

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, CTA EB CRIM. NO. 108
*Petitioner*¹, (CTA Crim. Case No. O-929)

Present:

-versus-

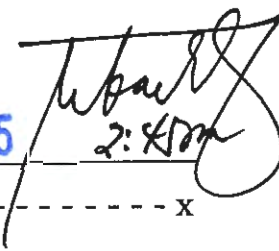
DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

ANTONIO VALERIANO M.
BERNARDO,
(A.V.M. BERNARDO ENGINEERING)
(AT LARGE: Address: No. 604 T. Santiago
St., Lingunan, Valenzuela City, Metro
Manila),

*Respondent*².

Promulgated:

MAR 04 2025



X-----X

DECISION

ANGELES, J.:

Before the Court *En Banc* is a **Verified Petition for Review (of the Resolution dated February 8, 2023)**³ filed on March 6, 2023, assailing the **Resolutions** dated November 28, 2022⁴ and February 8, 2023⁵, both promulgated by the First Division of this Court (the Court in Division) under CTA Crim. Case No. O-929, entitled "*People of the Philippines v. Antonio Valeriano M. Bernardo*", which

¹ The original designation as Plaintiff-Appellant is modified to Petitioner pursuant to Rule 43 of the Revised Rules of Court.

² The original designation as Accused-Appellee is modified to Respondent pursuant to Rule 43 of the Revised Rules of Court.

³ Verified Petition for Review (of the Resolution dated February 08, 2023) dated March 4, 2023, EB Docket, pp. 1 to 21.

⁴ Resolution dated November 28, 2022, EB Docket, pp. 28 to 34.

⁵ Resolution dated February 8, 2023, EB Docket, pp. 36 to 39.

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dismissed the *Information* filed against herein respondent on the ground that the criminal action has already prescribed.

The Parties

Petitioner Bureau of Internal Revenue (BIR), a government agency mandated to collect national revenue taxes, is represented by Commissioner of Internal Revenue (CIR) through Revenue Officers Gina D. Floreza and Grace G. Marohomsalic, 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 Court may be served.⁶

Respondent Antonio Valeriano M. Bernardo (Bernardo) is registered with BIR Revenue District Office No. 24 – Valenzuela City with Taxpayer Identification Number (TIN) 147-851-256-000. He is the Sole Proprietor of A.V.M. Bernardo Engineering engaged in the design, fabrication and installation of all food processing and slaughterhouse equipment. He is likewise a food consultant of hog and cattle line, and a food plant designer, with business address at 604 T. Santiago St., Lingunan, Valenzuela City where the summons, notices and other legal processes of this Court may be served.⁷

Facts of the Case

Proceedings before the Court in Division

On September 6, 2022, an *Information*⁸ was filed against respondent Antonio Valeriano M. Bernardo (Bernardo) for violation of Section 255 of the 1997 National Internal Revenue Code, as amended (Tax Code), docketed under CTA Crim. Case No. O-929, which states:

That on or about the 25th day of January 2013, in Valenzuela City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused ANTONIO VALERIANO M. BERNARDO, Filipino citizen, and a registered taxpayer with Tax Identification Number (TIN) 147-851-256, being a registered sole owner of the business enterprise under the name and style “A.V.M. Bernardo Engineering”, filed his Quarterly Value-Added Tax (QVAT) return for the 4th Quarter of the taxable year 2012, as required under Sections 105, 106 and 114 of the National Internal Revenue Code (NIRC) of 1997, as amended, did then and there, wilfully, unlawfully and feloniously, with willful and deliberate intent, fails to supply correct and accurate information in his 4th QVAT return when he declared

⁶ *Supra* note 1, Par. 7, EB Docket, p. 3.

⁷ *Supra* note 1, Par. 8, EB Docket, p. 3.

⁸ Information dated July 28, 2017, Division Docket, pp. 5 to 7.

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only the amount of Five Million Four Hundred Seventy Two Thousand Three Hundred Sixty Six Pesos and 07/100 Centavos (Php5,472,366.07), as his total vatable sales receipt in the said return, when in truth and in fact, his total vatable sales/receipts per audit of the Bureau of Internal Revenue amounted to Twenty Two Million Seven Hundred Thirty Six Thousand Six Hundred Twenty Four Pesos (Php22,736,624.00) that resulted to his failure to pay the correct tax in the total amount of Two Million Seventy One Thousand Seven Hundred Ten Pesos and 95/100 Centavos (Php2,071,710.95), as the basic deficiency net value-added tax, exclusive of interests and increments, to the damage and prejudice of the government.

CONTRARY TO LAW.

On November 28, 2022, the Court in Division issued the assailed *Resolution* stating that it finds no probable cause to issue a warrant of arrest against accused and dismissed the *Information* due to prescription. The pertinent portion of the *Resolution* states:

WHEREFORE, the Court finds no probable cause to issue a warrant of arrest against accused Antonio Valeriano M. Bernardo, on the ground of prescription of the offense charged. Likewise, on the same ground, the instant *Information* docketed as CTA Crim. Case No. O-929, is **DISMISSED**.

SO ORDERED.

On December 27, 2022, a *Formal Entry of Appearance with Motion for Reconsideration*⁹, was posted together with the attached *Motion for Reconsideration (of the Resolution dated November 28, 2022)*¹⁰, by the Deputized Special Prosecutors for the BIR pursuant to the Office Order dated October 14, 2022¹¹ issued by the Prosecutor General of the Department of Justice (DOJ).

On January 25, 2023, respondent filed his *Opposition/Comment (On Plaintiff's Motion for Reconsideration dated December 27, 2022)*¹².

On February 8, 2023, the Court in Division issued the assailed *Resolution* denying petitioner's *Motion for Reconsideration* for being filed out of time and for lack of merit. The dispositive portion of the said *Resolution* reads:

⁹ Formal Entry of Appearance with Motion for Reconsideration dated December 27, 2022, Division Docket, pp. 137 to 139; received by the Court in Division on January 12, 2023.

¹⁰ Motion for Reconsideration (of the Resolution dated November 28, 2022) dated December 27, 2022, Division Docket, pp. 142 to 150.

¹¹ Division Docket, pp. 140 to 141.

¹² Opposition/Comment (On Plaintiff's Motion for Reconsideration dated December 27, 2022) dated January 25, 2023, Division Docket, pp. 153 to 157.

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WHEREFORE, the prosecution's Motion for Reconsideration is **DENIED.**

The Formal Entry of Appearance of the Deputized Special Prosecutors for the Bureau of Internal Revenue as counsel for plaintiff is hereby **NOTED.**

SO ORDERED.

Proceedings Before the Court En Banc

Aggrieved by the dismissal of the *Information* and denial of the *Motion for Reconsideration*, herein petitioner filed on March 6, 2023 the instant *Verified Petition* praying for the Court to:

- a) Reverse and set aside the assailed *Resolutions*;
- b) Order the issuance of Warrant of Arrest against the respondent; and
- c) Set the arraignment and Pre-Trial of the case against the respondent.

On March 23, 2023, respondent filed his *Opposition (To Plaintiff-Appellant's Petition for Review)*.¹³ Subsequently, on March 30, 2023, petitioner filed a *Manifestation with Motion*¹⁴ praying that the title of the case be corrected from "BUREAU OF INTERNAL REVENUE" to "PEOPLE OF THE PHILIPPINES" as the plaintiff-appellant.

On March 6, 2024, the Court issued a *Minute Resolution*¹⁵ indicating the following court actions: (1) note the *Opposition (To Plaintiff-Appellant's Petition for Review)* filed by respondent; and (2) note and grant the *Manifestation with Motion* filed by the petitioner. Accordingly, the Court amended the caption of the case and submitted the *Verified Petition* for decision.

Issue

The sole issue submitted by the petitioner for this Court's decision is whether the Court in Division erred when it dismissed the case against respondent Bernardo for violation of Section 255 of the Tax Code or deliberate failure to supply correct and accurate

¹³ *Opposition (to Plaintiff-Appellant's Petition for Review)* dated March 21, 2023, EB Docket, pp. 159 to 163.

¹⁴ *Manifestation with Motion* dated March 30, 2023, EB Docket, pp. 164 to 168.

¹⁵ EB Docket, p. 171.

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information in his quarterly value-added tax return for the 4th quarter of taxable year 2012 on the ground of prescription.

Petitioner's arguments

Petitioner argues that prescription has not set in as the period of discovery and the institution of judicial proceedings for violation of Section 255 of the Tax Code, against the respondent did not only trigger the commencement of the prescriptive period, but at the same time, interrupts the prescriptive period on the date of filing of the complaint with the DOJ. Petitioner insists that the running of the five (5)-year prescriptive period is interrupted when a complaint is filed before the proper officer, for the purpose of conducting the requisite preliminary investigation pursuant to Act No. 3326. Petitioner also argues that respondent should be held liable for deliberate failure to supply correct and accurate information in his income tax return for taxable year 2013.

Respondent's counter-arguments

Respondent submits that the findings and conclusions of the Court in Division are based on existing laws, jurisprudence, plaintiff's Revenue Memorandum Circular and the Revised Rules of the Court of Tax Appeals (RRCTA). Respondent maintains that the five (5)-year prescriptive period for violations of the Tax Code, had already prescribed and was correctly dismissed by the Court for failure of the prosecution to timely file the Information in Court.

Ruling of the Court *En Banc*

The Verified Petition for Review was not duly filed; hence, the assailed Resolutions have attained finality since the running of the period to appeal was not effectively tolled.

Records reveal that on February 17, 2023, petitioner BIR received the assailed *Resolution* dated February 8, 2023, denying its *Motion for Reconsideration*.

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Pursuant to Section 3(b), Rule 8 of the RRCTA, petitioner had fifteen (15) days from February 17, 2023, or until March 04, 2023, within which to file a petition for review with the Court *En Banc*. Considering that March 4, 2023 fell on a Saturday, the last day within which to file the petition for review was on March 6, 2023, the next business day.

Absent any deputization from the OSG, the BIR Prosecution Division has no legal authority to represent the People of the Philippines in the instant case.

Consequently, on March 6, 2023, the instant *Verified Petition* was filed via registered mail and received by the Court on March 10, 2023. However, an examination of the *Verified Petition* shows that the same was filed by the Prosecution Division of the BIR.

Section 10, Rule 9 of the RRCTA provides that the Office of the Solicitor General (OSG) shall represent the People of the Philippines in all cases brought before the Court *En Banc* in the exercise of its appellate jurisdiction. The same rule allows the OSG to deputize the legal officers of the BIR in cases brought under the Tax Code or other laws enforced by the BIR, to *wit*:

Section 10. *Solicitor General as Counsel for the People and government officials sued in their official capacity.* – **The Solicitor General shall represent the People of the Philippines** and government official sued in their official capacity **in all cases brought to the Court in the exercise of its appellate jurisdiction. The former may deputize the legal officer of the Bureau of Internal Revenue in cases brought under the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue,** or the legal officers of the Bureau of Customs in case brought under the Tariff and Customs Code of the Philippines or other laws enforced by the Bureau of Customs, to appear in behalf of the officials of said agencies sued in their official capacity; Provided however, such duly deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General. (Emphasis supplied)

Jurisprudence likewise consistently holds that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings. The only exceptions are: (1) when the government is adversely affected by the contrary position taken by the OSG; (2) when there is an express authorization by the

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OSG deputizing legal officers to assist the Solicitor General and appear or represent the government in cases involving their respective offices; and (3) when the dismissal of the petition could have lasting effect on government tax revenues, where the issue raised was whether the revenue regulation issued by the CIR has exceeded, on constitutional grounds, the allowable limits of legislative delegation.¹⁶ In the instant case, however, none of the exceptions apply.

It may be argued that under Section 220¹⁷ of the Tax Code, the institution of civil and criminal actions shall be conducted by the legal officers of the BIR. However, in the case of *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*¹⁸, it was held that Section 220 did not overturn the established rule in requiring the OSG to represent the government in appellate proceedings, *viz*:

The institution or commencement before a proper court of civil and criminal actions and proceedings arising under the Tax Reform Act which "shall be conducted by legal officers of the Bureau of Internal Revenue" is not in dispute. **An appeal from such court, however, is not a matter of right. Section 220 of the Tax Reform Act must not be understood as overturning the long-established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic. This Court continues to maintain that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.** This pronouncement finds justification in the various laws defining the Office of the Solicitor General, beginning with Act No. 135, which took effect on 16 June 1901, up to the present Administrative Code of 1987.3 Section 35, Chapter 12, Title III, Book IV, of the said Code outlines the powers and functions of the Office of the Solicitor General which includes, but not limited to, its duty to -

"(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

"x x x x x x x x x

¹⁶ People of the Philippines v. Gloria F. Tuyay, G.R. No. 206579, December 01, 2021.

¹⁷ SECTION 220. Form and Mode of Proceeding in Actions Arising under this Code. - **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.

¹⁸ G.R. No. 144942, July 4, 2002.

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"(3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court." (Emphasis supplied)

The above ruling was likewise reiterated in *People v. Court of Tax Appeals-Third Division, L.M. Camus Engineering Corporation, et al.*¹⁹, thus:

Foremost, it should be pointed out that the **present Petition was filed by the Prosecution Division of the BIR instead of the Office of the Solicitor General (OSG)**. Perceivably, the OSG declined to institute the present action because it was of the opinion that the CTA, Third Division did not commit grave abuse of discretion in rendering the assailed Resolutions. Nevertheless, the BIR insists that despite the OSG's contrary position, it is allowed to institute the present action independently pursuant to the doctrine in *Orbos vs. Civil Service Commission*.

The Court takes this opportunity to caution both the BIR and the OSG that the doctrine in *Orbos* is not an absolute rule. **In fact, in the succeeding case of *Commissioner of Internal Revenue vs. La Suerte Cigar & Cigarette Factory*, the Court held that the NIRC did not do away with the established rule in requiring the OSG to represent the interest of the Republic in appellate proceedings** before this Court. This is the clear import of the provisions of the Executive Order No. 292, or the Revised Administrative Code, which provides in detail the duties of the OSG,

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As an independent office, **the Court has recognized that the Solicitor General has a wide discretion in the management of cases, i.e., "[h]e may start the prosecution of the case by filing the appropriate action in court or he may opt not to file the case at all.** He may do everything within his legal authority but always conformably with the national interest and the policy of the government on the matter at hand." Nevertheless, given the mandatory nature of the above-quoted provision as evident in the use of the word "shall" in the first paragraph thereof, the Court has held that the Solicitor General cannot refuse to perform his duty to represent the government, its agencies, instrumentalities, officials, and agents without a just and valid reason. (Emphasis supplied)

Based on the records of the case, the *Verified Petition* was filed by the Prosecution Division of the BIR, and not by the OSG, which is primarily responsible to appear on behalf of the government in appellate proceedings. The *Verified Petition* was also not accompanied

¹⁹ G.R. Nos. 251270 and 251291-301, September 05, 2022.

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by any written authorization issued by the OSG deputizing the legal officers of the BIR to appear before the Court *En Banc*.

Accordingly, the BIR did not have the required authorization to file the instant *Verified Petition*. As such, the filing of the *Verified Petition* by the BIR without any written deputization from the OSG did not toll the running of the period to file an appeal with the Court *En Banc*. In view thereof, the assailed *Resolutions* have become final and executory.

As consistently ruled by the Supreme Court, 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.²⁰

Considering that the *Verified Petition* was not duly filed within the period to file an appeal, the same must be dismissed as the Court *En Banc* cannot acquire jurisdiction over the case.

Even assuming that the Verified Petition for Review was duly filed, the same must still be denied for lack of merit.

The Court in Division ruled that the failure of the prosecution to timely file the *Information* within the five (5)-year prescriptive period renders the case dismissible on the ground of prescription.

The prescription for violations of the Tax Code is provided under Section 281 thereof, to wit:

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 date 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.**

The **prescription shall be interrupted when proceedings are instituted against the guilty persons** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

²⁰ *Viva Shipping Lines, Inc. v. Keppel Philippines Mining, Inc., et al.*, G.R. 177382, February 17, 2016.

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The term of prescription shall not run when the offender is absent from the Philippines. (Emphasis supplied)

Relative thereto, Section 2, Rule 9 of the RRCTA provides that:

Section 2: Institution of criminal actions. **All criminal actions** before the Court in Division in the exercise of its original jurisdiction **shall be instituted by the filing of an information in the name of the Republic of the Philippines.** In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.

The institution of criminal actions shall interrupt the running of the period of prescription. (Emphasis supplied)

As gleaned from the above provisions, the period of prescription for violations of the Tax Code begins to run either (a) from the day of the commission of the violation; or (b) if the same be not known at that time, from the discovery thereof and institution of judicial proceedings for its investigation and punishment. Further, pursuant to the RRCTA which was approved by the Supreme Court on November 22, 2005, particularly Section 2, Rule 9 thereof, the period to institute criminal actions for violations of the Tax Code shall be interrupted by the filing of an information with the Court in Division of the CTA.

Petitioner, however, claims that the five (5)-year prescriptive period had commenced and was at the same time interrupted upon filing of the complaint with the DOJ. In support of its claim, petitioner cited the cases of *Republic vs. Cojuangco, Jr.*²¹, *Lim vs. Court of Appeals*²², and *Romualdez vs. Marcelo*²³ to prove that prescription has not set in.

We are not convinced.

The rulings in *Republic vs. Cojuangco, Jr.* and *Romualdez vs. Marcelo* as cited by petitioner are not applicable in the instant case because these cases do not involve the prescriptive period for the filing of criminal tax case. The case of *Republic vs. Cojuangco, Jr.* pertains to the prescriptive period for instituting a case for the recovery of ill-gotten wealth acquired pursuant to Act No. 3326, while the case of

²¹ G.R. No. 139930, June 26, 2012.

²² G.R. Nos. L-48134-37, October 18, 1990.

²³ G.R. Nos. 165510-33, July 28, 2006.

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Romualdez vs. Marcelo involves violation of Section 7 of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

The Court *En Banc*, however, agrees that the case of *Lim vs. Court of Appeals*²⁴ applies. The relevant pronouncement in such case reads:

The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. **Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run.** It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. **Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.**

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The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. As Section 354 (now Section 218) stands in the statute book (and to this day it has remained unchanged) **it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years.** (Emphasis supplied)

Based on *Lim*, if the commission of the tax violation is not known, the prescriptive period to institute a criminal action **commences** from the discovery of the violation **and** indorsement of the case to the prosecutor's office for preliminary investigation. However, the period of discovery and indorsement for preliminary investigation **until** the filing of the information in court, should **not** exceed five (5) years.

Applying the ruling in *Lim* to this case, the table below shows the relevant dates pertaining to the discovery of tax violation, indorsement for preliminary investigation, and filing of criminal action with the Court in Division:

²⁴ G.R. Nos. L-48134-37, October 18, 1990.

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<i>BIR's Discovery of Tax Violation</i>	<i>BIR's Referral of the Complaint with the DOJ for Preliminary Investigation</i>	<i>DOJ Resolution</i>	<i>Last Day to File Criminal Action with the Court in Division</i>	<i>Filing of the Information with the Court in Division</i>
	[5-Year Prescriptive Period commenced]		[5th Year]	
2015	February 18, 2016	July 28, 2017	February 18, 2021	September 6, 2022

It can be gathered based on the case records that: **(a)** the discovery of the tax violation occurred in 2015 considering that in the Joint-Complaint Affidavit²⁵ executed by the BIR revenue officers, it was stated that investigations were conducted for Bernardo's alleged tax evasion scheme pursuant to a Memorandum²⁶ dated January 6, 2015; **(b)** the five (5)-year prescriptive period for the institution of a criminal action commenced on February 18, 2016 upon the filing of the Joint Complaint-Affidavit with the DOJ for preliminary investigation; and **(c)** the filing of the Information on September 6, 2022 was beyond the five (5)-year prescriptive period.

In view of the foregoing, the filing of the Information on September 6, 2022, or after more than (6) years counted from the filing of the Joint Complaint-Affidavit with the DOJ on February 18, 2016, has been barred by prescription. Thus, the Court in Division has no jurisdiction over the case which justifies the dismissal thereof.

WHEREFORE, premises considered, the instant *Verified Petition for Review (of the Resolution dated February 8, 2023)* is **DENIED** for lack of merit. The *Resolutions* dated November 28, 2022 and February 8, 2023, rendered by the First Division of this Court in CTA Crim. Case No. O-929, are hereby **AFFIRMED**.

SO ORDERED.


HENRY S. ANGELES
Associate Justice

²⁵ Joint Complaint-Affidavit (of Gina D. Floreza and Grace G. Marohomsalic) dated February 18, 2016, Division Docket, pp. 22 to 33.

²⁶ Memorandum dated January 6, 2015, Annex B of the Joint Complaint-Affidavit (of Gina D. Floreza and Grace G. Marohomsalic) dated February 18, 2016, Division Docket, p. 35.

WE CONCUR:



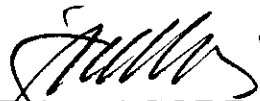
ROMAN G. DEL ROSARIO
Presiding Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice



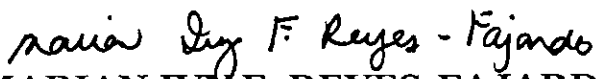
CATHERINE T. MANAHAN
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice

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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.

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', with a stylized, cursive script.

ROMAN G. DEL ROSARIO

Presiding Justice