.*
29 *Bureau of Customs v. Devanadera*, supra, note 16.
30 *Deutsche Bank AG v. Court of Appeals*, G.R. No. 193065, February 27, 2012.
31 *People of the Philippines v. Tan*, G.R. No. 167526, July 26, 2010.

information it obtained regarding Garcia's purchase of a condominium unit in the amount of ₱53,000,000.00.

Sections 254 and 255 of the NIRC of 1997, as amended, read:

> SEC. 254. Attempt to Evade or Defeat Tax. – Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (₱30,000.00) but not more than One hundred thousand pesos (₱100,000.00) and suffer imprisonment of not less than two (2) years but not more than four (4) years; x x x
>
> SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. x x x

Meanwhile, Sections 236(G) and 275 read:

> SEC. 236. Registration Requirements. – x x x
>
> (G) Persons Required to Register for Value-added Tax. –
>
> (1) Any person who, in the course of trade or business, sells, barters or exchanges goods or properties, or engages in the sale or exchange of services, shall be liable to register for value-added tax if:
>
> (a) His gross sales or receipts for the past twelve (12) months, other than those that are exempt under Section 109(A) to (U), have exceeded One million five hundred thousand pesos (₱1,500,000.00); or

> (b) There are reasonable grounds to believe that his gross sales or receipts for the next twelve (12) months, other than those that are exempt under Section 109(A) to (U), will exceed One million five hundred thousand pesos (₱1,500,000.00). x x x
>
> SEC. 275. Violation of Other Provisions of this Code or Rules or Regulations in General. – Any person who violates any provision of this Code or any rule or regulation promulgated by the Department of Finance, for which no specific penalty is provided, shall by law, upon conviction for each act or omission, be punished by a fine of not more than One thousand pesos (₱1,000.00) or suffer imprisonment of not more than six (6) months, or both.

The complaint presented before the prosecutor hinged on whether or not the amount of ₱53,000,000.00 is taxable income. After evaluating all the evidence presented before him, the Investigating Prosecutor found that: (1) the amount of ₱53,000,00.00 does not constitute income; (2) the application of the said amount to purchase a condominium unit is not a basis to conclude that the same is income; (3) the said amount used to pay for the condominium unit was sourced through loans; (4) Garcia disclosed the fact that the said amount was sourced through loans in his income tax return and financial statements for taxable year 2010 submitted to the BIR; (5) the loan agreements are not contracts for services; (6) the expenditure method used by the BIR in this case resulted in a mere inference; (7) the inference arrived at using the expenditure method cannot overcome the proof presented by Garcia that the subject amount was sourced from loans and properly reported as such; (8) the complaint of the BIR was based solely on the inference from the use of the expenditure method, uncorroborated by other documents and even contrary to the evidence; (9) Garcia's income reported for taxable year 2010 is only ₱1,380,500.00, hence he is not required to register as a VAT taxpayer; (10) petitioner's allegation of fraud is based on mere inference and/or conjecture, and cannot be upheld; and (11) the quantum of evidence required to sustain a finding of probable cause has not been sufficiently established.

The Secretary of Justice was justified in dismissing the petition for review of the resolution of the Investigating Prosecutor. The findings of the Investigating Prosecutor were based on the documents presented and were in no way arbitrary, whimsical, capricious or despotic. The finding that petitioner's complaint was not sufficiently substantiated to find probable cause was judiciously affirmed by the Secretary of Justice, who found that the loaned amount of ₱53,000,000.00 did not constitute income, thus:

> Respondent has made it adequately clear that the funds used in the purchase of the condominium unit in question cannot be classified as income, due to its having been obtained by way of

> loans from clients and business associates. This fact was duly reflected and disclosed in his financial statements as of December 31, 2010. Thus, because it has been established that the funds involved are not in the nature of income and that the source of such funds have been duly disclosed by respondent, there is no support for a finding of probable cause that respondent violated Sections 254 (Attempt to Evade or Defeat Tax) and 255 (Willful Failure to Supply Correct and Accurate Information). Neither can respondent be indicted for failure to register as a VAT taxpayer under Section 275.[32]

The Court finds no grave abuse of discretion on the part of the Investigating Prosecutor or the Secretary of Justice to warrant interference in their determination of lack of probable cause in this case. Hence, the instant Petition for *Certiorari* must be denied.

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby **DENIED** for lack of merit. The Resolution dated June 10, 2015 of the Secretary of Justice, which upheld the State Prosecutor's Resolution date December 22, 2011 dismissing the Joint Complaint-Affidavit filed by the Bureau of Internal Revenue, in NPS Docket No. XVI-INV-11I-00344, for lack of probable cause, is hereby **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

---

[32] Docket, p. 40.

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice