

## THIRD DIVISION

**[ G.R. No. 199480, October 12, 2016 ]**

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. TESS S. VALERIANO, RESPONDENT.**

### DECISION

**REYES, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> filed by the People of the Philippines (petitioner) assailing the Decision<sup>[2]</sup> dated November 18, 2011 of the Court of Tax Appeals (CTA) *en banc* in CTA EB Criminal Case No. 010. The CTA *en banc* sustained the Resolutions dated November 23, 2009<sup>[3]</sup> and June 1, 2010<sup>[4]</sup> of the CTA Special First Division which dismissed the criminal case against Tess S. Valeriano (Valeriano).

### Antecedent Facts

On February 9, 2006, the Regional Director (RD) of the Bureau of Internal Revenue (BIR), Revenue Region No. 6, wrote a Letter<sup>[5]</sup> to the City Prosecutor of Manila, recommending the criminal prosecution of Valeriano as president/authorized officer of the Capital Insurance & Surety Co., Inc. (Corporation) for failure to pay the following internal revenue tax obligations of the Corporation in violation of Section 255,<sup>[6]</sup> in relation to Section 253(d)<sup>[7]</sup> and Section 256,<sup>[8]</sup> of the 1997 National Internal Revenue Code (NIRC):

Kind of Tax	Assessment No./ Demand No.	Year	Date	Amount
Def. Income Tax	34-2000	2000	January 14, 2004	P 12,541,339.18
Def[.] VAT	34-2000	2000	January 14, 2004	16,296,946.70
Def. EWT	34-2000	2000	January 14, 2004	4,397,619.73
Def. DST	34-2000	2000	January 14, 2004	17,513,440.24 <sup>[9]</sup>

Thus, an Information<sup>[10]</sup> was filed with the CTA by Assistant City Prosecutor Suwerte L. Ofrecio-Gonzales (Assistant City Prosecutor Ofrecio-Gonzales) on July 9, 2009 against Valeriano for violation of Section 255, in relation to Section 253(d) and Section 256, of the 1997 NIRC.

On August 4, 2009, the CTA First Division issued a Resolution,<sup>[11]</sup> whereby Assistant City Prosecutor Orrecio-Gonzales was ordered to submit within five days from receipt thereof proof that the filing of the criminal case was with the written approval of the BIR Commissioner, and not by the RD, in compliance with Section 220<sup>[12]</sup> of the 1997 NIRC, as amended.

In a Resolution<sup>[13]</sup> dated September 28, 2009, the CTA First Division ordered Assistant City Prosecutor Orrecio-Gonzales to comply with the earlier resolution, within a final and non-extendible period of five days from receipt of the Resolution.

However, Assistant City Prosecutor Ofrecio-Gonzales failed to comply with the order to submit the approval of the Commissioner (to file the criminal action), as required. Consequently, the CTA First Division, through a Resolution<sup>[14]</sup> dated November 23, 2009, dismissed the case against Valeriano for failure to prosecute.

On January 29, 2010, a Special Attorney from the Legal Division of BIR Revenue Region No. 6 filed an "Entry of Appearance with Leave to Admit Manifestation and Motion for Reconsideration."<sup>[15]</sup> Attached thereto was a photocopy<sup>[16]</sup> of the supposed written approval of the BIR Commissioner to file the criminal case against Valeriano.

The CTA Special First Division then promulgated an Order<sup>[17]</sup> on February 9, 2010, requiring Valeriano to comment on the Motion with Leave to Admit Manifestation and Motion for Reconsideration filed by the counsel of the BIR Commissioner. However, the records disclose that Valeriano had already moved out of her address of record.<sup>[18]</sup>

On June 1, 2010, the CTA Special First Division issued a Resolution,<sup>[19]</sup> denying the petitioner's motion for reconsideration for lack of merit.

On July 1, 2010, the petitioner filed a Petition for Review<sup>[20]</sup> with the CTA *en banc*, arguing that it was not at fault when Assistant City Prosecutor Ofrecio-Gonzales failed to comply with the orders of the CTA Special First Division<sup>[21]</sup> and that the government is not bound by the errors committed by its agents.<sup>[22]</sup>

The CTA *en banc*, in its Resolution<sup>[23]</sup> dated August 9, 2010, directed Valeriano to file her comment. But as with the other documents sent to her, the resolution was returned unserved with the notation "RTS moved out." As Valeriano failed to file Comment,<sup>[24]</sup> the CTA *en banc*, through a Resolution<sup>[25]</sup> dated October 14, 2010, directed the parties to submit their respective memoranda. Only the petitioner filed a Memorandum,<sup>[26]</sup> after which the case was submitted for decision.<sup>[27]</sup>

The CTA *en banc* rendered its Decision<sup>[28]</sup> on November 18, 2011, denying the petition. The dispositive portion thereof reads as follows:

**WHEREFORE**, premises considered, the petition for review is hereby **DENIED**. Accordingly, the assailed Resolutions dated November 23, 2009 and June 1, 2010 are hereby **AFFIRMED with MODIFICATION that**

**the DISMISSAL is without prejudice.**

**SO ORDERED.**<sup>[29]</sup>

In sustaining the dismissal of the case, the CTA *en banc* noted that the petitioner failed to comply with the Resolutions dated August 4, 2009 and September 28, 2009 of the CTA Special First Division. While the petitioner did attach to its motion for reconsideration an alleged written approval of the BIR Commissioner,<sup>[30]</sup> it was merely a photocopy which was hardly readable. Hence, there was no compliance with the resolutions even when the lawyer of the BIR, deputized as special prosecutor, took over in the filing of the motion for reconsideration.<sup>[31]</sup>

Ergo, this petition with the lone assignment of error:

**THE HONORABLE CTA *EN BANC* ERRED IN RENDERING ITS DECISION DATED NOVEMBER 18, 2011, DENYING THE PETITION FOR REVIEW FOR THE PETITIONER'S SUPPOSED FAILURE TO PROSECUTE. 32 Ruling of the Court**<sup>[32]</sup>

The records of the case reveal that, indeed, the petitioner had earlier submitted a letter<sup>[33]</sup> of the RD of BIR Revenue Region No. 6, recommending the criminal prosecution of Valeriano. This letter was attached to the Information along with other documents pertinent to the case.<sup>[34]</sup> However, this was not deemed as compliance with Section 220, as the letter was not from the BIR Commissioner himself.

After the dismissal decreed by the CTA Special First Division, the petitioner, through a motion for reconsideration, presented an alleged copy of the written approval<sup>[35]</sup> dated July 2006 signed by then BIR Commissioner Jose Mario C. Buñag. Yet, as the CTA *en banc* found, the contents of the photocopied letter were faded and almost imperceptible.

The prerequisite approval of the BIR Commissioner in the filing of a civil or criminal action is provided under Section 220 of the 1997 NIRC, which states that:

**Sec. 220. *Form and Mode of Proceeding in Actions Arising under this Code.*** - Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but **no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.** (Emphasis ours)

The required approval of the Commissioner provided under Section 220 of the 1997 NIRC aside, Section 7 thereof allows the delegation of powers of the Commissioner to any subordinate official with the rank equivalent to a division chief or higher, save for the instances specified thereunder, viz:

**Section 7. Authority of the Commissioner to Delegate Power.** - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the **rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however, That the following powers of the Commissioner shall not be delegated:*

- (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
- (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
- (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: *Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000[.00]) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of [F]inance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and*
- (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept. (Emphasis and underlining ours)

In *Republic v. Hizon*,<sup>[36]</sup> the Court upheld the validity of a complaint for collection of tax deficiency which was signed by the Chief of the Legal Division of BIR Region 4 and verified by the RD of Pampanga. Citing Section 7 of the 1997 NIRC, the Court ratiocinated that "[n]one of the exceptions relates to the Commissioner's power to approve the filing of tax collection cases."<sup>[37]</sup>

The Court made a similar pronouncement in *Oceanic Wireless Network, Inc. v.*