REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-1003** For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended
- versus -	Members:
REYNALDO Y. DIA and FRITZ and MACZIOL ASIA, INC., (Units 3, 4 & 5, 22nd Zuelligh Bldg., Paseo De Roxas cor. Makati Ave., Makati City), (At-Large)	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
Accused.	Promulgated: JUL 18 2023 4:04 p.m.

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RESOLUTION

The prosecution filed an Information on December 6, 2022 against the accused for violation of Section 255 in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Subsequently, the Court directed the prosecution to submit original or certified true copy of pertinent supporting documents[1] for the determination of the existence of probable cause and to clarify the discrepancy of the name of the accused corporation.[2]

The prosecution then submitted its *Clarification* on February 15, 2023 with attached certified true copies of *some* of the aforesaid supporting documents and clarified that it committed inadvertence in the spelling of the name of accused corporation. The Court noted the same and ordered the prosecution to amend the Information reflecting the correct name of the accused corporation.

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[1] Annex A and the Tax Returns attached in Annex D.
[2] Resolution dated January 25, 2023, Docket, pp. 102 to 104.

The Court noted, however, that the prosecution did not submit the original or certified true copies of all of the pertinent supporting documents in the Clarification;[3] thus, the Court directed again the prosecution to submit the original or certified true copies of the other pertinent documents.[4]

Considering that the prosecution failed to comply with the same despite notice,[5] the Court dismissed the Information of the instant case without prejudice on May 4, 2023.[6]

Notwithstanding the foregoing, the prosecution filed the instant **Manifestation** on June 7, 2023 with the attached **Amended Information**.

At this juncture, the Court is challenged whether it can still consider the prosecution's Manifestation and the Amended Information since the Information was already dismissed without prejudice.

The pronouncement in the case of *Bañares II vs. Balising*[7] is highly instructive, *to wit*:

> "A 'final order' issued by a court has been defined as one which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court. As distinguished therefrom, an 'interlocutory order' is one which does not dispose of a case completely, but leaves something more to be adjudicated upon.
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> This Court has previously held that an **order dismissing a case without prejudice is a final order if no motion for reconsideration or appeal therefrom is timely filed**.
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> In *Olympia International vs. Court of Appeals*, we stated, thus:
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>> The dismissal without prejudice of a complaint does not however mean that said dismissal order was any less final. Such Order of dismissal is complete in all details, and though without prejudice, nonetheless finally disposed of the matter. It was not merely an interlocutory order but a final disposition of the complaint.

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[3] Page 1, 3 to 8 pages of Annex A and Tax Returns attached in Annex D.
[4] Resolution dated March 16, 2023, Docket, pp. 113 to 115.
[5] Records Verification Report dated April 13, 2023, Docket, p. 116.
[6] Resolution dated May 4, 2023, Docket, pp. 118 to 119.
[7] G.R. No. 132624, March 13, 2000.

The law grants an aggrieved party a period of fifteen (15) days from his receipt of the court's decision or order disposing of the action or proceeding to appeal or **move to reconsider** the same.

After the lapse of the fifteen-day period, an order becomes final and executory and is beyond the power or jurisdiction of the court which rendered it to further amend or revoke. A final judgment or order cannot be modified in any respect, even if the modification sought is for the purpose of correcting an erroneous conclusion by the court which rendered the same.

After the order of dismissal of a case without prejudice has **become final**, and therefore becomes outside the court's power to amend and modify, **a party who wishes to reinstate the case has no other remedy but to file a new complaint**.

This was explained in *Ortigas & Company Limited Partnership vs. Velasco*, where we ruled thus:

> *The dismissal of the case, and the lapse of the reglementary period to reconsider or set aside the dismissal, effectively operated to remove the case from the Court's docket. Even assuming the dismissal to be without prejudice, the case could no longer be reinstated or 'revived' by mere motion in the original docketed action, but only by the filing of another complaint* accompanied, of course, by the payment of the corresponding filing fees prescribed by law.
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> xxx xxx xxx
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> [S]ince theoretically every final disposition of an action does not attain finality until after fifteen (15) days therefrom, and consequently within that time the action still remains within the control of the Court, the plaintiff may move and set aside his notice of dismissal and revive his action before that period lapses. But *after dismissal has become final after the lapse of the fifteen-day reglementary period, the only way by which the action may be resuscitated or 'revived' is by the institution of a subsequent action through the filing of another complaint* and the payment of fees prescribed by law. This is so because *upon attainment of finality of the dismissal through the lapse of said reglementary period, the Court loses jurisdiction and control over it and can no longer make a disposition in respect thereof inconsistent with such dismissal.*

Contrary to private respondents' claim, the foregoing rule applies not only to civil cases **but to criminal cases** as well. In *Jaca vs. Blanco*, the Court defined **a provisional dismissal of a criminal case as a dismissal without prejudice to the reinstatement thereof before the order of dismissal becomes final or to the subsequent filing of a new information for the offense**." (*Emphases supplied.*)

Corollary thereto, Section 1, Rule 15 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

> "SECTION 1. *Who may and when to file motion.* - Any aggrieved party may seek a reconsideration or new trial of any decision, **resolution or order** of the Court by filing a motion for reconsideration or new trial within **fifteen days from the date of receipt of notice** of the decision, **resolution or order** of the Court in question." (*Emphases supplied.*)

Clearly, a party may file a motion for reconsideration against a dismissal without prejudice before the lapse of the fifteen-day reglementary period. After the order of dismissal of a case without prejudice has become final, a party who wishes to reinstate the case has no other remedy but to file a new Complaint/Information.

A thorough scrutiny of the records reveal that the prosecution received on May 23, 2023 the Court's Resolution dated May 4, 2023 that dismissed the instant case without prejudice.[8] Counting fifteen (15) days from May 23, 2023, the prosecution had until June 7, 2023 within which to file a motion for reconsideration.

Nevertheless, instead of a motion for reconsideration, the prosecution filed the instant ***Manifestation*** with the ***Amended Information*** on June 7, 2023.

Based on the foregoing, although the prosecution did not file any motion for reconsideration, its act of filing such *Manifestation* with the *Amended Information* will be considered by the Court as a positive act of seeking reconsideration on the dismissal of the case. Consequently, the Court notes such *Manifestation* and the *Amended Information* shall be admitted as part of the records.

The Court shall determine now the probable cause for the issuance of Warrant of Arrest against the accused.

In the *Amended Information* filed on June 7, 2023, the prosecution indicted accused REYNALDO Y. DIA and FRITZ and MACZIOL ASIA, INC. for violation of Section 255 in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended, allegedly committed as follows:

> "That on or about February 11, 2019 in Makati City, and within the jurisdiction of this Honorable Court, accused Fritz and Macziol Asia, Inc., a domestic corporation engaged in systems

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[8] Notice of Resolution dated May 5, 2023, Docket.

integration and software development and a registered taxpayer of the Revenue District Office No. 50-South, Makati City, with Tax Identification No. 245-977-475-000, and accused Reynaldo Y. Dia, its president, required by law to file returns on withholding tax on compensation and pay the taxes due thereon, did then and there, wilfully, unlawfully and knowingly fail to pay withholding tax on compensation in the amount of Php50,438,509.20, exclusive of interest, for the return period December 31, 2017 to July 31, 2019, for taxable year 2019, despite prior and post notices and demands, the latest being the Final Collection Notice dated February 11, 2019, to the damage and prejudice of the Government in the aforesaid amount, exclusive of surcharge.

CONTRARY TO LAW."

Pursuant to Section 4, Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, as amended,[9] the Court shall determine the existence or non-existence of probable cause. In this respect, "the judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice".[10]

Corollary thereto, the prosecution submitted the following supporting documents for examination of the Court:

1. Certified true copy of the Resolution issued by the Department of Justice on March 8, 2021;

2. Original copy of the Investigation Data Form with NPS Docket No. XVI-INV-19J-00377;

3. Original copy of the Referral letter of the Commissioner of Internal Revenue; and

4. Original copy of the Complaint-Affidavit of Sylvia A. Bangco, Arturo L. Mateo and Jim V. Young, with attached annexes.

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9 SEC. 4. *Warrant of arrest.* – Within ten days from the filing of the information, the Division of the Court to which the case was raffled shall evaluate the resolution of the public prosecutor and its supporting evidence. The Division may immediately dismiss the case if it finds that the evidence on record clearly fails to establish probable cause. If the Division finds probable cause, it shall issue a warrant of arrest signed by the Chairperson of the Division. In case of doubt on the existence of probable cause, the Division may order the prosecutor to present additional evidence, *ex parte*, within five days from notice.

10 *Mendoza vs. People*, G.R. No. 197293, April 21, 2014, citing the case of *People vs. Castillo and Mejia*.

Notwithstanding, some of the attached annexes of the Complaint-Affidavit[11] remain to be mere photocopies despite the prosecution having been given several opportunities to submit their original or certified true copies.

Being so and after a careful consideration of the allegations in the Amended Information and personally examining and evaluating the records of the case, the Court finds that the supporting documents on record are insufficient to establish a probable cause.

WHEREFORE, prosecution's **Manifestation** with attached Amended Information is **NOTED**. Nevertheless, in view of the foregoing, the instant Amended Information is **DISMISSED without prejudice**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

[11] Annex A (pages 1 and 3 to 8) and the Tax Returns attached in Annex D.