

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

*EN BANC*

PEOPLE OF THE PHILIPPINES,  
Petitioner,

CTA EB CRIM NO. 099  
(CTA Crim Case No.  
O-918)

-versus-

Present:  
Del Rosario, P.J.,  
Ringpis-Liban,  
Manahan,  
Bacorro-Villena,  
Modesto-San Pedro,  
Reyes-Fajardo,  
Cui-David,  
Ferrer-Flores, and  
Angeles, JJ.

SERAFIN PANALIGAN VILLALOBOS,  
Respondent.

Promulgated:

APR 17 2024

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*[Signature]* 11:30 a.m.

DECISION

RINGPIS-LIBAN, J.:

Before this Court is the Petition for Review filed by petitioner People of the Philippines on February 3, 2023 assailing the Resolution dated August 18, 2022 (1<sup>st</sup> Resolution) and Resolution dated December 28, 2022 (2<sup>nd</sup> Resolution) promulgated by the Court of Tax Appeals First Division (Court in Division) in the case entitled "*People of the Philippines vs. Serafin Panaligan Villalobos, proprietor of PSPV Commercial Rice Supply & Grocery, (1637 Dagonoy Street, San Andres Bukid, Santa Ana, Manila), (At Large)*," docketed as CTA Crim. Case No. O-918.

The dispositive portion of the 1<sup>st</sup> Resolution reads:

“**WHEREFORE**, the Court finds no probable cause to issue a warrant of arrest, on the ground of prescription. Likewise, on the same ground, the instant Information docketed as CTA Crim Case No. O-918, is **DISMISSED**.”

**SO ORDERED.”**

The dispositive portion of the 2<sup>nd</sup> Resolution reads:

“**WHEREFORE**, the prosecution’s Motion for Reconsideration with Leave of Court is **DENIED**.

The Entry of Appearance of Attys. Ramon B. Lorenzo and Rowell B. Vicente is hereby **NOTED**.

**SO ORDERED.”**

**THE PARTIES**

Petitioner People of the Philippines is represented by complainant Bureau of Internal Revenue (BIR), the government agency primarily tasked to collect internal revenue taxes for the support of the government, with office at the BIR National Office Building, Diliman, Quezon City, and may be served with summons and other legal processes of the Court through counsel at the Legal Division, Revenue Region No. 6, 5<sup>th</sup> Floor BIR Bldg. I, Solana Street, Intramuros, Manila.<sup>1</sup>

Respondent Serafin Panaligan Villalobos is the proprietor of PSPV Commercial Rice Supply & Grocery, a registered taxpayer of Revenue District Office (RDO) No. 34-Paco-Pandacan-Sta. Ana-San Andres, Manila with Tax Identification No. (TIN) 185-102-171, and with business address at 1637 Dagonoy Street, San Andres Bukid, Sta. Ana, Manila.<sup>2</sup>

**THE FACTS**

Filed before the Court in Division on May 16, 2022 is the Information for violation of Section 255 of National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 253 par. (d) and 256 of the same code, which read as follows:

**“INFORMATION**

“The undersigned Prosecution Attorney of the Department of Justice hereby accuses **PSPV Commercial Rice Supply & Grocery**, with business address at 1637 Dagonoy Stret, San Andres Bukid, Santa Ana, Manila, and **Serafin Panaligan Villalobos**, its

<sup>1</sup> Petition for Review, Rollo, CTA EB Crim. No. 099, p. 6.

<sup>2</sup> Joint Complaint Affidavit, Docket, CTA Crim Case No. O-918, p. 22.

proprietor, of violation of Section 255, in relation to Sections 253 and 256, of National Internal Revenue Code of 1997, as amended, committed as follows:

“That on or about 06 July 2017 and thereafter, in Manila City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, **Serafin Panaligan Villalobos**, the proprietor of accused **PSPV Commercial Rice Supply and Grocery**, with Tax Identification No. 185-102-171, to whom notices and demands were made by the Bureau of Internal Revenue (BIR) to pay his **value-added tax** obligations for the year 2013, in the amount of One Million Nine Hundred Ninety-Four Thousand Two Hundred Seventeen Pesos and Thirty-Two Centavos (**Php1,994,217.32**), exclusive of surcharges and interest, under BIR Assessment Notice No. 34-13-VT-16-0204, did then and there wilfully, unlawfully, knowingly and feloniously fail, refuse and neglect to pay the BIR the said amount despite due notice and demand and without formally protesting and appealing the same with the proper authority, which demand has already become final, to the damage and prejudice of the government.

### CONTRARY TO LAW.”

The following documents are attached to the said Information, *viz.*:

1. Resolution dated February 11, 2020 issued by Prosecution Attorney Jerome I. Coronel, recommending that accused Serafin Panaligan Villalobos be charged with violation of Section 255, in relation to Section 253(d) and 256 on the NIRC, as amended;<sup>3</sup>
2. Investigation Data Form;<sup>4</sup>
3. Authority and approval for the filing and institution of Criminal Complaint against accused Serafin Panaligan Villalobos, issued by the Commissioner of Internal Revenue (CIR), and filed with the Department of Justice (DOJ) on February 21, 2019;<sup>5</sup> and
4. Joint Complaint Affidavit (JCA) of Sarah A. Dolina and Felicidad A. Dela Rosa dated February 21, 2019 and filed ✓

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<sup>3</sup> Docket, pp. 8-18.

<sup>4</sup> Ibid., p. 19.

<sup>5</sup> Ibid., pp. 20-21.

with the DOJ on even date,<sup>6</sup> with the following attachments:

- a. Assessment Notices dated November 14, 2016;<sup>7</sup>
- b. Formal Letter of Demand;<sup>8</sup>
- c. Details of Discrepancy;<sup>9</sup>
- d. Letter of Authority No. 034-2014-00000426 dated September 17, 2014;<sup>10</sup>
- e. Checklist of Requirements;<sup>11</sup>
- f. First Request for Presentation of Records dated October 13, 2014;<sup>12</sup>
- g. Second and Final Request for the Presentation of Records dated August 13, 2014;<sup>13</sup>
- h. Memorandum;<sup>14</sup>
- i. Subpoena Duces Tecum;<sup>15</sup>
- j. Affidavit of Service of Subpoena Duces Tecum;<sup>16</sup>
- k. 2<sup>nd</sup> Indorsement dated October 28, 2015;<sup>17</sup>
- l. Preliminary Assessment Notice dated September 22, 2016;<sup>18</sup>
- m. Details of Discrepancies;<sup>19</sup>
- n. Transmittal of Pre-Assessment Notice/s dated September 22, 2016;<sup>20</sup>
- o. Memorandum dated October 3, 2016;<sup>21</sup>
- p. Transmittal of Formal Letter of Demand & Assessment Notices dated November 15, 2016;<sup>22</sup>
- q. Memorandum dated November 28, 2016;<sup>23</sup>
- r. Preliminary Collection Letter dated June 21, 2017, with registry receipt;<sup>24</sup>
- s. Final Notice Before Seizure dated July 6, 2017;<sup>25</sup>
- t. Memorandum of Assignment dated September 8, 2017;
- u. Warrant of Distrainment and/or Levy dated October 4, 2017;<sup>26</sup>

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<sup>6</sup> Ibid., 22-29.  
<sup>7</sup> Ibid., p. 30-33.  
<sup>8</sup> Ibid., p. 34.  
<sup>9</sup> Ibid., p. 35.  
<sup>10</sup> Ibid., p. 36.  
<sup>11</sup> Ibid., p. 37.  
<sup>12</sup> Ibid., p. 38.  
<sup>13</sup> Ibid., p. 39.  
<sup>14</sup> Ibid., p. 40.  
<sup>15</sup> Ibid., p. 41.  
<sup>16</sup> Ibid., p. 42.  
<sup>17</sup> Ibid., p. 43.  
<sup>18</sup> Ibid., p. 44-45.  
<sup>19</sup> Ibid., p. 46.  
<sup>20</sup> Ibid., p. 47.  
<sup>21</sup> Ibid., p. 48.  
<sup>22</sup> Ibid., p. 49.  
<sup>23</sup> Ibid., p. 50.  
<sup>24</sup> Ibid., p. 51.  
<sup>25</sup> Ibid., p. 52.  
<sup>26</sup> Ibid., p. 53.

- v. Warrants of Garnishment all dated October 4, 2017;<sup>27</sup>
- w. Memorandum dated September 20, 2018.<sup>28</sup>

On August 18, 2022, the Court in Division issued the 1<sup>st</sup> Resolution dismissing CTA Case No. O-918, on the ground of prescription.

On October 19, 2022, the Court in Division received petitioner's "Motion for Reconsideration with Leave of Court and Entry of Appearance (Re: Resolution dated 18 August 2022)."<sup>29</sup>

On December 28, 2022, the Court issued a Resolution holding that the Motion for Reconsideration was belatedly filed on October 18, 2022. Hence, the petitioner's Motion for Reconsideration with Leave of Court is denied. In the same Resolution, the Court noted the Entry of Appearance of Atty. Ramon B. Lorenzo and Rowell B. Vicente.

Aggrieved, petitioner filed within the extended period, the instant Petition for Review on February 3, 2023.<sup>30</sup>

On March 29, 2023, the Court *En Banc* issued a Resolution<sup>31</sup> ordering respondent to file Comment, not a motion to dismiss, within ten (10) days from notice.

On April 24, 2023, the Court *En Banc* received respondent's "Comment (To the Petition for Review dated 31 January 2023)"<sup>32</sup> dated April 24, 2023.

On May 9, 2023, the Court *En Banc* issued a Minute Resolution<sup>33</sup> which noted respondent's Comment (To the Petition for Review dated 31 January 2023) and deemed the instant case submitted for decision.

## THE ISSUE

The main issue for the Court *En Banc's* consideration is "***Whether or not the Court En Banc has jurisdiction to review the Court in Division's assailed Resolutions.***"

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<sup>27</sup> Ibid., pp. 54-63.

<sup>28</sup> Ibid., p. 64.

<sup>29</sup> Docket, pp. 72-76, with Annex.

<sup>30</sup> Rollo, CTA EB Crim. No. 099, pp. 5-13 with Annexes.

<sup>31</sup> Ibid., pp. 32-33.

<sup>32</sup> Rollo, pp. 45-56.

<sup>33</sup> Ibid., p. 64.

## THE ARGUMENTS

Petitioner maintains that the Court in Division erred in dismissing the instant case on the ground that the Information was filed beyond the five (5)-year prescriptive period; that the Final Assessment Notice (FAN) dated November 14, 2016 which was served on even date became final and unappealable on December 13, 2016, for failure of the accused to file a valid protest; that when the complaint was filed with the Department of Justice (DOJ) on February 21, 2019, the criminal action was instituted within the five (5)-year prescriptive period; that the Motion for Reconsideration filed by petitioner was for a Resolution dismissing the case after judicial determination of probable cause; and that the reglementary period under Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals should apply.

Respondent argues that the Petition for Review must be denied for failure to comply with Section 9(B), Rule 9 of the 2005 Revised Rules of the Court of Tax Appeals, in relation to Section 5, 6, and 7, Rule 43 of the Rules of Court; that petitioner's failure to timely file a motion for reconsideration of the Court in Division's Resolution dated August 18, 2022 rendered the same final and immutable; that petitioner violates respondent's rights to speedy disposition of the case and to due process; and that petitioner failed to advance any substantial ground to warrant the reversal of the Court in Division's Resolution.

## THE RULING OF THE COURT *EN BANC*

After consideration, the Court *En Banc* finds that petitioner's opportunity to appeal has already lapsed since the assailed Resolutions have become final and executory for failure of petitioner to file a Motion for Reconsideration in accordance with the rules.

Petitioner's right to appeal is a statutory privilege that must be exercised in the manner provided by law.

Sections 1 and 9, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provide:

SECTION 1. *Review of cases in the Court.* – The review of criminal cases in the Court *en banc* or in Division shall be governed by the applicable provisions of Rule 124 of the Rules of Court.

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SECTION 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 Court of Court within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period of not exceeding fifteen days.

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Section 16, Rule 124 of the Revised Rules of Criminal Procedure provides:

Section 16. *Reconsideration.* — A motion for reconsideration shall be filed **within fifteen (15) days from notice of the decision or final order** of the Court of Appeals, with copies served upon the adverse party, setting forth the grounds in support thereof. The mittimus shall be stayed during the pendency of the motion for reconsideration. No party shall be allowed a second motion for reconsideration of a judgment or final order. (*Emphasis ours*)

Based on the records of this case and as admitted by petitioner, the Court in Division's 1<sup>st</sup> Resolution was received by petitioner on August 26, 2022.

Pursuant to the above-mentioned provisions, petitioner had fifteen (15) days from August 27, 2022 or **until September 12, 2022**<sup>34</sup> within which to file a Motion for Reconsideration.

It was only on October 18, 2022 that petitioner filed before the Court in Division a "Motion for Reconsideration With Leave of Court and Entry of Appearance (Re: Resolution dated 18 August 2022)" dated October 14, 2022.<sup>35</sup>

In its Motion for Reconsideration, petitioner alleged that although the 1<sup>st</sup> Resolution was received by the Bureau of Internal Revenue National Office (BIR-NO)- Litigation Division and Prosecution Division on August 26, 2022, petitioner's counsel became aware of the said Resolution only on October 3, 2022, when the said Resolution was received by the Legal Division- Revenue Region No. 6-Manila. Based on the 1<sup>st</sup> Indorsement signed by Catherine Rose R. Tortoles, Asst. Chief, Prosecution Division, the case was endorsed to the ✓

<sup>34</sup> The fifteenth day is on September 10, 2022, a Saturday.

<sup>35</sup> Docket., pp. 72-77.

Legal Division, Revenue Region No. 6 – Manila on August 30, 2022, but the Indorsement was received only on October 3, 2022.<sup>36</sup>

The reckoning period for the filing of a motion for reconsideration is on **August 26, 2022**, not on October 3, 2022. Hence, when the “Motion for Reconsideration With Leave of Court and Entry of Appearance (Re: Resolution dated 18 August 2022)” was filed on October 18, 2022, petitioner’s right to appeal had already lapsed.

A party who fails to question an adverse decision by not filing a Motion for Reconsideration within the period prescribed by the rules loses its right to do so, since the decision as to him, becomes final and binding.

In *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*,<sup>37</sup> the Supreme Court ruled that:

“It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.

The CTA, even if vested with special jurisdiction, is, as courts of general jurisdiction can only take cognizance of such matters as are clearly within its statutory authority. Relative thereto, when it appears from the pleadings or evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.”

In the case of *Bureau of Internal Revenue vs. TICO Insurance Company, Inc., Glowide Enterprises, Inc., and Pacific Mills, Inc.*,<sup>38</sup> the Supreme Court extensively discussed the effect of failure to file on time a Motion for Reconsideration, viz:

It is settled that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional. This means that the failure to interpose a timely appeal deprives the appellate body of any jurisdiction to alter the

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<sup>36</sup> Ibid., p. 77.

<sup>37</sup> G.R. No. 185666, February 04, 2015.

<sup>38</sup> G.R. No. 204226, April 18, 2022, citations omitted.



final judgment, more so to entertain the appeal. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not, and no court — not even the Supreme Court — has the power to revise, review, change or alter the same. The right to appeal is not a part of due process of law, but is a mere statutory privilege to be exercised only in the manner, and in accordance with, the provisions of the law. After a decision is declared final and executory, vested rights are acquired by the winning party.

In the same vein, "a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal." "Under Section 1, Rule 52 of the Rules of Court, a motion for reconsideration of a judgment or final resolution should be filed within 15 days from notice. If no appeal or motion for reconsideration is filed within this period, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgment, as provided under Section 10 of Rule 51. The 15-day reglementary period for filing a motion for reconsideration is non-extendible."

Provisions of the Rules of Court prescribing the time within which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays, and to the orderly and speedy discharge of judicial business. While this Court has previously allowed the liberal application of procedural rules, these are exceptions that are sufficiently justified by meritorious and exceptional circumstances attendant therein, which are notably not present in the instant petition. Not every plea for relaxation of rules of procedure shall be granted by the Court for it will render such rules inutile.

Significantly, the BIR failed to adduce any cogent or exceptional reason that would warrant the liberal application of the rules. It merely invoked the inadvertence of its counsel's Document Management Division in failing to file its motion for reconsideration on time. However, a counsel's tardiness in complying with reglementary periods for filing pleadings that are attributed to the negligence of said counsel's secretary or clerk is not a valid reason. "It is the counsel's duty to adopt and to strictly maintain a system that ensures that all pleadings should be filed and duly served within the period; and if he fails to do so, the negligence of his secretary or clerk to file such pleading is imputable to the said counsel."

That the motion for reconsideration was filed only one day late is immaterial; the Court has similarly refused to admit motions for reconsideration which were filed late without sufficient justification. Indeed, "[j]ust as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the case."

In fine, the BIR's failure to seasonably file its motion for reconsideration rendered the December 16, 2011 Decision of the CA final and executory, and beyond the courts' power to amend or revoke. xxx"

Since the assailed 1<sup>st</sup> Resolution of the Court in Division has become final and executory, the Court *En Banc* cannot exercise appellate jurisdiction to review the same. Accordingly, the Court *En Banc* must deny the instant petition.

**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of jurisdiction.

**SO ORDERED.**

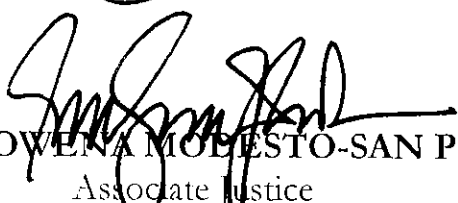
  
MA. BELEN M. RINGPIS-LIBAN  
Associate Justice

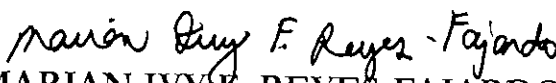
**WE CONCUR:**


  
ROMAN G. DEL ROSARIO  
Presiding Justice

  
CATHERINE T. MANAHAN  
Associate Justice

  
JEAN MARIE A. BACORRO-VILLENA  
Associate Justice

  
MARIA ROWENA MOLESTO-SAN PEDRO  
Associate Justice

  
MARIAN IVY F. REYES-FAJARDO  
Associate Justice

  
LANEE S. CUI-DAVID  
Associate Justice

  
CORAZON G. FERRER-FLORES  
Associate Justice

  
HENRY S. ANGELES  
Associate Justice

### CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

  
ROMAN G. DEL ROSARIO  
Presiding Justice