REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

JUDY ANNE L. SANTOS,
Petitioner,

-versus-

PEOPLE OF THE PHILIPPINES and BUREAU OF INTERNAL REVENUE,
Respondents.

C.T.A. EB. CRIM. No. 001
(C.T.A. Crim. Case No. O-012)

Present:
Acosta, *P.J.*:
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Enriquez, *JJ.*:

Promulgated:

AUG 28 2006 [signature]

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R E S O L U T I O N

While the period to appeal may be extended, such extension is addressed to the sound discretion of the Court and the mere filing and pendency of the motion for extension of time does not suspend the running of the reglementary period.[1] This is exactly what happened in the present Petition for Review.

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1 *The Provincial Sheriff of Rizal v. The Honorable Court of Appeals and Sandra K. Shaouy,* G.R. No. L-22606, December 12, 1975.

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STATEMENT OF THE CASE

This is a Petition for Review filed by the accused in C.T.A. Crim. Case No. O-012 currently being heard by the First Division of this Court. Accused alleges that the Honorable Court *en banc* has jurisdiction over this Petition as provided for by Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, stating that any party adversely affected by a resolution of a division of the Court of Tax Appeals (CTA) may file a petition for review with the CTA *en banc*.

THE FACTS

Petitioner is the accused in C.T.A. Crim. Case No. O-012 captioned "People of the Philippines vs. Judy Anne Santos y Lumagui, No. 8 Scout Tobias corner Scout Madrinian St., Quezon City"[2] for violation of Sec. 255 of the National Internal Revenue Code (NIRC), as amended. The facts as alleged by the petitioner in her Petition for Review are as follows:

> "On 10 January 2006, petitioner filed a Motion to Quash dated 09 January 2006, seeking to nullify the information dated 30 November 2005 charging her with violation of Section 255 of the National Internal Revenue Code (NIRC).
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> On 23 February 2006, petitioner received a copy of the court a quo's Resolution of even date, denying her Motion to Quash. A

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[2] Resolution, C.T.A. First Division, People of the Philippines vs. Judy Anne Santos y Lumagui, December 8, 2005.

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certified true copy of the Resolution dated 23 February 2006 is attached hereto as Annex "A".

Within the reglementary period, or on 01 March 2006, petitioner filed her Motion for Reconsideration and/or Reinvestigation dated 24 February 2006, which was likewise denied by the Court a quo in its Resolution dated 11 May 2006, a copy of which was received by the petitioner on 17 May 2006. A certified true copy of the Resolution dated 11 May 2006 is attached hereto as Annex "B".

Petitioner has fifteen (15) days from 17 March 2006, or until 01 June 2006, within which to file this Petition for Review, pursuant to Section 9(b) of Rule 9 of the Revised Rules of the Court of Tax Appeals, in relation to Rule 43 of the Rules of Court.

On 01 June 2006, petitioner filed her Motion for Extension of Time to File Petition for Review dated 31 May 2006, praying for an additional period of fifteen (15) days from 01 June 2006, or until 16 June 2006, within which to file her Petition. Hence, this petition is filed within the period of time prayed for." [3]

In her Petition for Review, the sole issue presented by the petitioner for resolution reads as follows:

"WHETHER THE COURT A QUO SERIOUSLY ERRED IN DENYING PETITIONER'S MOTION TO QUASH AND MOTION FOR RECONSIDERATION AND/OR REINVESTIGATION."

The grounds relied upon by the petitioner in support of her Petition for Review are the following:

A.

"THE COURT A QUO SERIOUSLY ERRED IN DENYING PETITIONER'S MOTION TO QUASH AND RULING THAT OLIVIA I. LAROZA-TORREVILLAS HAS THE AUTHORITY TO FILE THE SUBJECT INFORMATION. THE NIRC CLEARLY STATES THAT NO CRIMINAL ACTION FOR THE ENFORCEMENT OF ANY FINE, PENALTY OR FORFEITURE UNDER THIS CODE SHALL BE FILED IN COURT WITHOUT THE APPROVAL OF THE [BIR] COMMISSIONER. LACKING SAID APPROVAL, THE INSTANT INFORMATION IS FATALLY

3 Petition for Review, pp. 1-2.

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DEFECTIVE FOR BEING FILED BY AN OFFICER WITHOUT AUTHORITY TO DO SO. MOREOVER, OLIVIA I. LAROZA-TORREVILLAS, AS PROSECUTING ATTORNEY II, IS NOT LEGALLY CONFERRED WITH THE AUTHORITY TO FILE THE SUBJECT INFORMATION. IT IS THE QUEZON CITY PROSECUTOR, UNDER THE QUEZON CITY CHARTER, WHO HAS THE AUTHORITY TO INVESTIGATE AND PROSECUTE OFFENSES ALLEGEDLY COMMITTED WITHIN THE JURISDICTION OF QUEZON CITY, SUCH AS PETITIONER'S CASE."

B.

"THE COURT A QUO SERIOUSLY ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION AND/OR REINVESTIGATION DESPITE THE MANIFEST ERROR, GRAVE ABUSE OF DISCRETION, AND PREJUDICE ON THE PART OF THE PROSECUTION. PETITIONER WAS CLEARLY DENIED OF HER CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS BY REASON OF THE OBVIOUS DISCRIMINATORY PROSECUTION AGAINST HER WHEN, IN A SIMILAR CASE, THE PROSECUTION DISMISSED THE CHARGES AGAINST THE ACCUSED THEREIN."

In fine, petitioner is asking this Court to:

a. SET ASIDE the Resolutions of the First Division of this Court dated 23 February 2006 and 11 May 2006; and

b. Render a new one QUASHING the Information in C.T.A. Crim. Case No. O-012 and DISMISSING the charge against petitioner.

THIS COURT'S RULING

A perusal of the records of this appeal shows that the instant Petition for Review suffers from the following infirmities or defects: First, it was filed out of time as a result of the denial of petitioner's Motion for Extension of Time to File a Petition for Review. Second, the subject of the Petition for Review is an appeal from an interlocutory

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order which is not appealable as consistently held by the Supreme Court in a long line of cases.

A review of the material dates involved in this case shows that the Petition for Review was filed beyond the fifteen-day reglementary period pursuant to Section 9 (b) of Rule 9 of the Revised Rules of the Court of Tax Appeals[4] (RRCTA) which provides:

> "Sec. 9. Appeal; period to appeal. – (a) xxx xxx xxx
>
> (b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court **within fifteen days from receipt** of a copy of the decision or resolution appealed from. xxx" *(Emphasis supplied)*

As stated by the petitioner in her Petition for Review, she received the assailed Resolution on May 17, 2006 and she was aware that she had only until June 1, 2006 within which to file her Petition for Review pursuant to the afore-quoted provision of the RRCTA. On June 1, 2006, the last day of the period of appeal, petitioner filed a Motion for Extension of Time to File Petition for Review asking for fifteen (15) days or until June 16, 2006 within which to file her Petition. Indeed, petitioner filed her Petition for Review through registered mail on June 16, 2006, which the Court received only on June 28, 2006.

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4 A.M. No. 05-11-07-SC, RRCTA, Effective December 15, 2005.

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The instant Petition for Review would have been considered as having been filed on time were it not for the fact that petitioner's Motion for Extension of Time to File Petition for Review filed on June 1, 2006 was denied by this Court in a Resolution promulgated on June 19, 2006. The filing of such motion for extension does not suspend the running of the period of appeal.[5] Consequently, the original fifteen-day period within which petitioner could have taken an appeal had already expired on June 1, 2006.

Although the statutory period of the right to appeal can be extended upon motion of a party, the movant is not entitled thereto as a matter of right since such extension is addressed to the sound discretion of the Court. This Court denied petitioner's Motion for Extension of Time to File Petition for Review, in a Resolution dated June 19, 2006, because the subject of the intended appeal are the Resolutions of the First Division of this Court dated February 23, 2006 and May 11, 2006 denying petitioner's Motion to Quash the information in C.T.A. Crim. Case No. O-012.

As stated in this Court's Resolution, a resolution denying a motion to quash is not a proper subject of an appeal to the Court *en banc*

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5 *Eloy R. Bello, et al., v. Valentin A. Fernando,* G.R. No. L-16970, January 30, 1962.

under Section 11 of R.A. No. 9282 because a ruling denying a motion to quash is only an interlocutory order, as such, it cannot be made the subject of an appeal pursuant to said law and the Rules of Court. Section 1 of Rule 41 of the Rules of Court provides that no appeal may be taken from an interlocutory order and Section 1 (i) of Rule 50 provides for the dismissal of an appeal on the ground that the order or judgment appealed from is not appealable. Time and again, the Supreme Court had ruled that the remedy of the accused in case of denial of a motion to quash is for the accused to enter a plea, go to trial and after an adverse decision is rendered, to appeal therefrom in the manner authorized by law[6].

We have but to reiterate the fundamental rule that an order denying a motion to quash is interlocutory and therefore not appealable nor can it be the subject of a petition for certiorari. Such order may only be reviewed in the ordinary course of the law by an appeal from the judgment after trial. In other words, it cannot be the subject of appeal until the judgment or a final order is rendered. The ordinary procedure to be followed in that event is to enter a plea, go to trial and

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6 *Epifanio Lalican v. Hon. Filomeno A. Vergara, Presiding Judge, RTC Branch 52, Puerto Princesa City and People of the Philippines,* G.R. No. 108619, July 31, 1997; *Teodoro B. Cruz, Jr. v. Court of Appeals, Fifteenth Division,* G.R. No. 83754, February 18, 1991.

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if the decision is adverse, reiterate the issue on appeal from the final judgment.[7]

Moreover, in taking an appeal to this Court, the petitioner is invoking the appellate jurisdiction of the Court *En Banc* pursuant to Section 11 of R.A. No. 9282[8] which provides, in part, as follows:

> "A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*."

It should be noted that the "motion for reconsideration" referred to in the afore-quoted provision pertains only to a motion for reconsideration of a Decision or Resolution of the Court in Division that constitutes **a final disposition of the case**. In other words, Section 11 of R.A. No. 9282 provides for an appeal from the Resolution of the Court in Division that affirms, modifies or reverses its previous Decision on the merits of a case or its previous Resolution containing a final disposition of a case. A Resolution denying a Motion to Quash which is merely an interlocutory order and a Resolution affirming an

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7 *Salvador P. Socrates v. Sandiganbayan, Third Division and People of the Philippines,* G.R. Nos. 118896-97, February 20, 1996.

8 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise known as the Law Creating the Court of Tax Appeals, and For Other Purposes.

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interlocutory order are not within the ambit of Section 11 of R.A. No. 9282.

WHEREFORE, in view of the foregoing reasons, the instant Petition for Review filed with the Court *en banc* through registered mail on June 16, 2006 is hereby **DENIED DUE COURSE** and accordingly **DISMISSED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice