REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

JAIME G. NAPOLES, *Petitioner,*	CTA EB CRIM No. 037 (CTA Crim Case Nos. O-479, O-480, O-481, O-482 and O-484)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
PEOPLE OF THE PHILIPPINES and BUREAU OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 19 2018 2:29 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is the Petition for Review under *Section 9(b), Rule 9*[1] *of the 2005 Revised Rules of the Court*

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RULE 9
PROCEDURE IN CRIMINAL CASES

SEC. 9. Appeal; period to appeal. –

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(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

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of Tax Appeals (RRCTA), as amended, of the Resolutions dated June 20, 2016[2] and March 18, 2016,[3] denying petitioner Jaime G. Napoles' Motion to Quash,[4] both rendered by the Third Division of this Court, the dispositive portions of which, respectively, read as follows:

Resolution dated January 20, 2016:

> **WHEREFORE**, premises considered, the Motion to Admit First Amended Information in Criminal Case Nos. 0-482 and O-484 are hereby **GRANTED**. Hence, the First Amended Informations are admitted as part of the records of the cases.
>
> As regards the Motion to Quash, the same is hereby **DENIED** for lack of merit. Accordingly, this Court finds the existence of probable cause to hold accused for trial.
>
> **SO ORDERED.**

Resolution dated March 18, 2016:

> **WHEREFORE,** the accused's "Urgent Motion for Reconsideration" is hereby **DENIED** for lack of merit.
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> **SO ORDERED.**

The arguments assailed in the Motion to Quash, as recited by the Third Division in its January 20, 2016 Resolution, read as follows:

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[2] *En Banc Docket,* pp. 13-19.
[3] *Ibid.,* pp. 21-22.
[4] *Ibid.,* pp. 28-33.

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"In his Motion to Quash, accused argues that a) the facts stated in the Information do not constitute an offense; 1) the State Prosecutors were not authorized to file the cases; and e) the criminal action has been extinguished because the action has prescribed.

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Accused argues that the facts stated in the Information vis-a-vis the Resolution of the Department of Justice do not constitute an offense. The Informations in Criminal Case Nos. O-482 and O-484 charged accused Jaime G. Napoles of failure to supply correct and accurate information in his income tax returns (ITR) for April 2006 and April 2012, respectively; that accused should not be charged of failure to supply correct and accurate information in the ITRs because as per Resolution of the Department of Justice dated March 13, 2015, the accused did not file his ITRs in 2006 and 2012; that in determining the sufficiency of the Information, the rule is that only the facts alleged in the Information or those admitted by the prosecutor should be taken into account; that there was nothing attached to the complaint or to the Information which could determine whether accused willfully failed to supply correct and accurate information in the ITRs.

In the Comment filed by the prosecution, the prosecutors counter argue that all the elements to be liable for violation of Sections 254 and 255 of the NIRC are present in the assailed Informations. The statements "did, then and there, willfully, unlawfully and feloniously attempt to evade or defeat tax, as said accused substantially under-declared his income for taxable year xxx" and "did, then and there, willfully, unlawfully and feloniously failed to supply correct and accurate information in his annual income to taxable year xxx" are sufficient in form and substance.

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The Informations in Criminal Case Nos. O-479, O-480, O-482 and O-484 were subscribed by the

State Prosecutors of the Department of justice namely Assistant State Prosecutor (ASP) Stewart Allan A. Mariano, ASP Mark Roland S. Estepa and Prosecution Attorney Jayvee Laurence B. Bandong, and approved by Prosecutor General Claro A. Arellano; the state prosecutors have no authority to file the Informations since they were not authorized by the CIR pursuant to the NIRC; the legal officers of the Bureau of Internal Revenue did not sign the Informations; and the approval for the filing of the cases came from the Prosecutor General and not from the Commissioner of Internal Revenue; that assuming the authorization of the BIR was sought, the same was not included in filing Criminal Case No. O-481.

On the other hand, the prosecution counter argues that Section 220 of the NIRC of 1997, as amended simply requires that the BIR Commissioner approve the institution of civil or criminal action against a tax law violator, but it does not describe in what form such approval must be given; that the letter of BIR Commissioner already constitutes as the legal authority of the Department of Justice (through the Prosecutor General) to file the cases against the accused.

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Accused avers that Section 281 of the NIRC contemplates of three (3) periods; first, when the violation was committed; second, if the act is not known, from the date of discovery; third, from the time judicial proceedings are enforced; that the counting of the five year criminal prescription should be from the time the returns were filed; that Criminal Case Nos. O-479 and O-482 pertain to the returns that should have been filed in April 2006; that the Complaints were received by the DOJ on September 26, 2013 or seven (7) years and five (5) months after the said returns ought to have been filed. In this case, the counting of the Eve year criminal prescription should be from the time the returns were filed, that is in April 2006. Hence, the action has prescribed.

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The prosecution argues that the issue of prescription of criminal tax cases is already settled in the case of Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines (*G.R. Not. L48734-37; 18 October 1990)*; that the cases against the accused have not yet prescribed since it only took the BIR and the DOJ a period of less than two (2) years to discover the crimes committed by the accused, institute the proper judicial proceedings for its investigation and punishment and to file the information before the Court.

xxx xxx xxx" (Italics in the Original.)

The Third Division denied the Motion to Quash. It ruled that based on the Resolution of the Department of Justice (DOJ) dated March 13, 2015, accused failed to file his Income Tax Return (ITR) for taxable year 2009. Moreover, Section 220[5] of the National Internal Revenue Code (NIRC) of 1997 merely requires that the Commissioner of Internal Revenue (CIR) approves the institution of civil and criminal action, as evidenced by the letter of then Commissioner Kim S. Jacinto Henares to then DOJ Secretary Leila S. De Lima dated September 26, 2013. Lastly, the Third Division denied the Motion to Quash as the criminal action has not yet prescribed since the institution of such happened through endorsement to the DOJ for preliminary investigation on September 26, 2013, the date of discovery of the offense. Applying Section 281[6] of the NIRC, the offense has not yet prescribed.

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[5] Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

[6] SEC. 281. Prescription for Violations of any Provision of this Code. - All violations of any provision of this Code shall prescribe after Five (5) years.

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

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Petitioner's Motion for Reconsideration[7] was denied by the Third Division as *per* Resolution promulgated on March 18, 2016, hence, the Petition for Review was filed.

Petitioner argues that the information does not state a case against him. Since he retired from his profession since 2004, he is no longer required to file an ITR from 2004 onwards. He also claims that the assailed Resolutions are based on inference and not on admitted facts. Lastly, he contests that the assailed Resolutions misread the provision of Section 220 of the NIRC. He assails that the DOJ has no authority to pursue the case as the CIR cannot pass the burden to the DOJ the filing of the Information before this Court. As a consequence, petitioner asks for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to continue with the trial pending decision of the instant Petition for Review.

In its Comment[8] and Memorandum,[9] respondent People of the Philippines questions the jurisdiction of this Court over the Petition for Review as it assails that the Resolutions denying the Motion to Quash and the Motion for Reconsideration are mere interlocutory orders not subject to appeal before this Court. Moreover, the averments in the Information are sufficient to charge the petitioner with an offense. Lastly, the Supreme Court itself, in the case of *Judy Anne L. Santos vs. People of the Philippines and Bureau of Internal Revenue*[10] has already expounded on the meaning of the authority issued by the CIR under Section 220 of the NIRC, which simply requires that the CIR approve the institution of the civil and criminal action against the tax law violator. In the present case, the letter of the then CIR Henares to then DOJ Secretary De Lima is sufficient to comply with the said provision.

The Court denies the Petition for Review.

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[7] *En Banc* Docket, pp. 23-27.
[8] *Ibid.*, pp. 41-50.
[9] *Ibid.*, pp. 55-65.
[10] G.R. No. 173176, August 26, 2008.

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Elementary is the proper remedy in case of denial of Motion to Quash, being an Interlocutory Order, to wit:

> "The remedy against the denial of a motion to quash is for the movant accused to enter a plea, go to trial, and should the decision be adverse, reiterate on appeal from the final judgment and assign as error the denial of the motion to quash. The denial, being an interlocutory order, is not appealable, and may not be the subject of a petition for *certiorari* because of the availability of other remedies in the ordinary course of law."[11] (Underlining Supplied.)

A plethora of Supreme Court cases has been consistent that an appeal from a Resolution denying a Motion to Quash is the wrong remedy. As stated in the case of *Joel Galzote Y Soriaga vs. Jonathan Briones and People of the Philippines*:[12]

> "A preliminary consideration in this case relates to the propriety of the chosen legal remedies availed of by the petitioner in the lower courts to question the denial of his motion to quash. In the usual course of procedure, a denial of a motion to quash filed by the accused results in the continuation of the trial and the determination of the guilt or innocence of the accused. If a judgment of conviction is rendered and the lower court's decision of conviction is appealed, the accused can then raise the denial of his motion to quash not only as an error committed by the trial court but as an added ground to overturn the latter's ruling.
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> In this case, the petitioner did not proceed to trial but opted to immediately question the denial of his motion to quash xxx
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> xxx an appeal from an interlocutory order is not allowed under Section 1(b), Rule 41 of the Rules of Court. Neither can it be a proper subject of a petition for *certiorari* which can be used only in the absence of

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[11] *Godofredo Enrile and Dr. Frederick Enrile, vs. Hon. Danilo A. Manalastas (as Presiding Judge, Regional Trial Court of Malolos Bulacan, Br. VII), Hon. Eranio G. Cedillo, Sr., (as Presiding Judge, Municipal Trial Court Of Meycauayan, Bulacan, Br.1) and People of the Philippines*, G.R. No. 166414, October 22, 2014.
[12] G.R. No. 164682, September 14, 2011.

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> an appeal or any other adequate, plain and speedy remedy. The plain and speedy remedy upon denial of an interlocutory order is to proceed to trial as discussed above." (Citations omitted; Underlining Supplied.)

Also, in the case of *Oscar G. Raro, vs. The Honorable Sandiganbayan, (Second Division), the Honorable Ombudsman and People of the Philippines,* the Supreme Court ruled:[13]

> "xxx. As pointed out by the Office of the Solicitor General (citing *Nierras v. Dacuycuy, 181 SCRA 1 [1990]), and Acharon v. Purisima, et al.,* 13 SCRA 309; *People v. Madaluyo,* 1 SCRA 990), the established rule is that when such an adverse interlocutory order is rendered, the remedy is xxx but to continue with the case in due course and, when an unfavorable verdict is handed down to take an appeal in the manner authorized by law. It is only where there are special circumstances clearly demonstrating the inadequacy of an appeal that the special civil action of *certiorari* or prohibition may exceptionally be allowed. xxx"

Considering the above consistent ruling of the Supreme Court, filing an appeal before the Court *En Banc via* a Petition for Review is not the proper remedy from a denial of Motion to Quash. Even if this Court would treat the Petition for Review as a petition for *certiorari via* Rule 65 of the Rules of Court, in grave abuse of discretion cases, *certiorari* is appropriate only if the petitioner can establish that the Third Division issued the Resolutions without or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief. The petitioner carries the burden of showing that the attendant facts and circumstances fall within any of the cited instances.[14] Thus, a direct resort to a special civil action for *certiorari* is an exception rather than the general rule, and is

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[13] G.R. No. 108431, July 14, 2000.
[14] *Ibid.*

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a recourse that must be firmly grounded on compelling reasons.[15]

To reiterate, upon denial of petitioner's Motion to Quash, the Court must proceed with the trial. The conviction or acquittal of petitioner by the Third Division is a final order that completely disposes of the case. The petitioner's remedy then is to appeal the Third Division's decision in case of his conviction before this Court *En Banc* pursuant to Section 9(b) Rule 9 of the RRCTA. Thus:

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> (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

xxx xxx xxx"

Given the plain, speedy and adequate remedy of appeal, the petitioner cannot avail of the remedy of *certiorari*.

As correctly pointed out by the respondent, remedy of an appeal as provided for under Section 9(b), Rule 9 of the RRCTA pertains to final decisions of this Court's Division, which can be appealed before this Court *En Banc.* The Motion to Quash cannot, in any way, be considered as a decision finally disposing the case against petitioner.

WHEREFORE, the instant Petition for Review with prayer for issuance of Temporary Restraining Order/Writ of

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[15] *Ibid.*

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Preliminary Injunction is **DISMISSED** for lack of merit. The assailed Resolutions of the Third Division are hereby **AFFIRMED**. The Third Division is **DIRECTED** to proceed with the disposition of Criminal Case Nos. O-479, O-480, O-481, O-482 and O-484.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice