

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE
PHILIPPINES, AND
BUREAU OF INTERNAL
REVENUE, as represented
by the Commissioner of
Internal Revenue,
Petitioner,

CTA EB CRIM. NO. 126
(CTA Crim. Case Nos. O-679, O-680,
O-681 and O-682)

- versus -

RAPPLER HOLDINGS
CORPORATION and
MARIA A. RESSA,
Respondent.

PEOPLE OF THE
PHILIPPINES,
Petitioner,

CTA EB SCA NO. 0001

Present:

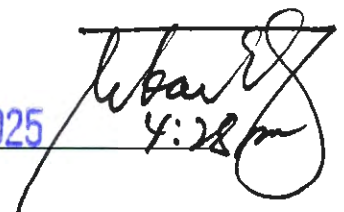
- versus -

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

COURT OF TAX
APPEALS FIRST
DIVISION, RAPPLER
HOLDINGS
CORPORATION and
MARIA A. RESSA,
Respondents.

Promulgated:

FEB 21 2025



4:28 pm

x-----x

DECISION

CTA EB Crim No. 126 and CTA EB SCA No. 0001

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DECISION

FERRER-FLORES, J.:

Before this Court are petitioner's: (1) **Verified Petition for Review (of the Resolution dated May 18, 2023, on the Civil Aspect)** (*Verified Petition for Review*) filed on June 8, 2023,¹ assailing the civil aspect of the Decision dated January 18, 2023 (assailed Decision)² and the Resolution dated May 18, 2023 (assailed Resolution)³ in CTA Crim. Case Nos. O-679 to O-682 and, (2) **Verified Petition for Certiorari** (*Verified Petition for Certiorari*) filed on July 24, 2023,⁴ praying that the assailed Decision and assailed Resolution be declared null and void, reversed and vacated.

The dispositive portions of the assailed Decision and the assailed Resolution read as follows:

assailed Decision:

WHEREFORE, in light of the foregoing considerations, the Court rules as follows:

1. In CTA Crim. Case Nos. O-679, O-680, O-681 and O-682, accused Rappler Holdings Corporation and Maria A. Ressa are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt;
2. No civil liability may be adjudged against the accused as the alleged unpaid tax obligations have not been factually and legally established and proven; and
3. The respective cash bail bonds of the accused for the said cases are likewise **CANCELLED** and ordered **RELEASED** to them upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

SO ORDERED.

assailed Resolution:

WHEREFORE, in view of the foregoing premises, the *Motion for Reconsideration* filed by plaintiff on February 2, 2023 is **DENIED** for lack of merit.

¹ *Rollo* (EB Crim. No. 126) – Vol. 1, pp. 1 to 19.

² *Id.* at 28 to 114. Penned by Associate Justice Catherine T. Manahan and concurred by Associate Justice Jean Marie A. Bacorro-Villena, as Special Member and Associate Justice Marian Ivy F. Reyes-Fajardo; Presiding Justice Roman G. Del Rosario inhibited.

³ *Id.* at 116 to 125.

⁴ *Rollo* (EB SCA No. 0001) – Vol. 1, pp. 3 to 66.

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SO ORDERED.

The assailed Decision addressed the consolidated criminal cases filed by petitioner against **Rappler Holdings Corporation (RHC)** and **Maria A. Ressa** for violation of Sections 254 and 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portions in the original *Information* and *Second Amended Information* for each case read as follows:⁵

CTA Crim. Case No. O-679:

INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **MARIA A. RESSA** of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

That on or about October 2015, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, being the President of Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully, fail to supply correct and accurate information in the quarterly value-added tax return of RHC for the third (3rd) quarter of tax year 2015, by then and there, failing to report therein the total quarterly sales receipts coming from the issue and sale by RHC of Philippine Depositary Receipts (PDRs), as a dealer in securities to NBM Rappler L.P., in the total amount of One Hundred Nine Million Twenty-Two Thousand Three Hundred Ninety-Nine Pesos and Twenty-Three Centavos (Php109,022,399.23), thereby resulting in deficiency value-added tax in the amount of Thirteen Million Eighty-Two Thousand Six Hundred Eighty-Seven Pesos and Ninety-One Centavos (Php13,082,687.91), exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW.

SECOND AMENDED INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **RAPPLER HOLDINGS CORPORATION/MARIA A. RESSA** of violation of Section 255 of the

⁵ *Assailed Decision, Rollo* (EB Crim. No. 126 and EB SCA No. 0001) – Vol. 1, pp. 28 to 34 and 82 to 88, respectively.

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National Internal Revenue Code of 1997, as amended, committed as follows:

That on or about October 2015, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, Maria A. Ressa, being the President of accused Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully, fail to supply correct and accurate information in the quarterly value-added tax return of RHC for the third (3rd) quarter of tax year 2015, by then and there, failing to report therein the total quarterly sales receipts coming from the issue and sale by RHC of Philippine Depositary Receipts (PDRs), as a dealer in securities to NBM Rappler L.P., in the total amount of One Hundred Nine Million Twenty-Two Thousand Three Hundred Ninety-Nine Pesos and Twenty-Three Centavos (Php109,022,399.23), thereby resulting in deficiency value-added tax in the amount of Thirteen Million Eighty-Two Thousand Six Hundred Eighty-Seven Pesos and Ninety-One Centavos (Php13,082,687.91), exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW.

CTA Crim. Case No. O-680:

INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **MARIA A. RESSA** of violation of Section 254 of the National Internal Revenue Code of 1997, as amended, committed as follows:

That on or about April 2016, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, being the President of Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully attempt to evade or defeat tax, by deliberately and calculatedly not declaring in the tax returns filed by RHC for tax year 2015, trading income derived from its issue and sale of Philippine Depositary Receipts (PDRs) as a dealer in securities, to NBM Rappler L.P. and Omidyar Network Fund LLC in the total amount of One Hundred Sixty-Two Million Four Hundred-Twelve

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Thousand and Seven Hundred Eighty-Three Pesos and Sixty-Seven Centavos (Php162,412,783.67), representing the difference between the aggregate book value of the underlying stocks of said PDRs (Php14,245,975.00) and the total consideration paid for the said PDRs (Php181,658,758.67), fraudulently concealing its true income earnings for the same TAX year, and defeating payment of the corresponding tax thereon in the amount of Forty-Eight Million Seven Hundred Twenty-Three Thousand and Eight Hundred Thirty-Five Pesos (Php48,723,835.00), exclusive of interests, penalties and surcharges, to the damage and prejudice of the government.

CONTRARY TO LAW.

SECOND AMENDED INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **RAPPLER HOLDINGS CORPORATION/MARIA A. RESSA** of violation of Section 254 of the National Internal Revenue Code of 1997, as amended, committed as follows:

That on or about April 2016, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, Maria A. Ressa, being the President of accused Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully attempt to evade or defeat tax, by deliberately and calculatedly not declaring in the income tax returns filed by RHC for the tax year 2015, trading income derived from its issue and sale of Philippine Depository Receipts (PDRs) as a dealer in securities, to NBM Rappler L.P. and Omidyar Network Fund LLC in the total amount of One Hundred Sixty-Two Million Four Hundred-Twelve Thousand and Seven Hundred Eighty-Three Pesos and Sixty-Seven Centavos (Php162,412,783.67), representing the difference between the aggregate book value of the underlying stocks of said PDRs (Php19,245,975.00) and the total consideration paid for the said PDRs (Php181,658,758.67), fraudulently concealing its true income earnings for the same year, and defeating payment of the corresponding income tax thereon in the amount of Forty-Eight Million Seven Hundred Twenty-Three Thousand and Eight Hundred Thirty-Five Pesos and Ten Centavos (Php48,723,835.10), exclusive of interest, penalties and surcharges, to the damage and prejudice of the government.

CONTRARY TO LAW. M

DECISION

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CTA Crim. Case No. O-681:

INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **MARIA A. RESSA** of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

That on or about February 2016, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, being the President of Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully, by then and there, fail to supply correct and accurate information in the quarterly value-added tax return of RHC for the fourth (4th) quarter of tax year 2015, by failing to report therein the total quarterly sales receipts coming from the issue and sale by RHC of Philippine Depositary Receipts (PDRs), as a dealer in securities, to Omidyar Network Fund LLC in the total amount of Seventy Million One Hundred Eighty-Four Thousand and Two Hundred Four Pesos and Fifty-Seven Centavos (Php70,184,204.57), thereby resulting in deficiency value-added tax in the amount of Eight Million Four Hundred Twenty-Two Thousand One Hundred Four Pesos and Fifty-Five Centavos (Php8,422,104.55), exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW.

SECOND AMENDED INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **RAPPLER HOLDINGS CORPORATION/MARIA A. RESSA** of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

That on or about February 2016, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused Maria A. Ressa, being the President of accused Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, wilfully and unlawfully, by then

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and there, fail to supply correct and accurate information in the quarterly value-added tax return of RHC for the fourth (4th) quarter of tax year 2015, by failing to report therein the total quarterly sales receipts coming from the issue and sale by RHC of Philippine Depositary Receipts (PDRs), as a dealer in securities, to Omidyar Network Fund LLC in the total amount of Seventy Million One Hundred Eighty-Four Thousand and Two Hundred Four Pesos and Fifty-Seven Centavos (Php70,184,204.57), thereby resulting in deficiency value-added tax in the amount of Eight Million Four Hundred Twenty-Two Thousand One Hundred Four Pesos and Fifty-Five Centavos (Php8,422,104.55), exclusive of surcharge and interest, to the damage and prejudice of the government.

CONTRARY TO LAW.

CTA Crim. Case No. O-682:

INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **MARIA A. RESSA** of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

That on or about April 2016, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, being the President of Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully, fail to supply correct and accurate information in the income tax return of RHC for tax year 2015, by then and there not reporting therein trading income from the issue and sale by RHC of Philippine Depositary Receipts (PDRs) as a dealer in securities, to NBM Rappler L.P. and Omidyar Network Fund LLC, in the total amount of One Hundred Sixty-Two Million Four Hundred Twelve Thousand Seven Hundred Eighty-Three Pesos and Sixty-Seven Centavos (Php162,412,783.67), representing the difference between the aggregate book value of the underlying stocks of said PDRs (Php14,245,975.00) and the total consideration paid for the said PDRs (Php181,658,758.67), fraudulently concealing its true income earnings for the same year, and defeating payment of the corresponding tax thereon in the amount of Forty-Eight Million Seven Hundred Twenty-Three Thousand and Eight Hundred Thirty-Five Pesos (Php48,723,835.00), exclusive of interest, penalties and surcharges, to the damage and prejudice of the government.

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CONTRARY TO LAW.

SECOND AMENDED INFORMATION

The undersigned Assistant State Prosecutor of the Department of Justice, Padre Faura St., Manila, hereby accuses **RAPPLER HOLDINGS CORPORATION/MARIA A. RESSA** of violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, committed as follows:

That on or about April 2016, and subsequent thereto, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused Maria A. Ressa, being the President of accused Rappler Holdings Corporation (RHC), a domestic corporation holding business at Level 3, Northwing, Estancia Offices, Capitol Commons, Pasig City, and registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 43-Pasig City, with Tax Identification No. (TIN) 008-923-940-000, did then and there, willfully and unlawfully, fail to supply correct and accurate information in the income tax return of RHC for tax year 2015, by then and there not reporting therein trading income from the issue and sale by RHC of Philippine Depositary Receipts (PDRs) as a dealer in securities, to NBM Rappler L.P. and Omidyar Network Fund LLC, in the total amount of One Hundred Sixty-Two Million Four Hundred Twelve Thousand and Seven Hundred Eighty-Three Pesos and Sixty-Seven Centavos (Php162,412,783.67), representing the difference between the aggregate book value of the underlying stocks of said PDRs (Php19,245,975.00) and the total consideration paid for the said PDRs (Php181,658,758.67), fraudulently concealing its true income earnings for the same year, and defeating payment of the corresponding income tax thereon in the amount of Forty-Eight Million Seven Hundred Twenty-Three Thousand and Eight Hundred Thirty-Five Pesos and Ten Centavos (Php48,723,835.10), exclusive of interest, penalties and surcharges, to the damage and prejudice of the government.

CONTRARY TO LAW.

THE PARTIES

Petitioner People of the Philippines is represented by the Office of the Solicitor General (OSG) with respect to its *Verified Petition for Certiorari*⁶ and the Bureau of Internal Revenue (BIR) as regards the *Verified Petition for Review*.⁷ ¶

⁶ *Parties, Verified Petition for Ceriorari, Rollo* (EB SCA No. 0001) – Vol. 1, p. 5.

⁷ *Parties, Verified Petition for Review, Rollo* (EB Crim. No. 126) – Vol. 1, p. 3.

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Respondent Rappler Holdings Corporation (respondent/RHC) is a domestic corporation organized under the laws of the Republic of the Philippines and was incorporated with the Securities and Exchange Commission (SEC) on December 12, 2014. Its primary purpose is to acquire by purchase, exchange, assignment, gift or otherwise, and to hold, own and use for investment or otherwise, and to sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, traffic, deal in and with and otherwise operate, enjoy and dispose of real and personal properties of every kind and description and wherever situated, as and to the extent permitted by law, including but not limited to, shares of capital stock, bonds, debentures, promissory notes, or other securities or obligations, created, negotiated or issued by any corporation, association, or other entity, foreign or domestic, and real estate, whether improved or unimproved, and any interest or right therein, as well as buildings, tenements, warehouses, factories, edifices and structures and other improvements, and while the owner, holder or possessor thereof, to exercise any and all rights, powers and privileges of ownership or any other interest therein, including the right to vote on any proprietary or other interest on any shares of capital stock, and upon any bonds, debentures, or other securities having voting power, so owned or held and the right to receive, collect and dispose of, any and all rentals, dividends, interests and income derived therefrom, except the management of fund portfolios and similar assets of such managed entities; Provided it shall not act as a stockbroker or dealer of securities.⁸

RHC is registered with the BIR Revenue District Office (RDO) No. 43-Pasig City with registered address at Level 3, North Wing Estancia Offices, Capitol Commons, Barangay Oranbo, Pasig City 1605 under Tax Identification Number (TIN) 008-923-940-000.⁹

Respondent Maria A. Ressa is the President and Chief Executive Officer of RHC.¹⁰

THE ANTECEDENT FACTS

The facts as found by the Court in Division are as follows:¹¹

The investigation against the accused was prompted by a National Investigation Division (NID) Memo Assignment No. CRD/AJDG 2018-01-024-0083 dated January 24, 2018, issued by Atty. Abigael Joy D. Gamboa, Officer-in-Charge (OIC)-Chief, NID of the BIR, directing Group

⁸ *Parties, Petition for Review, Rollo* (EB Crim. No. 126) – Vol. 1, p. 3.

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ *Rollo* (EB Crim. No. 126 and EB SCA No. 0001) – Vol. 1, pp. 35 to 48 and 89 to 102, respectively.

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Supervisor (GS) Editha Quilantang, and Revenue Officers (ROs) Rosanna Berba and Ed Al Renzie Salles, to conduct a preliminary investigation on the accused RHC.

On March 2, 2018, a Letter of Authority (LOA) eLa201600007402 was issued to accused RHC by the CIR authorizing complainants GS Quilantang and ROs Berba and Salles to audit accused's books of accounts and accounting records for the taxable year (TY) 2015.

Accused RHC received LOA eLA201600007402 dated March 2, 2018 from the BIR on March 5, 2018.

Complainants Salles, Berba and Quilantang filed a criminal complaint against RHC and Maria A. Ressa with the Department of Justice (DOJ) on March 8, 2018.

On March 8, 2018, then CIR Caesar R. Dulay wrote a letter to then Secretary of the DOJ Vitaliano N. Aguirre II, referring the Joint Complaint-Affidavit executed by GS Quilantang and ROs Berba and Salles, for preliminary investigation and the filing of appropriate Information in court, if the evidence so warrants.

The said Joint Complaint-Affidavit averred, inter alia, that:

"34. Considering that failure of RHC to pay the correct amount of Income Tax and Value-Added Tax Return from the transactions of buying and selling securities, the aggregate income tax liabilities of RHC amount to One Hundred Thirty-Three Million Eight Hundred Forty-One Thousand Three Hundred Five Pesos and 75/100 (P133,841,305.75) for deficiency income taxes and value added taxes for taxable year 2015, inclusive of surcharges and interests, are broken down as follows:

| | |
|--|----------------------|
| DEFICIENCY INCOME TAX | 2015 |
| Taxable Income per Investigation | 162,412,783.67 |
| Multiply: Tax Rate (30%) | 30% |
| Deficiency Tax Due | 48,723,835.10 |
| 50% Surcharge | 24,361,917.55 |
| Interest (up to 2/28/18) | 18,234,728.42 |
| Total Deficiency Income Tax | 91,320,481.08 |
| DEFICIENCY VALUE ADDED TAX | 2015 |
| a. 264,601 PDRs issued on 29 May 2015 to NBM Rappler, L.P. | 2,452,152.87 |
| Multiply: VAT Rate (12%) | 12% |
| Deficiency VAT | 294,258.58 |
| 50% Surcharge | 147,129.29 |
| Interest (up to 12/28/18) | 153,041.46 |
| Deficiency Value Added Tax | 594,402.34 |

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| | |
|---|-----------------------|
| b. 11,764,117 PDRs issued on 29 July 2015 to NBM Rappler, L.P. | 109,022,399.23 |
| Multiply: VAT Rate (12%) | 12% |
| Deficiency VAT | 13,082,687.91 |
| 50% Surcharge | 6,541,343.95 |
| Interest (up to 2/28/18) | 6,143,483.87 |
| Deficiency Value Added Tax | 25,767,518.73 |
| | |
| b. 7,217,257 PDRs issued on 05 October 2015 to Omidyar Network Fund LLC | 70,184,204.57 |
| Multiply: VAT Rate (12%) | 12% |
| Deficiency VAT | 8,422,104.55 |
| 50% Surcharge | 4,211,052.27 |
| Interest (up to 2/28/18) | 3,525,746.78 |
| Deficiency Value Added Tax | 16,158,903.60 |
| | |
| Total Deficiency Value Added Tax | 42,520,824.67 |
| | |
| TOTAL DEFICIENCY TAX | 133,841,305.75 |

Subsequently, OIC-Chief of the NID of the BIR, Atty. Abigail Joy D. Gamboa, issued a Notice of Informal Conference to accused RHC on November 12, 2018 along with initial findings of its alleged deficiency income tax (IT) and value-added tax (VAT) for TY 2015.

Assistant State Prosecutor Zenamar J.L. Machacon-Caparros of the DOJ issued a Resolution dated October 2, 2018, which was recommended for approval by Senior Deputy State Prosecutor, Chairman-Anti-Fraud Division Miguel F. Gudio, Jr. and approved by Senior Deputy State Prosecutor & OIC, Office of the Prosecutor General Richard Anthony D. Fadullon, finding probable cause and recommending the filing of criminal information against the accused.

On November 26, 2018, an Information was filed charging the accused Maria A. Ressa for the crime of willful failure to supply correct and accurate information in the quarterly VAT return of RHC for the 3rd quarter of taxable year 2015, under Section 255 of the 1997 NIRC, as amended. This case was docketed as CTA Crim. Case No. O-679.

On November 28, 2018, an Information was filed charging the accused, Maria A. Ressa for the crime of willful and unlawful attempt to evade or defeat tax, by deliberately and calculatedly not declaring in the income tax returns (ITR) filed by accused RHC for the TY 2015 its trading income under Section 254 of the 1997 NIRC, as amended. This case was docketed as CTA Crim. Case No. O-680.

On the same date of November 28, 2018, an Information was filed charging the accused, Maria A. Ressa for the crime of willfully and unlawfully failing to supply correct and accurate information in the VAT return of accused RHC for the 4th quarter of TY 2015 under Section 255 of the 1997 NIRC, as amended. This case was docketed as CTA Crim. Case No. O-681.

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Likewise, on November 28, 2018, an Information was filed against accused Maria A. Ressa for the crime of willfully and unlawfully failing to supply correct and accurate information in the ITR of accused RHC for TY 2015 under Section 255 of the 1997 NIRC, as amended. This case was docketed as CTA Crim. Case No. O-682.

On November 22, 2018, the Court received from the accused RHC and Maria A. Ressa a copy of the Motion for Reconsideration (of the Resolution dated 2 October 2018) filed by them before the DOJ.

On November 28, 2018, the plaintiff submitted to the Court a copy of the Motion for Reconsideration (of the Resolution dated 2 October 2018) filed before the DOJ.

On December 11, 2018, accused Maria A. Ressa voluntarily appeared and submitted her person to the jurisdiction of the Court and posted a cash bond in the amount of P60,000.00 for her provisional liberty.

In the Resolution dated December 11, 2018, the Court set the Preliminary Conference on January 16, 2019, for marking of plaintiff's and defense' exhibits and on January 23, 2019, for the arraignment of accused and the Pre-Trial Conference.

In the Resolution dated December 12, 2018, the First Division of this Court confirmed the consolidation of CTA Crim. Case Nos. O-680, O-681, and O-682 with CTA Crim. Case No. O-679.

During the conditional arraignment held on December 13, 2018, accused Maria A. Ressa, duly assisted by her counsel, entered a plea of "NOT GUILTY" of the crimes charged under the Information in CTA Criminal Case Nos. O-679, O-680, O-681, and O-682. Accordingly, these consolidated cases were initially set for Preliminary Conference on January 16, 2019, and Unconditional Arraignment and Pre-Trial Conference on January 23, 2019.

Also, during the hearing held on December 13, 2018, the Court allowed the plaintiff to make certain amendments/corrections to several clerical errors appearing on all four (4) Informations.

Thereafter, accused then filed an Ex Abundanti Ad Cautelam Urgent Motion (1) To Quash Information; and/or (2) To Remand to the Department of Justice; and/or; (3) To Suspend Proceedings on December 13, 2018. Plaintiff then filed a Consolidated Comment/Opposition (On the Accused Four (4) Ex Abundanti Ad Cautelam Urgent Motion to Quash Information, Remand to the Department of Justice and/or Suspend Proceedings dated December 12, 2018) on December 21, 2018

On January 21, 2019, plaintiff submitted its Compliance and attached the four (4) Amended Informations and a letter signed by then CIR, Caesar R. Dulay dated March 8, 2018.

Accused then filed an Ex Abundanti Ad Cautelam Urgent Motion to Defer Preliminary Conference and Pre-Trial on January 15, 2019, which

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was granted by the Court in its Resolution dated January 22, 2019. Accordingly, the Court postponed the Preliminary Conference previously scheduled on January 16, 2019 and the pre-trial on January 23, 2019.

In its Resolution dated February 7, 2019, the Court denied accused's Ex Abundanti Ad Cautelam Urgent Motion (1) To Quash Information; and/or (2) Remand to the Department of Justice; and/or; (3) To Suspend Proceedings. Accordingly, the preliminary conference and the pre-trial were set on March 6, 2019 and March 13, 2019, respectively.

On February 7, 2019, accused filed an Ex Abundanti Ad Cautelam Urgent Omnibus Motion: (A) For Leave to File and Serve the Attached Supplement to the Motion to Quash; and (B) To Defer Preliminary Conference, Arraignment and Pre-trial.

Thereafter, accused filed an Ex Abundanti Ad Cautelam Compliance with Manifestation on February 8, 2019, which was noted by the Court in its Resolution dated February 21, 2019.

In its Resolution dated February 21, 2019, the Court admitted the accused's attached Ex Abundanti Ad Cautelam Supplement to the Ad Cautelam Urgent Motion (1) To Quash Information; and/or (2) To Remand to the Department of Justice; and/or (3) To Suspend Proceedings dated 12 December 2018, with plaintiff's Comment filed on March 5, 2019.

In its Resolution dated March 21, 2019, the Court set these cases for Preliminary Conference on March 27, 2019 and the Arraignment of the accused Maria A. Ressa and Pre-Trial on April 3, 2019.

Accused's Pre-Trial Brief was filed on March 29, 2019, while the Prosecution's Pre-Trial Brief was submitted on April 1, 2019.

When arraigned on April 3, 2019, the accused Maria A. Ressa, duly assisted by her counsel, entered a plea of "NOT GUILTY" of the crimes charged under the Amended Informations in CTA Criminal Case Nos. O-679, O-680, O-681 and O-682. Thereafter, the Pre-Trial of the case proceeded followed by a Pre-Trial Order.

On April 8, 2019, the plaintiff filed an Urgent Motion with Leave of Court to Amend the Amended Informations dated December 13, 2018 and Motion to Admit attached Second Amended Informations, with accused's Manifestation (Re: Plaintiff's Urgent Motion with Leave of Court to Amend the Amended Informations) filed on April 26, 2019. The Court granted such motion in its Resolution dated May 15, 2019.

Trial ensued.

During the hearing held on May 15, 2019, the Court granted the motion to amend the Pre-Trial Order dated April 3, 2019. Considering that the parties agreed that the admission of the Second Amended Informations (the amendments therein being mere formal in nature) would not require the re-arraignment of accused Maria A. Ressa. Thus, accused Maria A. Ressa's plea of not guilty remains, without need of entering a new plea anent the Second Amended Informations.

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Due to the admission of the Second Amended Informations by the Court, the corporate entity RHC was included as an accused in these cases. The Court then directed both parties to submit their respective memoranda.

Both accused and plaintiff submitted their Memoranda on May 20, 2019.

Thereafter, accused filed a Request for Issuance of Subpoena Duces Tecum Ad Testificandum on May 29, 2019.

On May 29, 2019, Honorable Presiding Justice Roman G. del Rosario issued a Memorandum addressed to the other members of the First Division, stating that: "Sans arraignment, accused RHC cannot be convicted of the crimes charged in the Second Amended Informations without violating its right to be informed of the nature and cause of the accusations against it, not to mention its right to due process; on the other hand, sans an arraignment, any eventual acquittal of RHC would not entitle it to invoke the right against double jeopardy thereby allowing the filing of similar charges in the future. Needless to say, double jeopardy attaches only after arraignment."

On even date, Honorable Associate Justice Esperanza R. Fabon-Victorino also issued a Memorandum, which states that: "x x x, I reiterate my humble opinion that only a natural person may be the subject of arraignment x x x."

Also, the ponente, Honorable Associate Justice Catherine T. Manahan, issued as well a Memorandum, stating that: "Hence, I reiterate my position that no arraignment must be set for RHC in the 4 instant cases assigned to me."

In the Memorandum dated May 30, 2019, the Honorable Presiding Justice Roman G. del Rosario stresses the rationale behind his recusal from the instant case.

Then, on June 14, 2019, accused filed an Urgent Omnibus Motion 1. To Transmit the BIR-NID Records; and/or 2. Issuance of a Subpoena Duces Tecum, with plaintiff's Comment/Opposition (to the Urgent Omnibus Motion 1. To Transmit the BIR-NID Records; and/or 2. Issuance of a Subpoena Duces Tecum dated June 14, 2019) filed on July 15, 2019. However, the Court denied such motion for lack of merit.

In its Amended Resolution dated July 8, 2019, the Court issued a Subpoena Duces Tecum Ad Testificandum to Atty. Helen Go Tiu for the taking of her testimony in open court as a witness for the accused. Then, accused filed its Comment (Re: Amended Resolution dated 8 July 2019), while plaintiff failed to file its comment.

Plaintiff posted a Motion for Partial Reconsideration (to the Amended Resolution dated July 8, 2019) on July 22, 2019.

On August 5, 2019, accused filed a Motion for Leave to File and Admit Attached Reply, with attached Reply to (BIR's Comment/Opposition,

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Re: Transmittal of BIR NID/Records and Issuance of Subpoena Duces Tecum), which was rendered moot by the Court in its Resolution dated September 6, 2019.

During trial, the plaintiff presented their documentary and testimonial evidence. The plaintiff offered the testimonies of the following individuals, namely: (1) Ms. Jocelyn B. Bautista, OIC-Chief of Compliance Section of BIR Regional District Office (RDO) No. 43, Pasig City; 2) Mr. Rufo B. Ranario, Revenue District Officer of BIR RDO No. 43, Pasig City; (3) RO Salles at the NID of the BIR National Office; (4) RO Quilantang at the NID of the BIR National Office; and (5) Ms. Karen F. Lazaro, Administrative Officer IV in the Office of the General Counsel of the SEC.

On August 20, 2019, the plaintiff filed its Formal Offer of Evidence. The accused filed their Comment and/or Objections to the Plaintiff's Formal Offer of Evidence on September 11, 2019. Then, the plaintiff filed its Reply (to the Comment and/or Objections to the Plaintiff's Formal Offer of Evidence September 11, 2019) on September 19, 2019, which was noted by the Court in its Resolution dated October 1, 2019. In the Resolution dated October 25, 2019, the Court admitted the prosecution's Exhibits "P-1", "P-1-A", "P-2", "P-3", "P-4", "P-5", "P-5-A", "P-5-B", "P-5-C", "P-5-D", "P-5-E", "P-5-F", "P-5-G", "P-6", "P-6-A", "P-6-B", "P-6-C", "P-6-D", "P-7", "P-7-A", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25-26", "P-28", "P-29", "P-29-A", "P-30", "P-30-A", "P-31", "P-31-A", "P-32", "P-32-A", "P-33" and "P-33-A". However, Exhibit "P-27", was denied for failure to identify.

Accused filed their Motion for Leave to File and Admit attached Demurrer on November 8, 2019. The plaintiff filed its Comment/Opposition (to the Demurrer to Evidence dated November 8, 2019) on November 18, 2019. In its Resolution dated December 2, 2019, the Court admitted accused's Demurrer to Evidence, but denied the same.

The Court in its Order dated January 22, 2020, directed the counsel of the accused to submit the certified true copies of the supporting documents that will establish the credentials of the expert witness, Atty. Helen Go Tiu. Thereafter, accused filed their Submission with Manifestation (Re: Credentials of Atty. Helen G. Tiu) on February 6, 2020, with plaintiff's Comment/Opposition filed on February 17, 2020. Later on, accused filed their Reply (Re: Comment/Opposition dated 17 February 2020) filed on March 9, 2020. In its Resolution dated June 30, 2020, the Court took note of the accused's Submission with Manifestation (Re: Credentials of Atty. Helen G. Tiu) but denied plaintiff's prayer (contained in its Comment/Opposition) that the testimony of Atty. Tiu in relation to the taxability of PDR's and tax consequences of RHC's PDR transactions be stricken off the records and that her testimony regarding her opinion on questions of law be disallowed.

Thereafter, accused filed a Motion to Correct Transcript of Stenographic Notes on October 27, 2020 without plaintiff's comment, which was granted by the Court in its Resolution dated December 14, 2020.

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On February 3, 2021, the Court issued an Order striking out the following questions and/or answers of accused Ms. Dalafu's judicial affidavit: (1) 2nd sentence of her answer to Q. No. 8; (2) Q. No. 9 and 1st paragraph of her answer; (3) Q. No. 358; (4) Q. Nos. 330 and 331, together with the respective answers; (5) Q. Nos. 80, 84 and 88; (6) Q. Nos. 76, 89 and 90; and (7) Q. No. 9.

On February 26, 2021, accused filed an Urgent Motion to Admit the Amended Judicial Affidavit of Maria A. Ressa. In its Order dated March 4, 2021, the Court granted accused's motion and at the same time ordered that the Question and Answer No. 66 be stricken off from the Amended Judicial Affidavit of accused Maria A. Ressa.

Accused filed an Urgent Manifestation with Motion to Correct and Request for a Commissioner's Hearing on May 17, 2021 with plaintiff's Comment (on Urgent Manifestation with Motion to Correct and Request for a Commissioner's Hearing) filed on June 10, 2021, which was granted by the Court in its Resolution dated July 2, 2021.

On their part, the accused presented their documentary and testimonial evidence. The testimonies of 1. Atty. Helen Go Tiu, practicing lawyer; 2. Ms. Marie Fel D. Dalafu, Chief Financial Officer of accused RHC; and 3. accused Maria A. Ressa, President and Chief Executive Officer of RHC, were offered.

On May 17, 2021, the accused filed their Formal Offer of Documentary Evidence. The plaintiff filed its Comment to accused's Formal Offer of Evidence on June 3, 2021. [93] In the Resolution dated March 10, 2022, the Court admitted accused's Exhibits "A-1", "A-1-1", "A-2", "A-2-1", "A-3", "A-3-1", "A-4", "A-4-1", "A-5", "A-5-1", "A-6", "A-6-1", "A-7", "A-8", "A-8-1", "A-8-2", "A-8-3", "A-9", "A-9-1", "A-9-2", "A-9-3", "A-10", "A-11", "A-13", "A-13-1", "A-13-2", "A-13-3", "A-14", "A-14-1", "A-14-2", "A-15", "A-15-1", "A-15-2", "A-16", "A-16-1", "A-16-2", "A-17", "A-17-1", "A-17-2", "A-18", "A-18-1", "A-19", "A-19-1", "A-20", "A-20-1", "A-21", "A-21-1", "A-21-2", "A-21-3", "A-21-4", "A-21-5", "A-22", "A-22-1", "A-22-2", "A-22-3", "A-22-4", "A-22-5", "A-26", "A-26-1", "A-27", "A-28", "A-44", "A-45", "A-46", "A-29", "A-29-1", "A-29-2", "A-29-3", "A-30", "A-30-1", "A-31", "A-31-1", "A-31-2", "A-31-3", "A-32", "A-32-1", "A-33", "A-33-1", "A-34", "A-34-1", "A-35", "A-35-1", "A-36", "A-36-1", "A-37", "A-38", "A-39", "A-39-1", "A-40", "A-40-1", "A-40-2", "A-40-3", "A-40-4", "A-41", "A-42", "A-47", "A-47-1", "A-47-2", "A-48", "A-48-1", "A-48-2", "A-49", "A-49-1", "A-49-2", "A-49-3", "A-49-4", "A-49-5", "A-50", "A-43", "A-51", "A-52", "A-53", "A-54", "A-55", "A-56", "A-57", "A-58", "A-58-1", "A-58-2", "A-58-3", "A-58-4", "A-59", "A-59-1", "A-59-2", "A-60", "A-60-1", "A-60-2", "A-61", "A-61-1", "A-61-2", "A-62", "A-62-1", "A-63", "A-63-1", "A-64", "A-65", "A-65-1", "A-66", "A-66-1", "A-66-2", "A-67", "A-67-1", "A-68", "A-68-1", "A-68-2", "A-69", "A-70", "A-71", "A-72", "A-73", "A-74", "A-74-1", "A-75", "A-75-1", "A-76", "A-77", "A-78", "A-78-1", "A-90", "A-91", "A-92", "A-92-1", "A-93", "A-94", "A-95", "A-96", "A-97", "A-98", "A-99", "A-100", "A-101", "A-102", "A-103", "A-104", "A-105", "A-106", "A-107", "A-108", "A-109", "A-110", "A-111", "A-112", "A-112-1", "A-112-2", "A-113", "A-114", "A-115", "A-116", and "A-116-A". However, the Court denied the admission of the following exhibits: 

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1. Exhibits "A-12", "A-23", "A-24", "A-25", for failure to present the original for comparison;
2. Exhibits "A-7-1", "A-12-1", "A-12-2", "A-23-1", "A-24-1", "A-25-1", for failure to properly mark and to present the original for comparison; and
3. Exhibits "A-79", "A-80", "A-81", "A-82", "A-83", "A-84", "A-85", "A-86", "A-87", "A-88", "A-89", for failure to submit the duly marked exhibits.

Thus, on March 25, 2022, accused filed an Urgent Motion for Partial Reconsideration (Re: Resolution dated 10 March 2022) with: (1) Motion for Marking Conference; and (2) Motion to Suspend Period to File Memorandum.

The Court partially granted petitioner's motion and admitted the following exhibits: "A-7-1", "A-12", "A-12-1", "A-12-2", "A-23", "A-23-1", "A-24", "A-24-1", "A-25", "A-25-1", "A-79", "A-80", "A-81", "A-82", "A-83", "A-84", "A-85", "A-86", "A-87", "A-88" and "A-89".

On May 10, 2022, accused filed a Tender of Excluded Evidence, praying that the excluded questions and answers in Ms. Marie Fel Dalafu's Judicial Affidavit dated May 29, 2019 and in Maria A. Ressa's Amended Judicial Affidavit dated February 24, 2021 be part of the records of the case. The plaintiff filed its Comment to Tender of Excluded Evidence on June 27, 2022. Then, on July 18, 2022, accused filed a Motion for Partial Striking Out of Portions the Plaintiff's Comment to Tender of Excluded Evidence dated 26 June 2022, while, plaintiff filed its Opposition to Accused's Motion for Partial Striking Out of Portions of the Plaintiff's Comment (To Tender of Excluded Evidence dated 26 June 2022).

In its Resolution dated October 11, 2022, the Court noted accused's Tender of Excluded Evidence but denied accused's Motion for Partial Striking Out of Portions of the Plaintiff's Comment to Tender of Excluded Evidence dated 26 June 2022.

Accused filed their Memorandum on May 10, 2022, while plaintiff's Memorandum was posted on May 13, 2022.

On October 11, 2022, the case was submitted for decision.

On December 9, 2022, a Notice of Promulgation was issued by the Court setting the date of promulgation on January 18, 2022.

The Court in Division promulgated the assailed Decision on January 18, 2023.¹² On February 2, 2023, plaintiff filed a *Motion for Reconsideration*, which the Court in Division denied on May 18, 2023 for lack of merit.¹³

¹² *Rollo* (EB Crim. No. 126 and EB SCA No. 0001) – Vol. 1, pp. 28 to 114 and 82 to 162, respectively.

¹³ *Id.* at 116 to 125 and 166 to 175, respectively.

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Hence, the instant *Verified Petitions*.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On June 8, 2023, petitioners People of the Philippines and Bureau of Internal Revenue filed a *Verified Petition for Review*.¹⁴ Represented by the Office of the Solicitor General (OSG), petitioner People of the Philippines filed a *Verified Petition for Certiorari* on July 24, 2023.¹⁵

The Court *En Banc* required respondents to file their comment to the *Verified Petition for Review (of the Resolution dated May 18, 2023 on the Civil Aspect)*¹⁶ and to the *Verified Petition for Certiorari*¹⁷ within 10 days from notice. In the Minute Resolution dated September 29, 2023, the Court *En Banc* consolidated the EB Crim Case No. 126 and EB SCA No. 001, it appearing that these cases are questioning the assailed Decision and assailed Resolution by the First Division in CTA Crim. Case Nos. O-679 to O-682.

Respondents filed their *Comment/Opposition to the Verified Petition for Review on the Civil Aspect Dated 8 June 2023* on August 11, 2023 via accredited service courier and was received by the Court on August 14, 2023.¹⁸ Respondents likewise filed their *Comment/Opposition to the Verified Petition for Certiorari Dated 21 July 2023* on October 16, 2023.¹⁹

The instant case was submitted for decision on November 21, 2023.²⁰

THE ISSUES

In the *Verified Petition for Review*, petitioner raised a lone assignment of error:²¹

The CTA – First Division erred when it found that no liability (Civil Aspect) may be adjudged against the respondent as the alleged unpaid tax obligations have not been factually and legally established and proven. ⚡

¹⁴ *Rollo* (EB Crim No. 126) – Vol. 1, pp. 1 to 19.

¹⁵ *Rollo* (EB SCA No. 001) – Vol. 1, pp. 3 to 66.

¹⁶ Resolution dated July 31, 2023, *Rollo* (EB Crim No. 126) – Vol. 1, pp. 495 to 496.

¹⁷ Minute Resolution dated September 29, 2023. *Rollo* (EB Crim. No. 126) – Vol. 4, p. 2179.

¹⁸ *Id.* at Vol. 2, pp. 498 to 554.

¹⁹ *Id.* at Vol. 5, pp. 2179 to 2248.

²⁰ Minute Resolution dated November 21, 2023, *Id.* at Vol. 5, p. 2451.

²¹ *Rollo* (EB Crim No. 126) – Vol. 1, p. 10.

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On the other hand, petitioner, in its *Verified Petition for Certiorari*, raised the following grounds for the allowance of petition:²²

I

The CTA First Division gravely abused its discretion when it ignored the overwhelming evidence which established beyond reasonable doubt the guilt of private respondents.

II

The CTA First Division gravely abused its discretion when it grossly misinterpreted the law and ruled that no civil liability may be adjudged against private respondents.

THE ARGUMENTS

Arguments of petitioner/s

In its *Verified Petition for Review*, petitioners insist that the Court erred when it ruled no civil liability may be adjudged against RHC despite the fact that it earned trading income from the issuance of Philippine Depositary Receipts (PDRs) to foreign entities. For petitioners, the subscription price for the underlying Rappler Inc. (RI) shares and the gross receipts from the sale of PDRs is clearly income. Petitioners claim that, despite being acquitted for their criminal liability, they may still be found civilly liable arising from their acts.

In the *Verified Petition for Certiorari*, petitioner contends that the concept of double jeopardy is not infallible as there is an exception when a judgment of acquittal is assailed, and that is, when there is grave abuse of discretion in the issuance of the assailed Decision and assailed Resolution.

Petitioner also argues that the Court ignored the overwhelming evidence which established the guilt of private respondents beyond reasonable doubt. It maintains that RHC acted as a dealer in securities when it sold PDRs to NBM Rappler, L.P. (NBM) and Omidyar Network Fund, L.L.C. (ON), which have RI shares as underlying shares. Moreover, petitioner argues that the Court refused to recognize the transfer of economic rights or beneficial ownership of RI shares, which constitutes a taxable event. Petitioner posits that RHC willfully failed to supply the correct and accurate information in its

²² *Rollo* (EB SCA No. 001) – Vol. 1, p. 24.

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tax return and to pay such tax considering that the difference between the total consideration received by RHC from NBM and ON constitutes taxable income.

Arguments of respondents

In their *Comment/Opposition to the Verified Petition for Review on the Civil Aspect dated 8 June 2023*, respondents maintain that the PDR transactions did not involve a sale of RI shares as PDRs are separate and do not make the PDR holders the owner of the underlying shares. According to respondents, the PDR grants its holders an option to purchase the underlying shares and the benefits and rights of the PDR holder are different from those of the shareholder of the underlying shares. As there was no sale of shares, the elements of the imposition of income tax are not present.

In the *Comment/Opposition to the Verified Petition for Certiorari dated 21 July 2023*, respondents claim that there was no grave abuse of discretion as petitioner only raised errors of judgment which are baseless, misplaced and improper in a certiorari action. Respondents aver that the Court a quo did not ignore petitioner's evidence, which were duly evaluated in the assailed Decision. Further, respondents assert that the Court a quo correctly found that RHC did not receive any trading income from its issuance of PDRs; hence, it is not subject to VAT and income tax.

According to respondents, there is no overwhelming evidence that RHC performed acts as a dealer in securities considering that the PDR is a separate security and it does not make the holder the owner of its underlying shares; rather only a holder of the option to purchase the underlying shares. Respondents explain that evidence shows that the rights and benefits of a PDR holder are entirely different from a shareholder of RI. Thus, the Court a quo correctly acquitted accused from criminal liability and ruled that there is no civil liability that may be adjudged.

RULING OF THE COURT IN DIVISION

The Court in Division ruled that there was no violation of due process rights of the accused, even when no assessment has been issued prior to the filing of the criminal case. In the assailed Decision, the Court held that RHC, as a holding company, is not a dealer in securities. Notwithstanding RHC's issuance of PDR to NBM and ON, RHC cannot be considered as regularly or frequently engaged in the purchase of securities and resale thereof to customers. 4

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Moreover, the Court found that RHC did not earn any trading income from the issuance of PDRs to NBM and ON as the process whereby the PDRs were issued reveals that there was no sale of shares of stocks but mere investment transactions. The Court further discussed in the assailed Decision that there is nothing in the wordings of the PDR Instrument and the PDR Subscription Agreements that would show that NBM and ON will become owners of the shares of stocks of RI; rather, it only retains an option to purchase the underlying shares of the RI subject to certain conditions, e.g. that there is no law restricting foreign ownership in the business of the operating entity. Thus, the Court in Division did not find any legal basis in the imputed gain of RHC in the amount of ₱162,412,783.67 allegedly treated as trading income by respondents as the acquisition cost of different security (i.e. RI's shares of stock) is being used to attribute an alleged gain in the sale or issuance of another security (i.e. PDR). Consequently, the Court concluded that the elements of the crime charged under Sections 254 and 255 of the NIRC of 1997, as amended, are not present.

The Court likewise ruled that there is no civil liability as the alleged unpaid tax obligations have not been factually and legally established and proven.

Finally, in her *Separate Concurring Opinion*, Associate Justice Marian Ivy F. Reyes-Fajardo concurred in the conclusion in the assailed Decision but clarified her point as regards the amounts received by RHC from NBM and ON by reason of the issuance of the PDRs. Justice Fajardo explained that the amounts received by RHC from NBM and ON are capital and not income; hence, may not be burdened by the imposition of income tax.

In her *Separate Concurring Opinion*, Justice Reyes-Fajardo reiterated that RHC is a holding company and operates as the parent corporation of its subsidiary RI. It separately entered into a PDR Investment Agreement and PDR Subscription Agreement with NBM and OM. RI, upon approval of the SEC, increased its authorized capital stock. RHC and RI entered into Subscription Agreements and issued corresponding shares to the former. The PDR Instrument granted NBM and ON certain cash distribution representing the underlying shares of RHC in RI. The amounts received by RHC from NBM and ON by virtue of the issuance of the PDRs were used to subscribe in authorized capital stock from RI and the amounts which were more than the par value of RI shares were recognized as advanced from NBM and ON. Thus, the amount received by RHC from NBM and ON is not payment for services or sale of goods or properties, but an infusion of capital arising from the PDR Investment Agreement and PDR Subscription Agreements. ¶

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According to Justice Reyes-Fajardo, had there been no constitutional and statutory foreign equity restrictions in mass media, NMB and ON will simply execute subscription agreements with RI for the acquisition of its unissued capital stock, which is not subject to income tax just the same.

RULING OF THE COURT *EN BANC*

The *Verified Petition for Review* and the *Verified Petition for Certiorari* are both bereft of merit.

Both Petitions were timely filed.

Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

Sec. 3. *Who may appeal; period to file petition.* — xxx xxx xxx

- (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

Based on the foregoing, petitioner had 15 days from receipt of the assailed Resolution within which to file its Petition for Review on the civil aspect of the case.

Records show that the assailed Resolution of the Court in Division was received by petitioner on May 24, 2023.²³ Petitioner, thus, had 15 days from such receipt, or until June 8, 2023, to file its Petition for Review. On June 8, 2023, petitioner timely filed a *Verified Petition for Review*.

As regards the timeliness of the filing of the present *Verified Petition for Certiorari*, Section 4, Rule 65 of the 2019 Amendments to the 1997 Rules of Civil Procedure²⁴ states: *u*

²³ *Rollo* (EB Crim No. 126) – Vol. 1, p. 115.

²⁴ A.M. No. 19-10-20-SC..

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Sec. 4. *When and where to file Petition.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petitioner shall be filed not later than sixty (60) days counted from notice of the denial of said motion. xxx

As the assailed Resolution was received by petitioner’s counsel on May 24, 2023, the OSG had 60 days, or until July 23, 2023, within which to file the Petition for Certiorari. Clearly, petitioner timely filed the instant *Verified Petition for Certiorari* on July 24, 2023, which was the next working day.²⁵

The Court shall now address the grounds raised by petitioner in the *Petitions*.

VERIFIED PETITION FOR CERTIORARI

The Court in Division committed no grave abuse of discretion amounting to lack or excess of jurisdiction in the appreciation of evidence presented by petitioner.

RHC is not a dealer in securities.

Petitioner contends that the Court in Division disregarded pertinent case law and clear evidence showing that RHC acted as a dealer in securities. According to petitioner, RHC regularly engaged in the purchase of securities and resale thereof to customers. Petitioner reiterates that the Supreme Court has categorically declared, in the case of *Lapanday Foods Corporation vs. Commissioner of Internal Revenue*,²⁶ that an isolated transaction can be an incidental transaction for the purpose of VAT liability, as long as it is clearly established that the transaction in question must be related or connected with the conduct of the main business activity which is subject to VAT.

Respondents on the other hand claim that the Court in Division has thoroughly evaluated the evidence presented to determine whether respondent corporation is indeed engaged in the resale of securities. Thus, without any

²⁵ *Rollo* (EB SCA No. 001 – Vol. 1, pp. 166 to 175. July 23, 2023 is a Sunday.

²⁶ G.R. No. 186155, January 17, 2023.

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clear showing of grave abuse of discretion in the evaluation of the evidence presented, certiorari must fail.

We agree with respondents and affirm the ruling of the Court in Division.

In finding that RHC is not a dealer in securities, the Court in Division emphasized the definition of dealer in securities found in Section 22(U) of the NIRC of 1997, as amended, as implemented by Revenue Regulations (RR) No. 06-08,²⁷ and the definition of a dealer under Section 3.4 of the Securities Regulation Code (SRC),²⁸ viz:

Section 22. Definitions. — When used in this Title:

(U) The term "**dealer in securities**" means a **merchant of stocks and securities, whether an individual, partnership or corporation, with an established place of business, regularly engaged in the purchase of securities and the resale thereof to customer: that is, one who, as a merchant, buys securities and re-sells them to customers with a view to the gains and profits that may be derived therefrom.** (Emphasis ours)

SECTION 2. Definition of Terms. — For purposes of these Regulations, the following definitions of words and phrases are hereby adopted:

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(b) "**Dealer in securities**" means a merchant of stocks or securities, whether an individual, partnership or corporation, with an established place of business, **regularly engaged in the purchase of securities and the resale thereof to customers; that is one, who as merchant buys securities and re-sells them to customers with a view to the gains and profits that may be derived therefrom.** "Dealer in securities" means any person who buys and sells securities for his/her own account in the ordinary course of business. (Emphasis ours)

Section 3. Definition of Terms. —

3.4. — "Dealer" means any person who buys and sells securities for his/her own account **in the ordinary course of business.** (Emphasis ours)

²⁷ Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock Held as Capital Assets [(Rules on the Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock Held as Capital Assets), April 22, 2008.

²⁸ Republic Act No. 8799.

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Based on the foregoing, a dealer in securities is one who is regularly engaged in the purchase of securities and the resale thereof to customers with a view to the gains and profits that may be derived therefrom.

Evidence on record shows that RHC was not habitually or regularly engaged in the purchase and re-sale of securities as the issuance of the PDRs by RHC was done pursuant to a legitimate business purpose, i.e. to raise capital for its subsidiary RI, which is consistent with one of the purposes of RHC as a holding company.

On this matter, the Court *En Banc* adopts and quotes, with approval, the findings and discussions of the Court in Division in the assailed Decision, to wit:²⁹

It is not repugnant to the nature of a holding company to engage in financial activities to raise capital for its subsidiaries. In fact, RHC is registered with the BIR as an entity engaged in the Line of Business — "Financial Holding Company Activities". Also in the Acknowledgment Receipt of the SEC for the GIS of RHC dated August 30, 2016, the latter was classified as being engaged in "Financial Holding Activities."

True to its nature as an entity engaged in financial holding company activities, RHC entered into a PDR Investment Agreement with ON on September 29, 2015 and consequently a PDR Subscription Agreement on October 2, 2015. As regards NBM, there were two (2) PDR Subscription Agreements, namely: First PDR Subscription Agreement dated May 29, 2015 and Second PDR Subscription Agreement dated July 29, 2015. xxx

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The concept of a financial holding company was first recognized in the United States by the enactment of the Financial Services Modernization Act of 1999 which allowed financial service providers to be organized as financial holding companies, offering banking, insurance, securities and other financial services.

There are four (4) uses of holding companies in the United States, namely: 1) To centralize management or control of two or more independent companies, 2) to achieve unified financing for two or more independent companies, 3) to raise large capital for subsidiaries that have limited access to financing or are restricted to do so by regulatory agencies or for various other reasons and, 4) to maintain control with a minimum amount of capital investment or to use a holding company as a means of pyramiding control.

In the case at hand, RHC as the holding company is raising capital for RI, the operating company, which is restricted by constitutional and statutory foreign equity limitations. **M**

²⁹ *Rollo* (EB Crim No. 126) – Vol. 1, pp. 96 to 99.

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The SEC has also acknowledged that holding companies, aside from merely holding the stock of another corporation or corporations, may engage in investment/financial activities for their subsidiary or subsidiaries as evidenced by its approval of the primary purpose embodied in the Articles of Incorporation of several holding companies but with a corresponding limitation that said companies will not "act as a stockbroker (stock brokerage) or dealer of securities." This limitation is also found in the primary purpose of the AOI of RHC.

The agreements entered into by RHC with NBM and ON did not serve to convert the former as a dealer in securities, hence, this Court finds the allegation of plaintiff without legal or factual bases.

Based on the foregoing, RHC's issuance of PDRs is in accordance with its uses as a holding company and cannot be considered as a dealer in securities. The assailed Decision extensively discussed the nature of a PDR and was defined as:³⁰

What then is a PDR — is it an evidence of ownership of shares of stock or it a mere receipt?

Although not specifically defined in the 1997 NIRC, as amended, and the SRC, a PDR is classified as a security which grants the holder thereof the right to the delivery of sale of the underlying share. PDRs are not statements nor are they certificates of ownership of a corporation.

The SEC has clarified that the PDR issued by RHC to ON is an "equity derivative since its value is dependent on the underlying equity."

As an equity derivative, it can be said that its existence is anchored on the value of the underlying asset which is commonly the shares of stock of a corporation.

In Revenue Memorandum Order (RMO) No. 46-2020, the BIR defines a PDR as follows:

"A PDR is a document that gives the holder thereof a right, but not an obligation, to purchase the underlying shares at a specified price, or the right to the delivery of the sales proceeds of the underlying shares. When the first right is exercised, the PDR holder becomes a shareholder. The PDR holder cannot exercise, however, the first right if the underlying shares cannot be legally owned by a non-Philippine national. In such case, the PDR holder cannot compel the delivery of the underlying shares but is obliged to accept instead the proceeds of the sale of these shares."

³⁰ *Rollo* (EB Crim No. 126) – Vol. 1, pp. 99 to 101.

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In the Philippine Stock Exchange (PSE) Circular for Brokers No. 2375-99 dated September 22, 1999, it was pointed out that for as long as the PDR remains unexercised by its holder, the PDR holder has no right of ownership over the underlying shares and all such ownership rights pertain to and belong to the issuer. However, if the PDR holder exercises the option to have the underlying shares be delivered to him, he then becomes a shareholder but only up to the extent that he is qualified to own the underlying shares.

Clearly, a PDR may fall under the classification of "securities" in much the same way as a share of stock but under a different category. A security may come in various forms as described under the SRC, to wit;

"Section 3. Definition of Terms. —

3.1. "Securities" are shares, participation of interests in a corporation or in a commercial enterprise or profit making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character. It includes:

(a) Shares of stocks, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;

(b) Investment contracts, certificates of interest or participation in a profit-sharing agreement, certificates of deposit for a future subscription;

(c) Fractional undivided interests in oil, gas or other mineral rights;

(d) Derivatives like option and warrants;

(e) Certificates of assignments, certificates of participation, trust certificates or similar instruments;

(f) Proprietary or nonproprietary membership certificates in corporations, and

(g) Other instruments as may in the future be determined by the Commission."

We sustain the findings of the Court in Division that the issuance of PDRs to NBM and ON is not a sale of stock but an investment transaction. Nothing in the PDR Investment Agreement and PDR Subscription Agreements would show that the foreign entities will become owners of the shares of stock of RI upon the issuance of PDRs. The PDR holders only retain the option to purchase the underlying shares of RI subject to certain conditions i.e., that there is no law restricting foreign ownership in the business of the operating entity. This is consistent with RHC's Articles of Incorporation

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(AOI), which limits its purpose and does not include RHC to act as a dealer of securities or stockbroker.

Finally, the PDRs were issued by RHC and were not purchased from RI and resold to NBM and ON; thus, its subscription is not considered dealing in securities as defined under NIRC of 1997, as amended, SRC and RR No. 6-2008.

Accordingly, the Court *En Banc* finds no grave abuse of discretion when the Court in Division found that RHC is not a dealer in securities.

There is no transfer of economic rights or beneficial ownership of RI shares which may constitute a taxable event.

The *Informations* filed by petitioner in the Court in Division charge respondents for violation of Sections 254 and 255 of the NIRC of 1997, as amended, for their failure to supply correct information in their returns and for failure to pay VAT and income tax, respectively.

Petitioner insists that there is gain on the part of RHC in the amount of ₱162,412,783.67 based on the amount it received from NBM and ON upon issuance of the PDRs in the amount of ₱181,658,758.57 less than the amount of its subscription with RI in the amount of ₱19,245,975.00.

Respondents, on the other hand, argue that RHC did not receive any trading income from the issuance of the PDRs to NBM and ON. Respondents maintain that there was no sale of RI's shares as all the funds received by RHC from the subscription of PDRs of NBM and ON were used as: (1) part of its subscription price for RI's shares, not only for the premium but also the additional paid-in capital; (2) costs to be incurred in relation to the transaction such as documentary stamp tax (DST); and, (3) the balance as advances/special loan from the PDR holders. Further, respondents assert that R.G. Manabat & Co. issued an independent report of factual findings confirming that RI received the amount of ₱110,917,181.00 from RHC as deposit for future stock subscription. According to respondents, the difference in the amounts retained by RHC as claimed by petitioners to be income are actually allotted for reasonable general administrative expenses pursuant to the issuance of PDR Investment Agreement. On the part of RI, all of the investments of RHC were used to expand RI thereby increasing its authorized capital stock. ¶

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Citing the Philippine Stock Exchange (PSE) Circular for Brokers No. 2375-99 dated September 22, 1999, the Court pointed out that for as long as the PDR remains unexercised by its holder, the holder has no right of ownership over the underlying shares and all such ownership rights pertain and belong to the issuer. Only when the PDR holder exercises the option to have the underlying shares delivered to him/her that he/she becomes a shareholder.

In the assailed Decision, the Court found that the PDRs issued to NBM and ON did not involve a sale of shares of stock but were investment transactions. As plainly explained by Justice Reyes-Fajardo in her *Concurring Opinion*, if there is no sale, there is no income to speak of as there is no flow of wealth, but only capital.

The wordings of the PDR Instruments and PDR Subscription Agreements indicate that PDR holders are not owners but only investors, viz.:

4. Ownership of Shares and Voting Rights

4.1. Pending exercise of the PDRs (as described below), the Underlying Shares deliverable on exercise of the PDRs shall be owned by and registered in the name of the Issuer.

4.2. The stock certificates representing the Underlying Shares shall be placed by the Issuer in escrow with the Escrow Agent.

4.3. Neither the Escrow Agent nor any Holder shall have voting rights with respect to the Underlying Shares. **Until an exercise of a PDR Exercise Right, the Issuer, as owner of the Underlying Shares, will retain and exercise such voting rights relating to the Underlying Shares.** (Emphasis supplied)

Evidently, there is no grave abuse of discretion when the Court in Division found no legal basis in the alleged trading income earned by respondents as the acquisition cost of RI's shares of stocks is being used to attribute an alleged gain in the sale/issuance of the PDRs.

RHC is not required to report the amount received pursuant to the PDR issuance to NBM and ON.

Petitioner imputes that respondent failed to supply correct information in its returns when it did not declare the income and revenue received pursuant to the issuance of the PDRs to NBM and ON. Considering that there was sale

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of securities, respondent should have included the amount which should have been subject to VAT and income tax.

Respondents claim otherwise. As there was no sale to speak of, RHC is not liable for VAT and income tax. Instead, RHC only paid DST for the issuance of the PDRs.

The Court *En Banc* agrees with respondents.

VAT and income tax are imposed when there is sale and income, respectively.³¹ In the absence of sale of shares and the absence of a gain, there is no VAT or income tax to speak of. While said PDRs have corresponding underlying shares of stocks of RI, the issuance thereof was not subject to VAT and income tax. Hence, there was no willful failure to supply correct information in RHC's returns.

There can be no civil liability against accused RHC and Maria Ressa.

Petitioner argues that the acquittal of respondents do not automatically absolve respondents of the civil liability arising from the crime.

Respondents counter such allegation saying that the civil action was already deemed instituted with the criminal case.

Nevertheless, the Court *En Banc* finds civil liability did not attach considering that the Court in Division held that the issuance of the PDRs is not considered a sale and that RHC is not a dealer in securities. In short, there was no taxable event to speak of that could give rise to liability for income tax and VAT. Thus, petitioner failed to establish that respondents are required to report any income in its returns, nor are they required to pay VAT or income tax for the issuance of the PDRs.

³¹ "TITLE IV
Value-Added Tax
CHAPTER I
Imposition of Tax

SECTION 105. Persons Liable. — Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

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There is no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court in Division.

Article III, Section 21 of the 1987 Constitution provides that "[n]o person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." This is what is otherwise known as the right against double jeopardy.³² The judgment of acquittal is final and unappealable and immediately executory upon promulgation.

Citing the case of *People of the Philippines vs. Sandiganbayan (First Division)*,³³ the Supreme Court emphasized, in the case of *Raya and Borromeo vs. People of the Philippines*,³⁴ that a judgment of acquittal is reversible by certiorari. However, such will not lie if what was assailed are mere errors of judgment, to wit:

Verily, this means that not every error in the trial or evaluation of the evidence by the court in question that led to the acquittal of the accused would be reviewable by certiorari. Borrowing the words of the Court in *Republic v. Ang Cho Kio*, "[n]o error, however flagrant, committed by the court against the state, can be reserved by it for decision by the [S]upreme [C]ourt when the defendant has once been placed in jeopardy and discharged, even though the discharge was the result of the error committed."

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The finality-of-acquittal rule thus applies, and it applies regardless of whether the Court, or any appellate court, believes that the particular accused should have been convicted. The Court, in *People v. Sandiganbayan*, elucidated:

When a defendant has been acquitted of an offense, the clause guarantees that the State shall not be permitted to make repeated attempts to convict him, thereby subjecting him to embarrassment, expense, and ordeal, and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.

Thus, it is one of the elemental principles of criminal law that the government cannot secure a new

³² *Raya v. People*, G.R. No. 237798, May 5, 2021.

³³ G.R. Nos. 168188-89, June 16, 2006.

³⁴ *Raya v. People*, G.R. No. 237798, May 5, 2021.

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trial by means of an appeal even though an acquittal may appear to be erroneous. That judgment of acquittal, however erroneous, bars further prosecution on any aspect of the count, and consequently, bars appellate review of the trial court's error. Unless grave abuse of discretion amounting to lack of jurisdiction is shown, the errors committed by the trial court in the exercise of its jurisdiction, or even the legal soundness of such decision, errors of judgment, mistakes in its findings and conclusions, are not proper subjects of appeal under Rule 45 of the Rules of Court.

An acquittal represents the factfinder's conclusion that, under the controlling legal principles, the evidence does not establish that defendant can be convicted of the offense charged in the indictment. An acquittal is a resolution, correct or not, some or all of the factual elements of the crime charged. For a ruling to be considered a functional acquittal, it must speak of the factual innocence of the accused. However, the judgment does not necessarily establish the criminal defendant's lack of criminal culpability. The acquittal may result from erroneous evidentiary rulings or erroneous interpretations governing legal principles introduced by the defense, yet the Double Jeopardy Clause bars an appeal.

One other reason why further prosecution is barred to appeal an acquittal is that the government has already been afforded one complete opportunity to prove a case of the criminal defendant's culpability and, when it has failed for any reason to persuade the court not to enter a final judgment favorable to the accused, the constitutional policies underlying the ban against multiple trials become compelling. It matters not whether the final judgment constitutes a formal "acquittal." What is critical is whether the accused obtained, after jeopardy attached, a favorable termination of the charges against him. If he did, no matter how erroneous the ruling, the policies embodied in the Double Jeopardy Clause require the conclusion that further proceedings devoted to the resolution of factual issues on the elements of the offense charged are barred.

The public interest in the finality of criminal judgments is so strong that an acquitted defendant may not be retried even though the acquittal was based upon an egregiously erroneous foundation. If the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair. Because jeopardy attaches before the judgment becomes final, the constitutional protection also embraces the defendant's valued right to have his

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trial completed by a particular tribunal. Consequently, as a general rule, the prosecutor is entitled to one, and only one, opportunity to require an accused to stand trial. The reason is not that the first trial established the defendant's factual innocence, but rather that the second trial would present all the untoward consequences that the clause was designed to prevent. The government would be allowed to seek to persuade a second trier of the fact of the defendant's guilt, to strengthen any weaknesses in its first presentation, and to subject the defendant to the expense and anxiety of a second trial.

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The grave abuses of discretion alleged by the People in its petition for certiorari constituted, in reality, mere errors of judgment or misapprehension of evidence which do not justify the issuance of the writ of certiorari. Ultimately, the CA erred in granting the petition for certiorari and reinstating the proceedings against Raya and Borromeo. (Emphasis and citations omitted)

Moreover, the Supreme Court in the cited case of *People of the Philippines vs. Sandiganbayan*,³⁵ held that the alleged misapplication of facts and evidence, as well the erroneous conclusion of the Court, do not guaranty the reversal of judgment by certiorari:

A judgment of acquittal may be assailed by the People in a petition for certiorari under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the People is burdened to establish that the court a quo, in this case, the Sandiganbayan, acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. **Grave abuse of discretion generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.** The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty imposed by law, or to act in contemplation of law or where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. **No grave abuse of discretion may be attributed to a court simply because of its alleged misapplication of facts and evidence, and erroneous conclusions based on said evidence. Certiorari will issue only to correct errors of jurisdiction, and not errors or mistakes in the findings and conclusions of the trial court.** (Emphasis ours)

Based on the foregoing, mere allegation of grave abuse of discretion in a Petition for Certiorari will not set aside the judgment of acquittal. Certiorari will only issue to correct errors of jurisdiction and not errors or mistakes in the findings and conclusions of the trial court. *h*

³⁵ G.R. No. 168188-89, June 16, 2006.

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Here, petitioner was able to present documentary and testimonial evidence, which the Court in Division appreciated and evaluated during trial. There was no allegation of any violation of petitioner's right to due process.

Thus, the Court *En Banc* finds no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court and the instant certiorari will not lie.

**VERIFIED PETITION FOR
REVIEW (of the Resolution dated
May 18, 2023, on the Civil Aspect)**

Petitioner assails the Decision of the Court in Division which absolved respondents from civil liability. It, thus, requests that the assailed Decision and assailed Resolution be reversed and set aside and for the Court *En Banc* to render a Decision ordering that the civil liability be imposed against respondents.

Respondents, on the other hand, counters petitioner's arguments asserting the RHC is not, and has never operated as a dealer in securities as the PDR transactions did not involve any purchase or re-selling of securities. Respondents maintain that these were investments/capital raising transactions, which RHC performed consistent with its purpose as a holding company. Further, RHC did not gain any trading income from the PDR transactions considering that the elements for the imposition of income tax are not present. Finally, respondents aver that there is no evidence of any paradox or scheme that amounts to a circumvention of the Philippine Constitution or tax laws since the PDRs are not listed shares and are original issuance of RHC.

A careful perusal of the arguments raised in the *Verified Petition for Review* reveals that the arguments raised are mere rehash and were extensively passed upon by the Court in Division and also discussed above to address the *Verified Petition for Certiorari*.

The Court, nonetheless, finds respondents' arguments meritorious.

Indeed, RHC is not a dealer in securities and the issuance of PDRs to NBM and ON are not considered sale of shares. RHC did not purchase RI shares and sold it to NBM and ON. The underlying shares of RI covered by the PDRs issued by RHC to NBM and ON are original issuances of the

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unissued authorized capital stock of RI, which RHC subscribed. While NBM and ON are entitled to economic benefits of the underlying shares of RI, the former do not become shareholders of RI and definitely do not have voting rights.

Since there is no gain or profit and the transaction is not a sale of shares of RI, the Court *En Banc* joins the Court in Division in ruling that RHC is not required to pay the income tax and VAT on the PDR transactions. Since the findings of the Court in Division that the act from which the alleged civil liability arose did not exist, the civil liability in the instant case is extinguished.

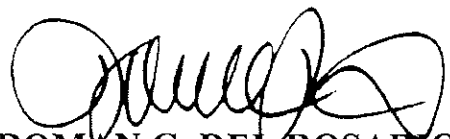
Accordingly, the Court *En Banc* finds no reason to modify or reverse the disposition in the assailed Decision and assailed Resolution.

WHEREFORE, premises considered, the instant **Verified Petition for Review (of the Resolution dated May 18, 2023, on the Civil Aspect)** and **Verified Petition for Certiorari** are **DENIED** for lack of merit. The assailed *Decision* dated January 18, 2023 and the assailed *Resolution* dated May 18, 2023 rendered by the First Division of this Court in CTA Crim. Case Nos. O-679, O-680, O-681 and O-682 are **AFFIRMED**.

SO ORDERED.


CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice


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CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(Inhibited)

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes - Fajardo
(I reiterate Separate Concurring Opinion in the assailed Decision
in CTA Crim Case Nos. O-679 to O-682)
MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

(Inhibited)

HENRY S. ANGELES
Associate Justice

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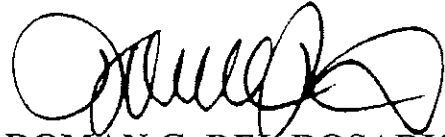
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CERTIFICATION

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 cases were assigned to the writer of the opinion of the Court.



ROMAN G. DEL ROSARIO

Presiding Justice