

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

PEOPLE OF THE CTA EB NO. 3072
PHILIPPINES, (CTA SCA Case No. 0005)
Petitioner,

Present:

- versus -

**RINGPIS-LIBAN, P.J.,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES,
ANGELES,
TESTON, and
CENTENO-DIJAMCO, JJ.**

**Hon. REGIONAL TRIAL
COURT OF THE CITY OF
MANILA, BRANCH 21, LILY
PEDROSO, ERNESTO
PEDROSO and ELVIN LOUIE
PEDROSO REYES,
*Respondents.***

Promulgated:

AUG 13 2026

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DECISION

ANGELES, J.:

Before the Court of Tax Appeals (CTA) *En Banc* (CTA *En Banc*) is a *Verified Petition for Review*¹ filed by the People of the Philippines (Petitioner), as represented by the Bureau of Internal Revenue (BIR), *via* registered mail on January 30, 2025, electronically filed on January 31, 2025, and received by the Court on February 4, 2025. Petitioner prays for the setting aside of the July 12, 2024 Decision² (Assailed Decision) and January 8, 2025 Resolution (Assailed

¹ EB Docket, pp. 1 to 21.

² EB Docket, pp. 30 to 57, Penned by Associate Justice Jean Marie A. Bacorro-Villena, and concurred by then Presiding Justice Roman G. Del Rosario and Associate Justice Lane S. Cui-David.

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Resolution) of the CTA First Division (CTA Division) in CTA SCA Case No. 0005, entitled *People of the Philippines v. Hon. Regional Trial Court of the City of Manila, Branch 21, Lily Pedroso, Ernesto Pedroso and Elvin Louie Pedroso Reyes*. Petitioner likewise seeks for the setting aside of the September 1, 2022 and December 22, 2022 Orders issued by the Regional Trial Court of the City of Manila, Branch 21 (RTC).³

THE PARTIES

Petitioner, as represented by the BIR, a government agency mandated to collect national revenue taxes, is represented by the Commissioner of Internal Revenue (CIR) through Revenue Officers Nelson J. Gonzales, Maxima DC. Mones, Jonas P. Punzal, and Josefa C. Torrenueva.⁴

On the other hand, the following are the respondents: the RTC of the City of Manila, Branch 21, which previously issued the assailed Orders (public respondent); and Ms. Lily Pedroso, Mr. Ernesto Pedroso, and Mr. Elvin Pedroso (private respondents), Filipino citizens, with business address at 1456 Felix Huertas St., Brgy. 317 Zone 032, Sta. Cruz, Manila. They are alleged to be the General Partners of R-Jell, a partnership engaged in the business of buying and selling of goods such as hardware, construction supplies, and in-building repairs.⁵

THE FACTS

The following are the facts culled from the Assailed Decision as narrated by the CTA Division:⁶

On 03 July 2014, Revenue Officers (**ROs**) Nelson V. Gonzales (**Gonzales**), Maxima DC. Mones (**Mones**), Jonas P. Punzal (**Punzal**), and Josefa C. Torrenueva (**Torrenueva**) filed a Joint Complaint-Affidavit against R-Jell Marketing and Construction Company, together with the private respondents (as the company's general partners), for their alleged willful attempt to evade payment of tax and deliberate failure to supply correct and accurate information in their income tax returns (**ITRs**) and value-added tax (**VAT**) returns, and to pay the corresponding taxes for taxable years

³ Prayer, *Verified Petition for Review*, EB Docket, p. 19.

⁴ Par. 6, Parties, *Verified Petition for Review*, EB Docket, p. 2.

⁵ Pars. 7-8, Parties, *Verified Petition for Review*, EB Docket, p. 2.

⁶ Division Docket, pp. 299 to 304.

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(TYs) 2005, 2006, 2007 and 2008 under Sections 254 and 255 in relation to Sections 253 (d) and 256 of the NIRC of 1997, as amended.

On 12 April 2019, petitioner (as then plaintiff) filed twelve (12) Informations with the respondent court *a quo* against private respondents. The cases were docketed sequentially as Criminal Case Nos. R-MNL-19-03523-CR up to R-MNL-19-03528-CR and R-MNL-19-03530-CR up to R-MNL-19-03535-CR and identically entitled as "*People of the Philippines v. Lily Pedroso y Reyes, Ernesto Pedroso y Reyes, Elvin Louie Pedroso y Reyes.*" Subsequently, the cases were consolidated for trial.

In the course of the proceedings before the respondent court *a quo*, private respondents filed a Motion to Quash (**MTQ**) on the ground that there was an inordinate delay of more than four (4) years from the filing of the Joint Complaint-Affidavit until the filing of the Informations in court. However, respondent court *a quo* denied the MTQ and proceeded with the presentation of petitioner's evidence.

After petitioner completed the presentation of its evidence, private respondents sought leave from respondent court *a quo*. After leave of court was given, they filed their Demurrer stating that: (1) petitioner's documentary exhibits are inadmissible since the "Manifestation with Formal Offer of Evidence for the Prosecution" (**FOE**) was without the conformity of the public prosecutor tasked with the prosecution of the case; (2) the assessment against them is void for lack of a valid Letter of Authority (**LOA**) authorizing RO Mones to conduct the audit; (3) petitioner failed to prove and distinguish the identity of R-Jell Marketing and Construction Company from R-Jell Marketing; (4) the criminal offense in the Informations charged against them has already prescribed; (5) the third party information (**TPI**) from Amkor Technology, Inc. is inadmissible and has no probative value; (6) private respondents are not liable to pay VAT since their sales to Amkor Technology, Inc. are zero-rated; and, (7) there was no valid demand to pay the VAT.

Later, after petitioner filed its "Comment to Demurrer to Evidence," respondent court *a quo* rendered the assailed Order of 01 September 2022 finding grounds to grant the private respondents' Demurrer. As a result, it dismissed the case and acquitted private respondents.

In the assailed Order of 01 September 2022, respondent court *a quo* explained that: (1) the FOE was filed with the conformity of the public prosecutor whose signature appeared thereon; (2) RO Mones joined the audit through an internal Memorandum; (3) there is no distinction between R-Jell Marketing and R-Jell Marketing and Construction Company as they have the same Tax Identification Number (**TIN**); (4) the criminal offense in the Informations has not yet prescribed since the ROs discovered that private respondents underdeclared their income from TYs 2005 to 2008, through the Sworn Certification dated 29 May 2013, and the appropriate Joint Complaint-Affidavit was filed before the Investigating Prosecutor on 03 July 2014, or well within the prescribed period; (5) apart from the

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TPI, there were several pieces of evidence which proved that private respondents underdeclared their sales to Amkor Technology, Inc.; (6) based on the same pieces of evidence, sales to Amkor Technology, Inc. do not qualify as zero-rated; and, (7) petitioner failed to adduce evidence to prove the demand of payment against private respondents for the pertinent quarterly VAT returns, *i.e.*, the existence and service of the Final Assessment Notice and Final Letter of Demand (**FAN/FLD**) to them.

According to respondent court *a quo*, petitioner's evidence, particularly the FLD of 06 May 2016, merely covered the Income Tax (**IT**) assessment. Even with the manifestation of the private respondents' counsel that the said FLD does not include any VAT assessment, petitioner omitted to present any demand, details of discrepancies nor audit result assessment notices pertaining to the VAT assessment against them. Relying on *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, which cited *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, respondent court *a quo* pointed out that without the FLD or any notice of assessment, petitioner failed to prove that private respondents were accorded due process and that they did not comply with the FAN/FLD prior to the institution of the criminal cases. Thus, the respondent court *a quo* ruled that petitioner failed to establish the guilt of private respondents beyond reasonable doubt and accordingly upheld the presumption of innocence on the latter's part.

Aggrieved, petitioner filed an MR and argued that an assessment is not required to prove that the crimes charged had been committed. It contended that the cases filed, being criminal in nature, the service of the FAN/FLD is not necessary to establish or prove criminal liability. Petitioner added that the exact identity or name of the accused is also immaterial considering that R-Jell Marketing and Construction Company, R-Jell Marketing and Construction Corp., R-Jell Marketing and Construction Supply or other variations of trade names of R-Jell (as used in the documents) are one and the same entity for bearing the same TIN of 215-171-072-000.

In response to petitioner's arguments, in the "Comment (to [MR])," private respondents emphasized that R-Jell Marketing and Construction Company was excluded from the Informations as accused even though they have been charged as responsible officers of the said partnership. As ruled in *Enviroaire, Inc., Represented by Tyrone N. Ong and Arlene Chua v. People of the Philippines*, by analogy, for failure to charge the partnership in the Informations, the court *a quo* never acquired jurisdiction over it, thus, the charges against them as officers thereof had no leg to stand on.

In a Reply to private respondents' arguments, petitioner contended that even if the company was not sued, it can still proceed with the prosecution of the erring officers as their liability is also provided under Section 253 (d) of the NIRC of 1997, as amended. Moreover, as the company was used to perpetrate fraud, it is only

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proper to apply the doctrine of piercing the veil of corporate fiction and hold the individual officers liable.

The court *a quo* was unconvinced and issued the second assailed Order of 22 December 2022 denying the MR. Agreeing with private respondents, respondent court *a quo* ruled that the identification, indictment, and conviction of R-Jell Marketing and Construction Company are vital and indispensable since it is a partnership (as taxpayer) required by law to supply correct and accurate information under the provisions of the NIRC of 1997, as amended. Hence, the charges against private respondents must be dismissed as the company was not impleaded in the criminal cases.

PROCEEDINGS BEFORE THIS COURT

On 14 March 2023, petitioner, through the Bureau of Internal Revenue (**BIR**), filed a Petition for *Certiorari* before this Court seeking relief from the assailed Orders. It prayed for the continuation of the proceedings in the trial court. The case was raffled to the Second Division.

On 14 April 2023, private respondents filed a "Comment (To Petition for *Certiorari*)" (**Comment**) stating that: (1) the BIR has no legal standing or personality to file the petition for *certiorari*; (2) respondent court *a quo* did not err when it ruled on a matter that was not previously raised in the MTQ, *i.e.*, as regards Section 3 (a), Rule 117 of the Revised Rules of Criminal Procedure, as amended, or the ground that the facts charged do not constitute an offense; and, (3) respondent court *a quo* correctly dismissed the case following petitioner's failure to implead R-Jell Marketing and Construction Company as accused in the Informations. Thereafter, the Court ordered the parties to file their respective Memoranda.

In the Minute Resolution dated 29 May 2023, the case was transferred to the First Division. Later, in compliance with the Court's directive, private respondents filed their Memorandum on 30 May 2023, while petitioner filed its Memorandum on 31 May 2023. In the Minute Resolution of 19 June 2023, the case was submitted for decision.

On July 12, 2024, the Court in Division issued the Assailed Decision. The dispositive portion⁷ of which provides, to wit:

Assailed Decision (July 12, 2024)

WHEREFORE, premises considered, the Petition for *Certiorari* filed by petitioner People of the Philippines on 14 March 2023 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

⁷ *Decision*, Division Docket, p. 324.

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In sum, the CTA Division found that the Petition for *Certiorari* before it was filed out of time. It held that the sixty (60)-day reglementary period must be reckoned from the earlier receipt of the public prosecutor of the December 22, 2022 Order of the RTC, and not from the later date when the BIR received the same.

Petitioner then received a copy of the Assailed Decision on July 17, 2024.⁸ Following thereto, on July 31, 2024, the latter filed a *Motion for Reconsideration*⁹ (MR) *via* registered mail, which was electronically filed on August 2, 2024, and received by the Court on August 5, 2024. On August 27, 2024, private respondents filed their *Comment/Opposition (To Motion for Reconsideration)*¹⁰ *via* accredited courier, and was received by the Court on August 29, 2024. Such *Comment/Opposition* was likewise previously electronically filed on August 2, 2024.

Eventually, on January 8, 2025, petitioner's MR was denied in the Assailed Resolution. The dispositive portion¹¹ of which is reproduced as follows:

Assailed Resolution (January 8, 2025)

WHEREFORE, the foregoing considered, the Motion for Reconsideration filed on 31 July 2024 filed by petitioner People of the Philippines is hereby **DENIED** for lack of merit.

SO ORDERED.

The BIR received the same on January 14, 2025, while the public respondent received the same on January 10, 2025.¹²

THE PROCEEDINGS BEFORE THE CTA *EN BANC*

Thus, on January 30, 2025, the present *Verified Petition for Review* was filed *via* registered mail, which was received by the Court on February 4, 2025. The same was likewise duly electronically transmitted on January 31, 2025. In a Resolution¹³ dated March 20, 2025, respondents were directed to file their Comment on the *Verified*

⁸ Notice of Decision, Division Docket, p. 297.

⁹ Division Docket, pp. 351 to 374.

¹⁰ Division Docket, pp. 386 to 391.

¹¹ Division Docket, p. 401.

¹² Notice of Resolution, Division Docket, p. 395.

¹³ EB Docket, p. 151.

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Petition for Review within ten (10) days from notice. On April 10, 2025, private respondents filed *via* accredited courier and electronic mail, the *Comment (To Motion for Reconsideration)* seeking to dismiss petitioner's *Verified Petition*.¹⁴ The Court thereafter noted the same in a Resolution dated April 30, 2025,¹⁵ and submitted the case for decision.

Thus, petitioner is now before the Court *En Banc* alleging the following errors committed by the CTA Division, to wit:¹⁶

- I. **The Honorable Court of Tax Appeals First Division erred when it ruled that the petitioner belatedly filed its *Petition for Certiorari*.**
- II. **The Honorable Court of Tax Appeals First Division erred when it ruled that the court *a quo* did not commit grave abuse of discretion when it granted the demurrer to evidence.**

THE ARGUMENTS

Petitioner's arguments¹⁷

Petitioner argues that the *Petition for Certiorari* filed before the CTA Division was filed on time. It contends that in pursuit of criminal actions involving the National Internal Revenue Code (NIRC), or other laws enforced by the BIR, the prosecution may be conducted by the duly deputized legal officers of the BIR, citing Rule 9, Section 3 of the Revised Rules of the Court of Tax Appeals (RRCTA).

It likewise maintains and cited its authority under Section 220 of the NIRC, which provides:

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

¹⁴ EB Docket, pp. 152 to 160.

¹⁵ EB Docket, p. 164.

¹⁶ Assignment of Errors, *Verified Petition for Review*, EB Docket, p. 7.

¹⁷ Discussion, *Verified Petition for Review*, EB Docket, pp. 7 to 19.

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of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

Moreover, the Department of Justice (DOJ) deputized the BIR lawyers to assist the public prosecutors in handling criminal tax cases, subject to court approval. Thus, as special prosecutors, they shall continue to prosecute tax offenses up to the end of the trial even in the absence of the prosecutor, unless the authority is revoked or withdrawn. Furthermore, petitioner states that as per the Memorandum of Agreement (MOA) between the Office of the Solicitor General (OSG) and the BIR, the OSG recognizes the same in such undertaking.

In view of the foregoing, petitioner argues that considering the subject of the case involves the violation of Section 255 of the NIRC, it may be conducted by the duly deputized special prosecutors of the BIR. Petitioner then emphasized that it was not aware that the DOJ already received the December 22, 2022 Order of the RTC which denied its MR. It was only on January 13, 2023, that such denial came to its knowledge. Counting sixty (60) days therefrom, it had until March 14, 2023 to file the subject *Petition for Certiorari*.

Moreover, petitioner alleges denial of the prosecution's right to due process, and imputes grave abuse of discretion on the part of the public respondent RTC, for the following reasons: *First*, the granting of the Demurrer to Evidence of private respondents had nothing to do with the evaluation of the sufficiency of its evidence. *Second*, when the public respondent granted the same, it was on the ground that there was no proof of service and demand to pay of the assessment issued against the private respondents. Thereafter, in denying the petitioner's MR, the public respondent changed its theory when it based its dismissal on the ground that the company R-Jell Marketing and Construction Company was not sued. Hence, for petitioner, the changing of grounds is downright capricious and do not involve weight or sufficiency of evidence.

Private respondents' counter-arguments

On the other hand, at the core of private respondents' *Comment (To Motion for Reconsideration [sic])*¹⁸ is the issue on timeliness. Private respondents emphasized that the *Petition for Certiorari* before the CTA Division was indeed filed out of time – as it was apparent that when the public respondent RTC issued the Order dated December 22,

¹⁸ EB Docket, pp. 152 to 157.

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2022, the public prosecutor, DOJ, received the same as early as December 29, 2022. Hence, the reckoning point to institute a petition for certiorari should be counted from such date, and not from the subsequent receipt of the BIR of the Order on January 13, 2023.

THE RULING

After careful consideration, the instant *Verified Petition for Review* before the CTA *En Banc* suffers from a number of fatal defects. Hence, it cannot prosper and must be dismissed.

We explain Our reasons below.

The BIR has no legal authority to represent the People of the Philippines in pursuing the present case

At the outset, it is crucial to point out the fundamental rule that it is the **OSG** which has the primary duty to represent the Government in all proceedings it is involved. This finds basis as early as in the Administrative Code of 1987, outlining the powers and functions of the OSG, which includes but are not limited to the following:

SECTION 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. **The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer.** It shall have the following specific powers and functions:

(1) **Represent the Government** in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers **in** the Supreme Court, the Court of Appeals, and **all other courts or tribunals in all civil actions** and special proceedings in which the Government or any officer thereof in his official capacity is a party.¹⁹ (*Emphasis supplied*)

¹⁹ Section 35, Chapter 12, Title III, Book IV.

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While petitioner may argue that Section 220 of the NIRC, provides that civil and criminal actions and proceedings instituted on behalf of the Government, shall be conducted by the legal officers of the BIR, the Supreme Court, in the case of *Civil Service Commission, et al. vs. Asensi*,²⁰ had the occasion to clarify the same. It pronounced that **the duty of the OSG to represent the Government remains notwithstanding Section 220** of the NIRC, viz.:

...the Court has already ruled on a similar argument before in *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*,²¹ which was previously cited in the assailed Resolution. In that case, the Commissioner of Internal Revenue invoked Section 220²² of the Tax Reform Act of 1997 in asserting that its legal officers were allowed to institute civil and criminal actions and proceedings in behalf of the government before the Supreme Court. The Court disagreed, stating that **'Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic.'** The Court again cited *Gonzales v. Chavez*²³ in holding that 'from the historical and statutory perspectives, **the Solicitor General is the principal law officer and legal defender of the government.**' **Strikingly, the Tax Reform Act was a law enacted subsequent to the Administrative Code and is more specific in application to tax cases. Yet these considerations were not sufficient for the Court to consider the powers granted to BIR legal officers under Section 220 of the Tax Reform Act as superseding those vested to the Solicitor General under the Administrative Code.** xxx. (*Emphases and underscoring added*)

More importantly, the same case likewise discussed that the **primary responsibility of the Solicitor General to appear for the government extends further to appellate proceedings.**²⁴

Subsequently, Revenue Memorandum Circular (RMC) No. 025-10 was issued, published, and presented the MOA executed between the OSG and the BIR – where it clearly delineated their respective responsibilities in the facilitation and preparation of tax cases. This

²⁰ G.R. No. 160657, December 17, 2004.

²¹ G.R. No. 144942, July 2, 2002.

²² "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 actions 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."

²³ G.R. No. 97351, February 4, 1992.

²⁴ *Civil Service Commission, et al. vs. Asensi*, G.R. No. 160657, December 17, 2004.

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categorically stated that **on the matter of appeals before the CTA *En Banc*, the OSG deputizes BIR handling lawyers to continue the prosecution or litigation of such cases.** Moreover, such RMC likewise requires the BIR to periodically submit a list of handling lawyers to be deputized by the OSG, *viz.*:

REVENUE MEMORANDUM CIRCULAR NO. 025-10²⁵

xxx xxx xxx

WHEREAS, in the Resolution promulgated on 04 July 2002 in G.R. No. 144942 entitled *Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory*, the Supreme Court *En Banc* ruled that "*it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.*"

xxx xxx xxx

2. Cases appealed before the Regional Trial Courts, Court of Appeals and the **Court of Tax Appeals *En Banc*.**

a. The OSG hereby deputizes **BIR handling lawyers** to:

i. Appear before the Courts; and

ii. **Continue the prosecution/litigation of appealed tax cases before** the Regional Trial Courts, Court of Appeals and **the Court of Tax Appeals *En Banc*.**

The BIR handling lawyer shall have the following responsibilities:

i. To appear before courts; and

ii. To prepare all pleadings, motions, orders, decisions, resolutions, communications and other papers/documents in connection with the case.

b. The **BIR shall periodically submit a list of handling lawyers to the OSG for purposes of deputation.** (*Emphasis supplied*)

The foregoing considered, while the OSG may deputize BIR handling lawyers, the former remains to exercise supervision and control over the deputized lawyers and is entitled to be furnished copies of all court orders, notices and decisions, as held in *Republic of*

²⁵ Publishing the Full Text of the Memorandum of Agreement Between the BIR and the OSG, Revenue Memorandum Circular No. 025-10, March 17, 2010.

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*the Philippines, represented by the Land Registration Authority vs. Raymundo Viaje, et al.,*²⁶ to wit:

The power of the OSG to deputize legal officers of the government departments, bureaus, agencies and offices to assist it in representing the government is well settled. **The Administrative Code of 1987 explicitly states that the OSG shall have the power to ‘deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases.’** But it is likewise settled that the OSG’s deputized counsel is ‘no more than the ‘surrogate’ of the Solicitor General in any particular proceeding’ and **the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.** xxx. (*Emphases and underscoring added*)

In view of the foregoing, it is well-settled and necessary to emphasize that the distinct role of the BIR and the OSG is crucial in its pursuit of appeals before any court of law. Absent any proof of deputization, it is clear that the OSG is the proper party to file the necessary appeal.

Additionally, such a concept is likewise explicitly provided in the internal rules of the CTA. Section 10, Rule 9 of the 2005 RRCTA states that:

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

²⁶ G.R. No. 180993, January 27, 2016.

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Thus, an examination of the *Verified Petition* before Us reveals that it is merely filed by the BIR lawyers, instead of the OSG who is primarily responsible to appear on behalf of the government in appellate proceedings. While petitioners may insist that the present appeal is attached with a Revenue Delegation Authority Order (RDAO) No. 2-2007,²⁷ which authorizes BIR officials to file civil and criminal cases, this Court finds the same as insufficient to serve as the required authorization – as this RDAO merely originated from the Commissioner of the BIR, and not of the OSG. Worse, what is attached is not even an original but a mere photocopy.

Based on the records of this case, the absence of the required written authorization from the OSG constrains this Court to dismiss the case. As held in the recent case of *Commissioner of Internal Revenue v. Second Division of the Court of Tax Appeals*, it has been ruled that **a petition filed without the OSG's imprimatur, when it is required, shall be defective; it shall be dismissible based on this ground alone.**²⁸ Accordingly, considering that no valid appeal was filed before this Court, the Assailed Decision and Assailed Resolution have attained finality.

Moreover, even if the present BIR lawyers are validly authorized to pursue the instant case, such recourse is likewise erroneous.

The present Appeal before the CTA En Banc is improper

Petitioner, in filing the instant Appeal,²⁹ finds basis in Rule 8 of the RRCTA,³⁰ where a party adversely affected by a ruling, decision, or resolution of the CTA Division may elevate the matter on appeal, to the CTA *En Banc* within fifteen (15) days from receipt thereof. Moreover, under the same Rule, it may be made by filing a petition for review under **Rule 43** of the Rules of Court, to wit:

²⁷ EB Docket, p. 24.

²⁸ G.R. No. 280165, August 4, 2025.

²⁹ Par. 3, Nature of Appeal and Timeliness of the Petition, *Verified Petition for Review*, EB Docket, p. 2.

³⁰ Rules of the Court of Tax Appeals - approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals - approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA); and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

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RULE 8 PROCEDURE IN CIVIL CASES

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. (*Rules of Court, Rule 42, sec. 1a*) (*Emphasis supplied*)

SEC. 4. *Where to appeal; mode of appeal.* —

XXX XXX XXX

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal. (n)

The Court finds that under the abovementioned rules, the *Verified Petition for Review* appears to be timely filed. As previously narrated, petitioner received a copy of the Assailed Decision on July 17, 2024.³¹ Thereafter, petitioner filed an MR³² via registered mail on July 31, 2024. Eventually, on January 8, 2025, petitioner's MR was denied in the Assailed Resolution. Petitioner received the same on January 14, 2025.³³ It then had fifteen (15) days from receipt or until January 29, 2025, within which to file an appeal before the CTA *En Banc*. Considering that January 29, 2025 fell on a holiday,³⁴ the petitioner timely filed its *Verified Petition* on the next working day, January 30, 2025.

³¹ Notice of Decision, Division Docket, p. 297.

³² Division Docket, pp. 351 to 374.

³³ Notice of Resolution, Division Docket, p. 395.

³⁴ As per Presidential Proclamation No. 727, s. 2024, January 29, 2025 (Wednesday), is declared a Special Non-Working Day in observance of the Chinese New Year.

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Unfortunately, even with the timely filing of the same or even with the proper deputization of the BIR legal officers, the Verified Petition for Review cannot prosper.

The instant Appeal under Rule 43 calls for the review of the acquittal of herein private respondents; such a review is violative of the latter's right against double jeopardy

A brief recollection of the crucial facts is in order:

Previously, in an Order dated September 1, 2022 (First Order),³⁵ the public respondent RTC granted a *Demurrer to Evidence* effectively acquitting the accused of the crime charged under Section 255 of the Tax Code. The dispositive portion of the First Order is reproduced herein below:

IN VIEW OF THE FOREGOING, the Demurrer to Evidence with Leave of Court is granted and accused Lily Pedroso y Reyes, Ernesto Pedroso y Ong, and Elvin Louie Pedroso y Reyes are **ACQUITTED** of the crime charged in the respective Information for violation of Section 255 in relation to Sections 253(d) and 256 if the NIRC of 1997, as amended, and docket as Criminal Case Nos. R-MNL-19-03523-CR, R-MNL-19-03524-CR, R-MNL-19-03525-CR, R-MNL-19-03526-CR, R-MNL-19-03527-CR, R-MNL-19-03528-CR, R-MNL-19-03530-CR, R-MNL-19-03531-CR, R-MNL-19-03532-CR, R-MNL-19-03533-CR, R-MNL-19-03534-CR, R-MNL-19-03535-CR.

SO ORDERED. (*Emphasis supplied*)

In so ruling, the public respondent RTC pronounced that the prosecution failed to prove the crime charged because no assessment was duly issued. Hence, there was violation of the accused's right to due process. Later, the RTC likewise denied the prosecution's Motion for Reconsideration in its Order dated December 22, 2022 (Second Order),³⁶ which was received by the public prosecutor on December 29, 2022. Later, the deputized lawyers of the BIR received the same on January 13, 2023.

Hence, herein petitioner assailed the First and Second Orders of the public respondent RTC to the CTA Division through a Petition for

³⁵ EB Docket, pp. 91 to 98.

³⁶ EB Docket, pp. 100 to 103.

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Certiorari under Rule 65 of the Rules of Court.³⁷ The Court in Division dismissed the same in the Assailed Decision on the ground that such petition was belatedly filed.

Presently, as herein discussed, before this Court *En Banc* is a *Verified Petition for Review* under Rule 43, a mode of appeal, filed by the People of the Philippines, as merely represented by the BIR instead of the OSG as required. The latter argues that the deputized BIR legal officers timely filed the previous Petition for *Certiorari* before the CTA Division. It likewise **questioned the grounds utilized by the public respondent in granting the demurrer to evidence** which led to the acquittal of herein private respondents. Thus, petitioner prays for the setting aside of the CTA Division Decision, the reinstatement of the criminal case, and the continuation of the trial.

In view of the foregoing, the Court *En Banc* finds that as a clear consequence of the Assailed Decision of the CTA Division in dismissing the case before it, the **acquittal of herein private respondents effectively remains**.

It is settled that a judgment of acquittal cannot be recalled or withdrawn by another order reconsidering the dismissal of the case, nor can it be modified except to eliminate something which is civil or administrative in nature.³⁸ This concept finds clear anchor in the 1987 Constitution which provides that *no 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.*³⁹

Moreover, in *Villareal v. Aliga*,⁴⁰ the Supreme Court read the constitutional right against double jeopardy in relation to the Revised Rules of Criminal Procedure providing for the qualified instances when an appeal of a criminal case may be made, emphasizing that it is only possible if the accused will not be placed in double jeopardy, *viz.*:

However, the provision must be read in relation to Section 1, Rule 122 of the Revised Rules of Court, which provides that any party may appeal from a judgment or final order "unless the accused will thereby be placed in double jeopardy." The judgment that may be appealed by the aggrieved party envisaged in the Rule is a *judgment convicting the accused, and not a judgment of acquittal. The State*

³⁷ Division Docket, pp. 05 to 37.

³⁸ *Goodland Company, Inc. v. Co*, G.R. No. 196685, December 14, 2011.

³⁹ 1987 Constitution, Article III, Section 21.

⁴⁰ G.R. No. 166995, January 13, 2014.

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is barred from appealing such judgment of acquittal by a petition for review. (Boldfacing added)

As may be gleaned, the law allows an appeal of a judgment of conviction but has explicitly provided a **prohibition to appeal a judgment of an acquittal**. In the same case, the High Court has even categorically *barred the State from doing such an appeal by virtue of a petition for review*.

Considering that herein private respondents were already acquitted when the public respondent RTC granted their demurrer to evidence, such a grant is equivalent to a judgment on the merits that terminates the case.⁴¹ Hence, legal jeopardy has already attached.⁴² Any attempt to review or appeal the same would amount to double jeopardy – and the right against the same is constitutionally protected. Oft repeated by jurisprudence is that a **judgment of an acquittal is final and unappealable**⁴³ because doing so places the accused in double jeopardy.

In *Mandagan v. Jose M. Valero Corp.*,⁴⁴ the Supreme Court emphasized the importance of the finality of a judgment of an acquittal, and the proscription against double jeopardy as follows:

In criminal cases, no rule is more settled than that a **judgment of acquittal is immediately final and unappealable**. Such rule proceeds from the accused's constitutionally-enshrined right against prosecution if the same would place him under double jeopardy. Thus, a judgment in such cases, once rendered, may no longer be recalled for correction or amendment – regardless of any claim of error or incorrectness. (*Emphases supplied*)

Furthermore, in the case of *Philippine Savings Bank v. Spouses Bermoy*,⁴⁵ the High Court ruled that courts should not take cognizance nor review an order which granted a demurrer to evidence which acquitted an accused considering that such act will put the latter in double jeopardy, to wit:

⁴¹ *Philippine Savings Bank v. Spouses Bermoy*, G.R. No. 151912, September 26, 2005.

⁴² Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused. (*Canceran v. People*, G.R. No. 206442, July 1, 2015 [Per J. Mendoza, Second Division])

⁴³ *People of the Philippines v. Asis*, G.R. No. 173089, August 25, 2010.

⁴⁴ G.R. No. 215118, June 19, 2019.

⁴⁵ G.R. No. 151912, September 26, 2005.

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Thus, we held in an earlier case:

In terms of substantive law, the Court will not pass upon the propriety of the order granting the Demurrer to Evidence on the ground of insufficiency of evidence and the consequent acquittal of the accused, as it will place the latter in double jeopardy. Generally, the dismissal of a criminal case resulting in acquittal made with the express consent of the accused or upon his own motion will not place the accused in double jeopardy. However, this rule admits of two exceptions, namely: insufficiency of evidence and denial of the right to a speedy trial . . . In the case before us, the resolution of the Demurrer to Evidence was based on the ground of insufficiency of evidence . . . Hence, it clearly falls under one of the admitted exceptions to the rule. Double jeopardy therefore, applies to this case and this Court is constitutionally barred from reviewing the order acquitting the accused. (Emphasis supplied)

The strict rule against appellate review of judgments of acquittal is not without any basis. As the Court explained in **People v. Velasco** -

The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State . . . " Thus, *Green [v. United States]* expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, 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."

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability. With this right of repose, **the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.**

Related to his right of repose is the defendant's interest in his right to have his trial completed by a particular tribunal. . . . [S]ociety's awareness of the heavy personal strain which the criminal trial represents for the individual defendant is manifested in the willingness to limit Government to a single criminal proceeding to vindicate its very vital interest in enforcement of criminal laws. The ultimate goal is prevention of government oppression; the goal finds its voice in the finality of the initial proceeding. As observed in *Lockhart v. Nelson*, "(t)he fundamental tenet animating the Double Jeopardy Clause is that the State should not be able to oppress individuals through the abuse of the criminal process." **Because the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair.** (Boldfacing added)

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In light of the foregoing doctrines, petitioner's present resort to an *appeal* by virtue of a *Verified Petition for Review* under Rule 43 before the CTA *En Banc* is fatal since a review of private respondents' acquittal violates the latter's right against double jeopardy, essentially addressing both questions of fact and law.

After a careful scrutiny of the present case, it appears that **petitioner effectively seeks a review** of the First Order of the public respondent RTC in dismissing the criminal case and acquitting herein private respondents. While the timeliness of its *Petition* before the CTA Division was likewise being questioned, **it is in effect appealing from a judgment of acquittal, and in pursuit of reopening the same.** The appeal at hand seeks to nullify the findings of the public respondent RTC which goes into depth of the latter's appreciation and evaluation of the evidence previously produced by the prosecution. This cannot be done without violating the private respondents' right against double jeopardy.

Clearly, the prosecution was afforded an opportunity to establish its case by presenting its evidence which would support its premise that herein private respondents were guilty.⁴⁶ Unfortunately, the fact that the public respondent RTC found the same as insufficient to overcome its presumption of the innocence of the latter, cannot be questioned on appeal. Besides, a judicial action on a motion to dismiss or demurrer to evidence is best left to the exercise of sound judicial discretion.⁴⁷ After all, basic is the rule that *the prosecution must rest on its own merits and must not rely on the weakness of the defense. In fact, if the prosecution fails to meet the required quantum of evidence, the defense may logically not even present evidence in its own behalf. In which case, the presumption of innocence shall prevail and hence, the accused shall be acquitted.*⁴⁸

Petitioner is clearly mistaken in its pursuit to appeal this case. The Court cannot allow such a legal maneuver to reopen and review the acquittal of herein respondents in light of the latter's sacred right against double jeopardy.

Thus, in view of the finality-of-acquittal rule, and the constitutional proscription against double jeopardy, **it is erroneous**

⁴⁶ *Manifestation with Formal Offer of Evidence for the Prosecution*, Division Docket, pp. 65 to 117.

⁴⁷ *People v. Sandiganbayan*, G.R. No. 164577, July 5, 2010.

⁴⁸ *People v. Orteza*, G.R. No. 173051 [Formerly G.R. No. 161678], July 31, 2007.

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for the prosecution to pursue its present recourse before the CTA *En Banc*, via Rule 43, a mode of appeal.

Likewise, a number of defects cannot be ignored as it is apparent that the prosecution has been technically remiss in its pursuit of its cases – in view of its previous failure to timely and procedurally file its Petition for *Certiorari* before the CTA Division. And, more importantly, as previously discussed, in the present case, they were again fatally remiss in their pursuit to elevate the matter before the CTA *En Banc*. To reiterate, not only did it fail to obtain the proper authority from the OSG to file this case, it also resorted to a wrong remedy, which leaves this Court no other recourse but to dismiss the same.

Considering the aforementioned, this Court finds it worthy to emphasize and reiterate that a judgment of acquittal, "even if seemingly erroneous," is the final verdict.⁴⁹ Likewise, as applied to the present case, the rule on double jeopardy prohibits the state from appealing or filing a petition for review of a judgment of acquittal that was based on the merits of the case.⁵⁰

WHEREFORE, premises considered, the *Verified Petition for Review* is **DISMISSED**.

SO ORDERED.


HENRY S. ANGELES
Associate Justice

WE CONCUR:


MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

⁴⁹ *People v. Sandiganbayan*, G.R. No. 164577, July 5, 2010.

⁵⁰ *People v. Court of Appeals*, G.R. No. 128986, June 21, 1999.

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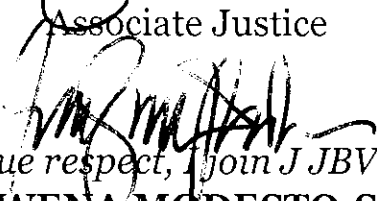
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(With Separate Opinion)

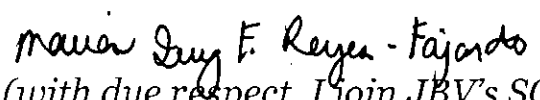
JEAN MARIE A. BACORRO-VILLENA

Associate Justice


(w/ due respect, I join J JBV's SO)

MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice


(with due respect, I join JBV's SO)

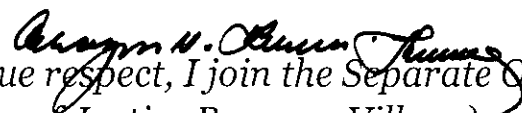
MARIAN IVY F. REYES-FAJARDO

Associate Justice


(With due respect, I join J JMBV's SO)

LANEE S. CUI-DAVID

Associate Justice


(With due respect, I join the Separate Opinion
of Justice Bacorro-Villena)

CORAZON G. FERRER-FLORES

Associate Justice

Took no part

PAOLO S. TESTON

Associate Justice

Took no part

DEBBIE JEAN CENTENO-DIJAMCO

Associate Justice

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



MA. BELEN M. RINGPIS-LIBAN

Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB NO. 3072
(CTA SCA Case No. 0005)

Present:

- versus -

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

Hon. REGIONAL TRIAL COURT
OF THE CITY OF MANILA,
BRANCH 21, LILY PEDROSO,
ERNESTO PEDROSO and ELVIN
LOUIE PEDROSO REYES,

Respondents.

Promulgated:

AUG 13 2026

x ----- x

SEPARATE OPINION

BACORRO-VILLENA, L:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Henry S. Angeles, insofar as it dismisses the subject Petition for Review due to the absence of conformity from the Office of the Solicitor General (OSG) to file the appeal before the Court *En Banc*. An examination of the said pleading reveals that the Bureau of Internal Revenue (BIR) lawyers signed the same; however, without the proper deputation from the OSG to authorize the former to act on the latter's behalf.

Also, I agree with the *ponente's* discussion on the constitutional right against double jeopardy and the significance of the finality-of-acquittal doctrine. However, with due respect, I am constrained to withhold my concurrence on the *ponencia's* declaration that the present Petition for

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Review filed before the Court *En Banc* is improper¹ and that is erroneous for the prosecution to have pursued its recourse *via* an appeal because it, in effect, seeking a review of the RTC's grant of demurrer of evidence (thus, violative of the accused's right not to be placed in double jeopardy).

Section 18 of Republic Act (RA) No. 1125,² as amended by RA 9282³ provides for an appeal to the Court *En Banc*, viz –

...

SEC. 18. Appeal to the Court of Tax Appeals *En Banc*. - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*.⁴

...

Relative thereto, Section 2(f), Rule 4 of the Revised Rules of the Court of Tax Appeals⁵ (RRCTA) provides that the Court *En Banc* shall exercise exclusive appellate jurisdiction to **review by appeal** over “[d]ecisions, resolutions or orders on motions for reconsideration or new trial of the **Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs.**”

Here, an examination of the instant Petition for Review shows that petitioner assigned two (2) issues: (1) the First Division erred in ruling that the prior Petition for *Certiorari* was not timely filed; and (2) the First Division erred in ruling that Regional Trial Court (RTC) of Manila, Branch 21 did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in granting the Demurrer to Evidence (**Demurrer**).⁶

¹ See p. 13 of the *ponencia*.

² AN ACT CREATING THE COURT OF TAX APPEALS.

³ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

⁴ Emphasis and italics supplied.

⁵ A.M. No. 05-11-07-CTA.

⁶ *Rollo*, p. 7.

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In distinguishing a Petition for *Certiorari* from an appeal, the Supreme Court in *People of the Philippines v. Hon. Perfecto A.S. Laguio, Jr., in his capacity as Presiding Judge, Branch 18, RTC, Manila et al.*,⁷ held that a Petition for *Certiorari* is an original and independent action that is not part of the trial that had resulted in the rendition of the judgment or order complained of.

Applying the foregoing in the instant case, the Petition for *Certiorari* was filed before the Court in Division to impute grave abuse of discretion (amounting to lack or in excess of jurisdiction) over the RTC's action of granting a Demurrer. However, in the Decision of 12 July 2024⁸ (**assailed Decision**), the First Division dismissed the Petition for *Certiorari* on the determination that it was filed beyond the reglementary period prescribed under Rule 65⁹ of the Rules of Civil Procedure (**RCP**), as amended.

It bears stressing that the First Division's dismissal of the Petition for *Certiorari* constitutes a **final order as it completely disposed of the petition**. Thus, to contest the assailed Decision and the subsequent Resolution of 08 January 2025¹⁰ (**assailed Resolution**), the aggrieved party may file an appeal through a Petition for Review before the Court *En Banc* pursuant to Section 18 of RA 1125 as amended by RA 9282, and Section 2(f), Rule 4 of the RRCTA.

In *William R. Wenceslao, et al. v. Makati Development Corporation, et al.*,¹¹ the Supreme Court ruled that a Petition for *Certiorari* under Rule 65 of the RCP, as amended, will only lie should there be no plain, adequate and speedy remedy available –

...

It is settled that a special civil action for *certiorari* under Rule 65 is an original or independent action based on grave abuse of discretion amounting to lack or excess of jurisdiction; and it will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. **In this case, what the petitioners seek to be annulled are the resolutions of the CA dismissing their petition for *certiorari* and the motion for reconsideration from such dismissal being, without a doubt, a final order for the complete disposition of such petition. Consequently, the petitioner's right and available legal recourse to assail such resolutions is an appeal by *certiorari* under Rule 45 instead of a special civil action for *certiorari* under Rule 65.**

⁷ G.R. No. 128587, 16 March 2007.

⁸ *Rollo*, pp. 30-57.

⁹ CERTIORARI, PROHIBITION AND MANDAMUS.

¹⁰ *Rollo*, pp. 59-65.

¹¹ G.R. No. 230696, 30 August 2017; Citations omitted, italics and emphasis in the original text and supplied.

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The Court in *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, announced:

The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is *its lack of jurisdiction* over the subject matter, or *the exercise of power in excess thereof*, or *grave abuse of discretion* in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is that there should be no appeal.

...

Similarly, in this case, an appeal *via* a Petition for Review before the Court *En Banc* is the remedy available to the petitioner to challenge the findings in the assailed Decision and assailed Resolution, both of which dismissed the Petition for *Certiorari* and thereby completely disposed of the case.

Nonetheless, although an appeal through a Petition for Review is the proper remedy, and even assuming that the requisite conformity of the OSG was obtained for its filing before the Court *En Banc*, the same will be denied for being unmeritorious.

In *Marian Rebutay Sedano v. People of the Philippines*,¹² the Supreme Court declared —

...

[I]t is immaterial whether the RTC erred in its application of the relevant law or in its appreciation of the parties' respective evidence. The fact remains that petitioner's right against double jeopardy already attached when the RTC, after a full-blown trial, and considering the evidence on record, found reasonable doubt to convict petitioner of the charges. **What is necessary for the Court to determine is whether the prosecution was denied due process. Absent any proof or indication that the State was denied its day in court, which is clearly not obtaining in the case, the finality-of-acquittal rule must be strictly adhered to.**

...

Here, petitioner failed to prove that the prosecution was denied due process before the RTC had rendered the Order granting the Demurrer.¹³

¹² G.R. No. 246306, 26 July 2023; Emphasis supplied.

¹³ Promulgated on 01 September 2022, *rollo*, pp. 91-98.

Instead, it merely assails what it perceives to be the RTC’s erroneous judgment and misappreciation of the evidence, which ultimately resulted in the acquittal of the accused. Absent any showing that the State was deprived of its day in court, the finality-of-acquittal rule must be strictly observed.¹⁴ Accordingly, the instant Petition for Review must be denied.

In the analogous case of *EB No. 3037 (CTA Case SCA No. 0014)* entitled “*People of the Philippines v. Hon. Ana Teresa T. Cornejo-Tomacruz, in her capacity as Presiding Judge of The Regional Trial Court of Pasig City, Branch 157, et al.*,”¹⁵ the Court *En Banc* had also denied a Petition for Review (for lack of merit) which appealed the Court in Division’s denial of the Petition for *Certiorari*.

In view of the foregoing circumstances, I humbly submit that an appeal through a Petition for Review before the Court *En Banc* is the proper recourse to contest the First Division’s assailed Decision and assailed Resolution, which dismissed the Petition for *Certiorari*.

Be that as it may, the present Petition for Review remains **DISMISSIBLE** for lack of the requisite conformity from the OSG. Further, assuming there is proper authority to file the appeal, the same should be **DENIED** for lack of merit.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

¹⁴ *Marian Rebutay Sedano v. People of the Philippines*, supra at note 12.
¹⁵ Penned by Associate Justice Marian Ivy F. Reyes-Fajardo and concurred by Presiding Justice Ma. Belen M. Ringpis-Liban, Association Justice Jean Marie A. Bacorro-Villena, Associate Justice Lanee S. Cui-David and Associate Justice Corazon G. Ferrer-Flores. Associate Justice Maria Rowena Modesto-San Pedro and Associate Justice Henry S. Angeles inhibited. Promulgated on 28 May 2026.