

SECOND DIVISION

[G.R. No. 197164, December 04, 2019]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. BENEDICTA MALLARI AND CHI WEI-NENG, RESPONDENTS.

DECISION

HERNANDO, J.:

At bench is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assailing the May 23, 2011 Decision^[2] of the Court of Tax Appeals (CTA) *En Banc* which dismissed the petition for review filed by petitioner, the People, questioning the dismissal of C.T.A. Criminal Case No. O-151 by the CTA First Division in its December 14, 2009 Resolution^[3] for failure to obey lawful orders of the court and the subsequent dismissal of its motion for reconsideration in the CTA Special First Division March 17, 2010 Resolution^[4] for being filed out of time.

The Factual Antecedents

On October 23, 2007, pursuant to Revenue Delegation Authority Order (RDAO) No. 2-2007,^[5] Regional Director Alfredo V. Misajon (Misajon) of the Bureau of Internal Revenue (BIR), Revenue Region No. 6 of Manila (BIR Manila), filed a criminal complaint^[6] against respondents Benedicta Mallari (Mallari) and Chi Wei-Neng (Wei-Neng), President and General Manager, respectively, of Topsun Int'l., Inc. (Topsun) for violation of Section 255 in relation to Sections 253 and 256 of the 1997 National Internal Revenue Code (NIRC) before the Office of the City Prosecutor (OCP) of Manila docketed as I.S. No. O8A-00131. The complaint stemmed from Topsun's outstanding Value Added-Tax (VAT) deficiency for the months of January to June 2000 in the amount of P3,827,564.64, and a compromise penalty of P25,000.00 for the same period. Topsun failed and refused to pay its outstanding obligations despite several demands and the service of the Warrant of Dstraint and/or Levy.

Mallari, in her counter-affidavit,^[7] denied that Topsun had any outstanding internal revenue tax liability as evidenced by the Certificate of No Tax Liability^[8] dated October 15, 2003 issued by Revenue District Office No. 32.

In the Resolution^[9] dated August 7, 2009, Assistant City Prosecutor of Manila Gideon C. Mendoza (ACP Mendoza) found probable cause to indict Mallari and Wei-Neng. He thus recommended the filing of an Information against them for violation of Section 255 in relation to Sections 253 and 256 of the NIRC before the CTA.

An Information^[10] was subsequently filed before the CTA First Division which was docketed as Crim. Case No. 0-151. It reads:

The undersigned accuses BENEDICTA MALLARI and CHI WEINENG of Violation of Section 255 in relation to Section[s] 253(d) and 256 of the 1997 Tax Code, committed as follows:

That on or about July 9, 2003 and continuously up to the present, in the City of Manila, the said accused, being then the President and General Manager of TOPSUN INTERNATIONAL INC., respectively, with new business address at JMBC Building, Zansibar corner Rockefeller Streets, Barangay San Isidro[,] Makati City, in said City, did then and there willfully, unlawfully fail, refuse and neglect to pay Deficiency Income Tax in the amounts of P3,827,564.64 and P25,000.00, respectively, due from said corporation for the taxable year 2000 in the total amount of P3,852,564.64 under BIR Assessment Notice No. 32-Jan-Jun 2000, despite notice of said assessment, without formally protesting against or appealing the same, and repeated demands made upon him to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid sum of P-3,852,564.64 Philippine Currency.

CONTRARY TO LAW.^[11]

Attached to the Information were the following documents, among others:

1. Resolution dated August 7, 2009 of ACP Mendoza;^[12]
2. Recommendation dated October 23, 2007 for criminal prosecution by Regional Director Misajon;^[13]
3. Affidavit^[14] dated October 23, 2007 of Atty. Ramon B. Lorenzo, Attorney I of the Legal Division of Revenue Region No. 6, BIR, Manila with Annexes.

In its Resolution^[15] dated October 7, 2009, the CTA First Division observed that in the Department of Justice (DOJ) Resolution dated August 7, 2009, Mallari and Wei-Neng were charged with failure to pay overdue "*deficiency VAT*" in the amount of P3,827,564.64 and "*compromise penalty*" of P25,000.00. However, the Information stated that they failed to pay "*deficiency income tax*" in the said amounts. Further, the CTA First Division noted that the recommendation for the criminal prosecution or the filing of the criminal information for violation of the Tax Code was without the written approval of the Commissioner of the Internal Revenue (CIR). This approval should have been secured pursuant to Sections 220 and 221 of the NIRC, as amended, in relation to Section 2, Rule 9 of the Revised Rules of the CTA. Lastly, the motion to adopt the allegations contained in the Counter-Affidavit of Mallari, and the Reply to the Counter-Affidavit and its Annexes were not attached to the Information.

Thus, the CTA ordered ACP Mendoza to comply with the following within five days from notice:

1. [T]o make the necessary formal correction in the Information against the accused, Benedict Mallari and Chi Wei-Neng;
2. [T]o submit the recommendation for criminal prosecution of the accused or approval of the filing of Information with the Court by

the Commissioner of Internal Revenue;

3. [T]o present the "Motion to Adopt allegations contained in Counter-Affidavit of Benedicta Mallari" filed by accused Chi Wei-Neng as well as the "Reply to Counter-Affidavit" and its Annexes filed by Atty. Ramon B. Lorenzo; and
4. [T]o present other additional evidence, if any.^[16]

Since ACP Mendoza had not yet complied with its October 7, 2009 Resolution, the CTA First Division issued another Resolution^[17] on November 10, 2009 reiterating its directives in the October 7, 2009 Resolution. The CTA First Division likewise issued a warning that non-compliance with its orders will result in the dismissal of the case for failure to obey lawful order of the court.

Subsequently, by way of compliance, ACP Mendoza submitted the following: (a) the Amended Information;^[18] (b) a certified true copy of RDAO No. 2-2007^[19] dated March 1, 2007 of Commissioner Jose Mario C. Bunag of the BIR in lieu of the written approval of the CIR with respect to the filing of the present information; (c) the "Motion to Adopt Allegations Contained in Counter-Affidavit of [Benedicta] Mallari";^[20] and (d) the "Reply to Counter-Affidavit"^[21] and its annexes.

On November 26, 2009, the CTA First Division issued yet another Resolution^[22] noting that ACP Mendoza still failed to attach the CIR's recommendation for criminal prosecution of Mallari and Wei-Neng or the filing of information, among others. As such, it ordered the submission of the required recommendation in accordance with the NIRC.

However, ACP Mendoza, in his Compliance with Manifestation,^[23] maintained that the authority of Regional Director Misajon is already sufficient pursuant to RDAO No. 2-2007 which authorizes Regional Directors to approve and sign approval and referral letters to authorize the institution of criminal actions for the National Office of the BIR as required by Section 220 of the NIRC including the filing of information before the courts.

Ruling of the Court of Tax Appeals First Division:

The CTA First Division, in its Resolution dated December 14, 2009, dismissed the criminal complaint for failure of ACP Mendoza to obey a lawful order of the court, *i.e.*, to submit a certified true copy of the Memorandum of the CIR authorizing Regional Director Misajon to prosecute and conduct proceedings. It ruled that RDAO No. 2-2007 is not sufficient as it merely empowers the signatory to sign approval and referral letters to authorize the institution of the criminal actions as distinguished from the written approval of the CIR to institute the case required under Sections 220 and 221 of the NIRC, as amended, and Section 2, Rule 9 of the Revised Rules of the CTA.

The pertinent portions of the December 14, 2009 Resolution read in this wise:

It is clear from the foregoing that [RDAO] No. 02-2007 merely empowers the signatory to sign approval and referral letters to authorize the

institution of the criminal actions as distinguished from the written approval of the Commissioner of Internal Revenue to institute the case required under Sections 220 and 221 of the NIRC of 1997, as amended, and Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals.

Further, in the case of *People the Philippines v. Sia, et al.*, wherein the BIR counsels manifested and submitted certified true copies of [RDAO] No. 02-2007 dated March 1, 2007 and a Memorandum dated March 27, 2007 of the Commissioner of Internal Revenue which authorized specific BIR Personnel to prosecute and conduct criminal proceedings involving violations of tax laws, the Court allowed and noted both documents.

In the case at bar, considering that Assistant City Prosecutor Mendoza failed to submit a certificate copy of the Memorandum from the Commissioner of Internal Revenue authorizing Regional Director Alfredo V. Misajon to prosecute and conduct criminal proceedings and that he was previously given a non-extendible period of five (5) days to submit the said requirement, the Court cannot countenance the repeated failure to comply with the said order.

WHEREFORE, for failure to obey a lawful order of the Court, the case-in-caption is hereby DISMISSED.

SO ORDERED.^[24] (Citation omitted)

ACP Mendoza received the said CTA First Division Resolution on January 13, 2010. Hence, on January 18, 2010, the special counsels/prosecutors of the BIR Manila filed their Entry of Appearance with Leave to Admit Attached Motion for Reconsideration.

^[25] In the attached Motion for Reconsideration, the prosecution maintained that Regional Director Misajon can sign approval and referral letters to authorize the institution of criminal actions/cases from the regional office with the courts, government agencies, or quasi-judicial bodies under Section 220 of the NIRC. This is in accordance with the delegated authority vested by the CIR to Regional Directors under RDAO No. 2-2007. Further, the March 27, 2007 Memorandum issued by the CIR gives authority to specific BIR legal officers, including Atty. Ramon B. Lorenzo, to prosecute and conduct criminal proceedings with respect to violation of tax laws like in the instant case.

The prosecution likewise averred that in *People v. Sia* docketed as C.T.A. Crim. Case No. 0-104 dated February 4, 2009, the CTA allowed and noted the certified true copies of RDAO No. 2-2007, and the March 27, 2007 Memorandum of the CIR. Thus, it prayed that it may be allowed to prosecute the accused in the interest of justice.

However, the CTA Special First Division, in its Resolution^[26] dated March 17, 2010, denied the Motion for Reconsideration due to late filing. It observed that based on the records, the BIR received its December 14, 2009 Resolution on December 17, 2009, while the Office of the City Prosecutor received the same on December 21, 2009; hence, the prosecution had until January 4, 2010 and January 5, 2010, respectively, to file the Motion for Reconsideration. Regrettably, the prosecution filed its Motion for Reconsideration only on January 18, 2010 or 14 days late beyond the prescribed 15-day period for filing the same. Moreover, it failed to sufficiently

explain why it belatedly filed its Motion for Reconsideration which could have allowed the relaxation of the procedural rules. Thus, the Motion for Reconsideration was deemed a mere scrap of paper for having been filed late.

Undaunted, the prosecution filed a Petition for Review^[27] before the CTA *En Banc*. It averred that the BIR Manila was not officially notified of the December 14, 2009 Resolution of the CTA First Division. As a result thereof, it was only on January 18, 2010 wherein it filed its entry of appearance with motion to admit the attached motion for reconsideration. Further, the prosecution stressed that the CTA Special First Division erred when it did not consider RDAO No. 2-2007 as basis for the regional directors to institute civil and criminal actions/cases.

Ruling of the Court of Tax Appeals En Banc:

In its Decision^[28] dated May 23, 2011, the CTA *En Banc* dismissed the Petition for Review for lack of merit. It affirmed the findings of the CTA Special First Division that ACP Mendoza indeed failed to submit a Memorandum from the CIR authorizing Regional Director Misajon to prosecute and conduct criminal proceedings, in defiance of the lawful order of the CTA First Division. Moreover, the Motion for Reconsideration was belatedly filed. Consequently, the December 14, 2009 Resolution of the CTA First Division has already become final.

Hence, this Petition for Review.

Issues

The core issues to be resolved by this Court are: (a) whether the Resolution dated December 14, 2009 has already become final; and (b) whether a Regional Director can sign approvals and referral letters to authorize the institution of criminal actions/cases from the regional office with the courts, government agencies, or quasi-judicial bodies without the approval of the CIR.

The Court's Ruling

We **DENY** the petition.

Petitioner avers that the period for the filing of the Motion for Reconsideration has not yet run since it did not receive a proper notice of the December 14, 2009 Resolution of the CTA First Division. Besides, assuming that ACP Mendoza, the deputized special counsel, failed to timely file the said motion, his inadvertence cannot be imputed against the State especially on matters relating to the exercise of its inherent power to tax .

We are not persuaded.

The Motion for Reconsideration was beyond the 15-day prescribed period.

Section 1, Rule 15 of A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the CTA, states that an aggrieved party shall file a motion for reconsideration **within 15 days** from the date he/she received notice of the assailed decision, resolution or order of the court in question.