

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellant,

CTA EB CRIM NO. 107
(CTA Crim Case No.
O-956)


-versus-

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

ZIEGFRIED LOO TIAN,
Accused-Appellee,

Promulgated:

JUN 18 2024

 8:39 a.m.

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DECISION

RINGPIS-LIBAN, J.:

Before this Court is the Amended Verified Petition for Review (of the Resolution dated February 9, 2023) filed by plaintiff-appellant People of the Philippines on June 6, 2023¹ assailing the Resolution dated December 5, 2022 (1st Resolution)² and Resolution dated February 9, 2023 (2nd Resolution)³ promulgated by the Court of Tax Appeals Second Division (Court in Division) in the case entitled “*People of the Philippines vs. Ziegfried Loo Tian, No. 1013, Juan Luna Street, Brgy. 7, Zone 1, Tondo, Manila, (At Large)*,” docketed as CTA Crim. Case No. O-956.

The dispositive portion of the 1st Resolution reads: ✓

¹ Rollo, CTA EB Crim. No. 107, pp. 259- 283.

² Ibid., pp. 293-297.

³ Ibid., pp. 299-305.

“**WHEREFORE**, in view of the foregoing considerations, CTA Crim. Case No. O-956 is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.”

The dispositive portion of the 2nd Resolution reads:

“**WHEREFORE**, in light of the foregoing considerations, the Motion for Reconsideration (of the Resolution dated December 05, 2022) filed on January 5, 2023 is **DENIED** for being filed out of time and for lack of merit.

Accordingly, the Resolution dated December 5, 2022 dismissing the instant case on the ground of prescription is hereby **AFFIRMED**.

SO ORDERED.”

THE PARTIES

Plaintiff-appellant People of the Philippines through the Bureau of Internal Revenue (BIR), a government agency mandated to collect national revenue taxes, is represented by Commissioner of Internal Revenue through Revenue Officers Emerita D. Tan, Carine P. Balmeo, Dominador A. Callangan, Arnel A. Boco and Adelina P. See, all of legal ages, Filipinos, and with postal address at c/o Rm. 704, BIR National Office Building, BIR Road, Diliman, Quezon City, where the summons, notices and other legal processes of this Honorable Court may be served.⁴

Accused-Appellee Ziegfried Loo Tian is registered with BIR RDO No. 29- Tondo, San Nicolas, Manila with Taxpayer Identification Number (TIN) 193-647-148-000. He is the Sole Proprietor of Golden Taste Food Services & General Merchandising engaged in the business of food catering and/or wholesale of general merchandise with business address at No. 1013 Juan Luna St, Brgy. 27, Zone 4, Tondo, Manila, where the summons, notices and other legal processes of this Honorable Court may be served.⁵

⁴ Amended Petition for Review, p. 3

⁵ Ibid.

THE FACTS

Filed before the Court in Division on October 26, 2022 is the Information for violation of Section 254 of National Internal Revenue Code (NIRC) of 1997, as amended, which read as follows:

“INFORMATION

“That on or before October 20, 2011, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen, required by law to file his Quarterly Value-Added Tax Return (VAT return), did, then and there, willfully, unlawfully and feloniously attempt to evade and defeat payment of VAT for the third (3) quarter of taxable year 2011, by stating in the entry fields of the said return the word "exempt", when in truth and in fact said accused is not exempted as he failed to comply with the substantiation and reporting requirement under the tax law and revenue regulations, which resulted to deficiency tax in the amount of Three Million One Hundred Sixty Six Thousand Two Hundred Forty Six Pesos and Fifty Five Centavos (3,166,246.55), exclusive of interests, penalties and surcharges to the damage and prejudice of the Government of the Republic of the Philippines.”

CONTRARY TO LAW.”⁶

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

1. Resolution dated May 11, 2017 issued by Prosecution Attorney Jayvee Laurence B. Bandong, denying for lack of merit the motion for reconsideration.⁷
2. Resolution dated September 1, 2014 issued by Prosecution Attorney Jayvee Laurence B. Bandong, recommending that the following Informations be filed:

1. Informations for two (2) counts of violation of Section 255 of the NIRC, as amended, be filed against respondent Ziegfried Zoo Loo Tian for his failure to supply correct information in his ITR for the taxable year 2010 and his failure to file his ITR for taxable year 2011;

⁶ Docket, CTA Crim. Case No. O-956, p. 5.

⁷ Ibid., pp. 7-9.

2. Informations for two (2) counts of violation of Section 254 of the NIRC, as amended, be filed against respondent Ziegfried Loo Tian for his attempt to evade or defeat income taxes for taxable years 2010 and 2011;

3. Informations for eight (8) counts of violation of Section 255 of the NIRC, as amended, be filed against respondent Ziegfried Loo Tian for his failure to supply correct and accurate information in his VAT returns for the taxable years 2010 and 2011;

4. Informations for eight (8) counts of violation of Section 254 of the NIRC, as amended, be filed against respondent Ziegfried Loo Tian for his attempt to evade or defeat taxes in his VAT returns for taxable years 2010 and 2011.⁸

3. Investigation Data Form;⁹
4. Authority and approval for the filing and institution of Criminal Complaint against accused Ziegfried Loo Tian, issued by the Commissioner of Internal Revenue (CIR) on July 5, 2012;¹⁰ and
5. Joint Complaint Affidavit (JCA) of Emerita D. Tan, Carine P. Balmeo, Dominador A. Callangan, Arnel A. Boco and Adelina P. See, dated July 5, 2012, with attachments.¹¹

On December 5, 2022, the Court in Division issued the 1st Resolution dismissing CTA Case No. O-956, on the ground of prescription.

On January 5, 2023, the Court in Division received plaintiff-appellant's "Formal Entry of Appearance with Motion for Reconsideration."¹²

On February 9, 2023, the Court issued a Resolution holding that the Motion for Reconsideration was belatedly filed on January 5, 2023. Hence, the plaintiff-appellant's Motion for Reconsideration is denied. In the same Resolution, the Court noted the Entry of Appearance of Deputized Special

⁸ Docket, pp. 10-19.

⁹ Ibid., p. 191.

¹⁰ Ibid., pp. 21-22.

¹¹ Ibid., p. 23-37.

¹² Ibid., pp. 219-233.

Prosecutors Catherine Rose R. Tortoles, Jamaica Kay Dela Cruz, and Grace E. Untalan.¹³

Aggrieved, plaintiff-appellant filed on February 28, 2023, a Verified Petition for Review (of the Resolution dated February 09, 2023).¹⁴

On March 15, 2023, plaintiff-appellant filed by registered mail a “Manifestation and Motion”¹⁵ manifesting that it committed error in the caption of the “Verified Petition for Review (of the Resolution dated February 09, 2023)” and prayed that the caption of the title of the case be corrected from “Bureau of Internal Revenue” to “People of the Philippines” as the plaintiff-appellant.

On May 26, 2023, the Court issued a Resolution which noted and granted the “Manifestation and Motion,” and ordered plaintiff-appellant to file an amended Verified Petition for Review (of the Resolution dated February 09, 2023), within five (5) days from notice.¹⁶

On June 9, 2023, the Court *En Banc* received the “Amended Verified Petition for Review (of the Resolution dated February 09, 2023),” filed by registered mail on June 6, 2023.¹⁷

On June 19, 2023, the Court *En Banc* issued a Minute Resolution¹⁸ noting the “Amended Verified Petition for Review (of the Resolution dated February 09, 2023),” and directed accused-appellee to file his Comment, not a Motion to Dismiss, within ten (10) days from notice.

On July 12, 2023, the Court *En Banc* received the Notice of Appearance as counsel for accused-appellee filed by De Ramos and Bantigue Law Office.¹⁹

On July 17, 2023, the Court *En Banc* issued a Minute Resolution²⁰ which noted the Notice of Appearance of De Ramos and Bantigue Law Office.

On July 27, 2023, the Court *En Banc* received accused’s “Comment/Opposition (Re: Verified Petition for Review of the Resolution dated 09February 2003).”²¹

¹³ Docket, pp. 235-241.

¹⁴ Rollo, CTA EB Crim. No. 107, pp. 1-24, with Annexes.

¹⁵ *Ibid.*, pp. 249-253.

¹⁶ *Ibid.*, pp. 256-258.

¹⁷ 259-283, with Annexes.

¹⁸ *Ibid.*, p. 514.

¹⁹ *Ibid.*, pp. 515-517.

²⁰ *Ibid.*, p. 519.

²¹ *Ibid.*, pp. 520-539.

On August 7, 2023, the Court *En Banc* issued a Minute Resolution²² which noted accused's "Comment/Opposition (Re: Verified Petition for Review of the Resolution dated 09February 2003)," 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.***"

THE ARGUMENTS

Plaintiff-appellant claims that the Second Division erred when it denied the Motion for Reconsideration allegedly for being filed out of time; that the Motion for Reconsideration was timely filed on January 5, 2023, as the reckoning point for the counting of the fifteen (15)- day period for filing of the Motion for Reconsideration is on December 21, 2022, the date of the BIR's Receipt of the assailed Resolution dated December 5, 2022, which lapsed on January 5, 2023; that the Second Division erred when it found no probable cause to charge accused-appellee for violation of Section 254 or willful attempt to evade or defeat payment of tax for the third quarter of taxable year 2011; that prescription has not set in, since the prescriptive period began to run on July 5, 2012, when the BIR filed a complaint for violation of the NIRC of 1997, as amended, against accused-appellee, but at the same time, prescription was interrupted for the same reason that proceedings for purposes of preliminary investigation were instituted on the same date before the Department of Justice; and that accused appellee should be held liable for willful attempt to evade or defeat tax for the third quarter of taxable year 2011.

Accused-appellee argues that the right of the government to prosecute has prescribed pursuant to Section 281 of the NIRC, of 1997, as amended; that the case must be dismissed for violation of accused's right to speedy disposition of cases; and that the Resolution of the Court dated December 5, 2022 attained finality when the prosecution failed to timely file its motion for reconsideration.

THE RULING OF THE COURT *EN BANC*

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

²² Ibid., p. 64.

Plaintiff-appellant'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.

xxx xxx xxx

SECTION 9. *Appeal; period to appeal.* –

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 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.

xxx xxx xxx

Rule 15, Section 1 of the Revised Rules of the Court of Tax Appeals 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." (*Emphasis ours*)

Based on the records of this case, the Notice of Resolution dated December 5, 2022²³ shows that the Resolution dated December 5, 2022 dismissing the case on the ground of prescription, was received by 1) the DOJ National Prosecution Service (NPS) Docket Section on December 16, 2022, and 2) the BIR- Prosecution Division on December 21, 2022.

²³ Docket, p. 212.

The period for the filing of the Motion for Reconsideration should begin upon receipt by the DOJ of the 1st Resolution dated December 15, 2022 since the DOJ's public prosecutor is the principal prosecutor in this case before the Court in Division.

Section 5, Rule 110 of the Revised Rules of Criminal Procedure, as amended by A.M. No. 02-2-07-SC provides:

“Section 5. Who must prosecute criminal actions. – All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.” (Emphasis ours)

Section 3, Rule 9 of the Revised Rules of the Court of Tax Appeals, as amended, (RRCTA) provides:

“SEC. 3. Prosecution of criminal actions. – All criminal actions shall be conducted and persecuted under the direction and control of the public prosecutor. In criminal actions involving violations of the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue, and violations of the Tariff and Customs Code or other laws enforced by the Bureau of Customs, the Prosecution may be conducted by their respective duly deputized legal officers.” (Emphasis ours)

On January 5, 2023, the plaintiff-appellee through the “Deputized Special Prosecutors” filed a “Formal Entry of Appearance with Motion for Reconsideration.” Attached as “Annex A” thereof is the “Authorization and Deputization of Lawyers of the National Office – Prosecution Division.” The pertinent portion of said authority reads as follows:

“As per your recommendation and pursuant to Section 5, Rule 110 of the Revised Rules of Criminal Procedure, the above-

mentioned **BIR lawyers are hereby authorized by this Office to assist the public prosecutors in handling criminal tax cases, subject to court approval.**

It is understood that as special prosecutors, they shall continue to prosecute tax offenses before the courts, up to the end of the trial, even in the absence of the prosecutor, unless the authorization is revoked or withdrawn.” (*Emphasis ours*)

Records show that the assailed 1st Resolution dismissing the case was issued on December 5, 2022, while the Formal Entry of Appearance was filed on January 5, 2023. The Entry of Appearance was noted/approved by the Court in Division in the assailed 2nd Resolution dated February 9, 2023. Thus, the deputization of the lawyers from the BIR-Prosecution Division was not yet approved by the Court when the assailed 1st Resolution was issued. Note also that the written authority deputizing the BIR lawyers of the BIR-Prosecution Division merely authorized them to *assist the public prosecutors*, not to replace them as counsel in a particular case.

The reckoning point for the counting of the fifteen (15)-day period to file a Motion for Reconsideration is on December 16, 2022, the date when the 1st Resolution was served upon the DOJ- NPS Docket Section. Pursuant to the above-mentioned provisions, plaintiff-appellee had fifteen (15) days from December 16, 2022 or **until December 31, 2022** within which to file a Motion for Reconsideration. Since, December 31, 2022 was a holiday, the last day for filing a Motion for Reconsideration was on January 3, 2023, the next working day.

Hence, when the Motion for Reconsideration was filed on January 5, 2023, plaintiff-appellant’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 it, becomes final and binding.

It is important to bear in mind that a judgment becomes final by operation of law.²⁴ The finality of a decision becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The Court need not even pronounce the finality of the decision as the same becomes final by operation of law.²⁵

²⁴ *Spouses Poblete vs. Banco Filipino Savings and Mortgage Bank et al.*, G.R. No. 228620, June 15, 2020.

²⁵ *Dizuanco et. Al. vs. Villajerte*, G.R. No. 247391, July 13, 2021, citing *Barrio Fiesta Restaurant v. Beronia*, 789 Phil. 520, 539 (2016).

In *CIR vs. Fort Bonifacio Development Corporation*,²⁶ the Supreme Court emphasized that:

“It has been ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.”

In *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*,²⁷ 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 the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.”

Since the assailed 1st 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 Amended Verified Petition for Review is **DENIED for lack of jurisdiction.**

²⁶ G.R. No. 167606, August 11, 2010.


²⁷ G.R. No. 185666, February 04, 2015.

SO ORDERED.

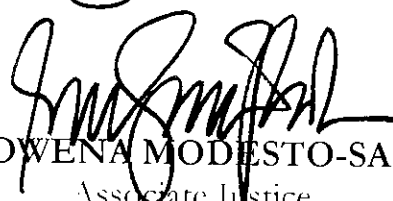

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

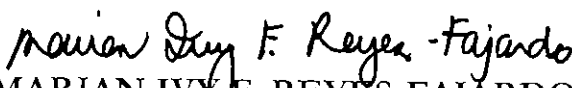
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice



CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
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.



ROMAN G. DEL ROSARIO
Presiding Justice