

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

EN BANC

**PEOPLE OF THE
PHILIPPINES,**
Petitioner,

**CTA EB Crim. No. 168
(CTA CRIM. CASE NO. O-
913)**

Present:

- versus -

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

CESAR VACUNAWA LEBITE,
Respondent.

Promulgated:

OCT 01 2026

3:40pm

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DECISION

ANGELES, J.:

Before the Court of Tax Appeals (CTA) *En Banc* (CTA *En Banc*) is a *Petition for Review*¹ filed by the People of the Philippines (Petitioner), through the Department of Justice (DOJ) and the Bureau of Internal Revenue (BIR) on October 16, 2024, praying that such *Petition* be given due course, and that the March 26, 2024 Resolution² (First Assailed Resolution) and September 6, 2024 Resolution³ (Second Assailed Resolution) of the Court of Tax Appeals First Division (CTA Division) in CTA Crim. Case No. O-913 entitled, *People of the Philippines v. Cesar Vacunawa Lebite (At-Large: Address: Sitio-3*

¹ EB Docket, pp. 7 to 21.

² EB Docket, pp. 22 to 44.

³ EB Docket, pp. 45 to 50.

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Kabilugan St., Gulod, Novaliches, Quezon City), be reversed and set aside, insofar as the civil aspect of the case is concerned.

To recapitulate, the CTA Division previously granted the *Demurrer to Evidence (with prior leave of Court)*⁴ filed by Cesar Vacunawa Lebite (Respondent), and acquitted the latter on the grounds of insufficiency of evidence and prescription of the offense charged.

THE PARTIES

Petitioner is represented by the BIR, the government agency primarily tasked with the collection of internal revenue taxes for the support of the government.⁵

On the other hand, respondent, Cesar Vacunawa Lebite, is the accused in CTA Crim. Case No. O-913. He is represented by the Public Attorney's Office (PAO).⁶

THE FACTS

At the outset, below are the relevant facts as found and narrated by the CTA Division in the First Assailed Resolution:⁷

Accused [herein respondent] Cesar Vacunawa Lebite is indicted for violation of Section 255 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, allegedly committed as follows:

"That on or about May 15, 2013 and thereafter, in Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Cesar Vacunawa Lebite, a Filipino citizen, owner and proprietor of a business under the name and style "Blue Alcindor Enterprise" in which he is engaged in the business of selling merchandise with Tax Identification Number (TIN) 913-477-128-000, and therefore subject and liable to file Value-Added Tax (VAT) returns and to pay the corresponding tax due, pursuant to Sections 105 and 106 of the National Internal Revenue Code (NIRC) of 1997, as amended, did then and there knowingly, unlawfully and willfully fails and refuses to pay his basic VAT liability for taxable year 2010 in the total amount of Eight Million One Hundred Sixty Nine Thousand and Eight Hundred Ten Pesos and 43/ 100 (Php8,169,810.43), exclusive of surcharge and interest, despite receipt of several notices and demands as specified under the law

⁴ Division Docket, *unpaginated*.

⁵ Par. 6, The Parties, *Petition for Review*, EB Docket, p. 8.

⁶ Par. 7, The Parties, *Petition for Review*, EB Docket, p. 8.

⁷ Division Docket, pp. 418 to 421.

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and regulations, the last of which are the Preliminary Assessment Notice (PAN) and Formal Letter of Demands, including the final notice before seizure issued by the BIR on May 15, 2013, to the damage and prejudice of the government.

CONTRARY TO LAW.”

On October 27, 2022, the accused [herein respondent] was arraigned and entered a plea of **NOT GUILTY**. Thereafter, the Pre-Trial Conference ensued.

On February 8, 2023, the Court issued the *Pre-Trial Order*.

On February 9, 2023, the prosecution moved to amend the *Pre-Trial Order* to include Ms. Alden T. Bruno as an additional witness and Exhibits P-6-a, P-7-b, P-24, and P-25 as additional documentary exhibits. The accused [herein respondent] and his counsel interposed no objection, and the Motion was granted.

On March 6, 2023, the accused [herein respondent] filed a *Motion to Amend Pre-Trial Order* praying for (1) the removal of the stipulation that the accused [herein respondent], Cesar Vacunawa Lebite, is the same person named and charged in the Information; (2) the removal of the reserved documentary evidence - Memorandum dated May 29, 2015, signed by Leo S. Castillo; and (3) the allowance of the reservation of certain documentary evidence. On March 30, 2023, the Motion was granted.

The presentation of prosecution's evidence followed. The prosecution presented Revenue Officers Rosario Villaflor and Leo S. Castillo on March 9, 2023, Mr. Benhur C. Nacorda on April 12, 2023, and Ms. Alden T. Bruno on September 6, 2023.

On September 12, 2023, the prosecution filed plaintiff's [herein petitioner's] *Formal Offer of Evidence (FOE)* dated September 7, 2023, offering the following exhibits: xxx

On September 19, 2023, the accused [herein respondent] filed his *Comment and/or Objection* to plaintiff's [herein petitioner's] FOE.

On October 12, 2023, the accused [herein respondent] filed a *Demurrer to Evidence (with prior leave of court)*, to which the prosecution filed an *Opposition (Re: Accused's [herein respondent's] Demurrer to Evidence)* on October 20, 2023.

On December 1, 2023, the Court admitted plaintiff's [herein petitioner's] documentary exhibits, subject to its final evaluation and/or appreciation of their probative value, except Exhibit P-16-a, for failure to submit the duly marked exhibit.

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On December 19, 2023, the accused [herein respondent] filed a *Manifestation and Motion* stating that on December 7, 2023, he received the Court's Resolution dated December 1, 2023 on plaintiff's [herein petitioner's] FOE; on October 12, 2023, he filed a Demurrer to Evidence (with prior leave of court), a copy of the Demurrer to Evidence was attached; and moved that the Court consider for resolution his Demurrer to Evidence.

On January 5, 2024, the prosecution filed an *Omnibus Motion a. For Reconsideration Re: Resolution dated December 1, 2023; b. Admit Attached Duly Marked Exhibit (Omnibus Motion)*.

On January 16, 2024, the Court issued a Minute Resolution noting the accused's [herein respondent's] *Manifestation and Motion* and plaintiff's [herein petitioner's] *Omnibus Motion*; granting the accused [herein respondent] five (5) days from receipt to file comment to plaintiff's [herein petitioner's] *Omnibus Motion*; and cancelling the accused's [herein respondent's] presentation of evidence on January 17, 2024 at 8:30a.m.

On January 18, 2024, the Court issued another Minute Resolution noting the accused's [herein respondent's] *Demurrer to Evidence (with prior leave of court)* and plaintiff's [herein petitioner's] *Opposition (Re: Accused 's [herein respondent's] Demurrer to Evidence)* and submitting for resolution the accused's [herein respondent's] *Demurrer to Evidence. (Emphases in the original)*

Thus, on March 26, 2024, the First Assailed Resolution was rendered by the CTA Division, dismissing the case and acquitting herein respondent. The dispositive portion⁸ of which is reproduced below, *viz.*:

First Assailed Resolution (March 26, 2024)

WHEREFORE, premises considered, accused's *Demurrer to Evidence (with prior leave of Court)* is **GRANTED**.

Accordingly, CTA Crim Case No. O-913 is **DISMISSED**, and the accused **CESAR VACUNAWA LEBITE** is **ACQUITTED** on the grounds of insufficiency of evidence and prescription of the offense charged.

SO ORDERED.

⁸ Division Docket, p. 439.

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On April 2, 2024, petitioner received a copy of the First Assailed Resolution.⁹ Thereafter, it filed a *Motion for Reconsideration (Re: Resolution dated 26 March 2024)*¹⁰ (MR) on April 17, 2024. Eventually, such MR was denied in the Second Assailed Resolution. The dispositive portion¹¹ of which provides, to wit:

Second Assailed Resolution (September 6, 2024)

WHEREFORE, premises considered, plaintiff's *Motion for Reconsideration (Re: Resolution dated 26 March 2024)* is **DENIED** for lack of merit.

Accordingly, accused's *Motion to Release Cash Bond* filed on April 26, 2024 is hereby **GRANTED**. The cash bail bond posted by the accused is hereby **CANCELLED** and ordered **RELEASED** to the accused upon presentation of proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED.

Petitioner then received a copy of the Second Assailed Resolution on September 16, 2024.¹²

THE PROCEEDINGS BEFORE THE CTA *EN BANC*

On October 1, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review*.¹³ On October 3, 2024, the Court granted the same, and petitioner was given until October 16, 2024 within which to file its appeal.¹⁴

Within the extended period provided, the present *Petition for Review*¹⁵ was filed on October 16, 2024. Subsequently, in a Notice¹⁶ dated January 6, 2025, respondent was directed to file its comment within ten (10) days from notice. On February 14, 2025, respondent timely filed his *Comment*.¹⁷ The Court then required respondent to transmit the Portable Document Format copy of the same in

⁹ Notice of Resolution, Division Docket, p. 416.

¹⁰ Division Docket, pp. 441 to 450.

¹¹ Division Docket, p. 470.

¹² Notice of Resolution, Division Docket, p. 464.

¹³ EB Docket, pp. 1 to 4.

¹⁴ Notice, EB Docket, p. 6.

¹⁵ EB Docket, pp. 7 to 21.

¹⁶ EB Docket, p. 57.

¹⁷ EB Docket, pp. 58 to 63.

accordance with CTA *En Banc* Resolution Nos. 8-2024 and 1-2025.¹⁸ Eventually, the Court noted the said comment and submitted the case for decision.¹⁹

THE ASSIGNMENT OF ERRORS²⁰

- I. Whether or not the CTA Division erred in ruling that petitioner failed to adduce sufficient evidence to convict respondent Lebite; and**

- II. Whether the CTA Division erred in ruling that the offense charged had already prescribed**

THE ARGUMENTS

Petitioner’s arguments²¹

In support of the contention that the CTA Division erred in ruling that petitioner failed to adduce sufficient evidence to convict respondent, petitioner argues the following:

First, as regards the finding of the CTA Division that no Notice of Informal Conference (NIC) was previously issued to and received by herein respondent, petitioner claims that a Post Reporting Notice dated May 29, 2012 was duly issued. Such document already embodied all the essential requirements of an NIC. Petitioner likewise emphasized that its witness attempted several times to serve BIR correspondences to herein respondent.

Secondly, as regards the alleged improper service of the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN), petitioner claims that these were duly transmitted to the Post Office for mailing. Thus, when a mail matter is sent by registered mail, the presumption applies that it was received in the regular course of mail.

¹⁸ Notice dated April 10, 2025, EB Docket, p. 66.
¹⁹ Notice dated June 18, 2025, EB Docket, p. 71.
²⁰ Assignment of Error of Fact and Law, *Petition for Review*, EB Docket, p. 11.
²¹ Arguments/Discussions, *Petition for Review*, EB Docket, pp. 11 to 17.

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Petitioner also thus argues that considering that the NIC, PAN, and FAN were duly served to respondent, the latter's failure to administratively protest the same rendered such assessments as final and executory.

On the other hand, as regards petitioner's claim that the CTA Division erred in ruling that the offense charged had already prescribed, it argues that the FAN was duly transmitted to the Post Office on October 24, 2012, and attained finality on December 24, 2012 as determined by the CTA Division. Thus, when the complaint was filed with the DOJ on December 10, 2015, the criminal action was instituted within the five (5) year prescriptive period.

Respondent's counter-arguments

On the other hand, respondent, by way of his *Comment*²² counters that while the petitioner is categorical in its prayer that it merely seeks the reversal and setting aside of the Resolutions of the CTA Division *insofar as the civil aspect of the case*, nowhere in the grounds raised in the *Petition for Review* actually pertains to such civil aspect. Thus, the finality of acquittal doctrine must be respected.

Moreover, even assuming that indeed, only the civil aspect is the subject of the appeal, the same must still be denied for lack of merit, as petitioner failed to sufficiently prove that respondent was the owner and proprietor of the business "Blue Alcindor Enterprise". Respondent likewise highlights that since the CTA Division already previously ruled that the Letter of Authority (LOA), PAN, and FAN were improperly served, the assessment is thus void, and negates the presence of willfulness as an element of Section 255 of the National Internal Revenue Code of 1997, as amended (Tax Code).

²² EB Docket, pp. 58 to 63.

TIMELINESS OF THE PRESENT APPEAL

*The Petition for Review
was filed on time*

Under Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA),²³ a party adversely affected by a ruling, decision, or resolution of the CTA Division in criminal cases, may elevate the matter, on appeal, to the CTA *En Banc* within fifteen (15) days from receipt thereof, to wit:

RULE 9
PROCEDURE IN CRIMINAL CASES

XXX XXX XXX

SEC. 9. *Appeal; period to appeal.* —

XXX XXX XXX

(b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court **within fifteen days from receipt** of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days. *(Emphasis supplied)*

As previously stated, petitioner received a copy of the First Assailed Resolution on April 2, 2024.²⁴ Within fifteen (15) days, petitioner then filed an *MR*²⁵ on April 17, 2024. Eventually, such *MR* was denied in the Second Assailed Resolution.

On September 16, 2024, petitioner received a copy of the Second Assailed Resolution.²⁶

²³ 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).
²⁴ Notice of Resolution, Division Docket, p. 416.
²⁵ Division Docket, pp. 441 to 450.
²⁶ Notice of Resolution, Division Docket, p. 464.

Within fifteen (15) days from its receipt, petitioner filed a *Motion for Extension of Time to File Petition for Review*²⁷ on October 1, 2024, which the Court granted in a Notice dated October 3, 2024. Thus, petitioner was given until October 16, 2024 within which to file its petition for review.²⁸

Within the extended period, the present *Petition for Review*²⁹ was filed. Following the fifteen (15)-day reglementary period to file an appeal before the CTA *En Banc* as required by the RRCTA, the present *Petition* was timely filed.

Nevertheless, even with the timely filing of the appeal, it does not automatically merit favor from this Court.

We explain our reasons below.

THE RULING OF THE COURT *EN BANC*

Upon careful review and consideration, the Court *En Banc* finds that **the present Appeal must fail and be dismissed** on the basis of the following grounds which the Court shall discuss herein below, namely: **(1)** the BIR is not duly authorized to file the instant *Petition for Review* without the necessary deputization from the Office of the Solicitor General (OSG); and that **(2)** a judgment of acquittal may no longer be appealed and reviewed by the Court.

The BIR is not duly authorized to represent the People of the Philippines to file the present Appeal

First and foremost, it is fundamental that it is the **OSG which has the primary duty to represent the Government** in all proceedings it is involved in – the key provision of which may be found in the Administrative Code of 1987, which outlines the powers and functions of the OSG, including but not limited to the following:

²⁷ EB Docket, pp. 1 to 4.
²⁸ Notice, EB Docket, p. 6.
²⁹ EB Docket, pp. 7 to 21.

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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.³⁰ (*Emphasis supplied*)

While it may be argued that under Section 220 of the Tax Code, it is provided that civil and criminal actions under the Tax Code or other laws enforced by the BIR, and proceedings instituted in behalf of the Government, shall be conducted by the legal officers of the BIR, this was already categorically clarified in the Supreme Court case of *Civil Service Commission, et al. v. Asensi*,³¹ that the duty of the OSG to represent the Government remains notwithstanding Section 220 of the Tax Code, *viz.*:

...the Court has already ruled on a similar argument before in *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*, which was previously cited in the assailed Resolution. In that case, the Commissioner of Internal Revenue invoked Section 220 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* 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*); (*Citations omitted*)

³⁰ Section 35, Chapter 12, Title III, Book IV.

³¹ G.R. No. 160657, December 17, 2004.

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Moreover, the same case likewise specifically provided that the primary responsibility of the Solicitor General to appear for the government extends further to appellate proceedings.³²

Additionally, Revenue Memorandum Circular (RMC) No. 025-10 was issued, published, and discussed the relevant Memorandum of Agreement (MOA) executed between the OSG and the BIR, where the respective responsibilities and duties of the latter agencies in the facilitation and preparation of tax cases, were clearly defined and designated. It was likewise categorically stated that as regards the aspect of appeals before the CTA *En Banc*, the OSG deputizes BIR handling lawyers to continue the prosecution or litigation of such cases. Moreover, the BIR was likewise required to periodically submit a list of handling lawyers to be deputized by the OSG, *viz.*:

REVENUE MEMORANDUM CIRCULAR NO. 025-10³³

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.

³² *Civil Service Commission, et al. v. Asensi*, G.R. No. 160657, December 17, 2004.

³³ Publishing the Full Text of the Memorandum of Agreement Between the BIR and the OSG, March 17, 2010.

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

Verily, while the OSG may deputize BIR handling lawyers to continue its tax cases before the CTA *En Banc*, the former retains supervision and control over such deputized lawyers, as held in *Republic of the Philippines, represented by the Land Registration Authority vs. Raymundo Viaje, et al.*,³⁴ 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.'** (*Emphases and underscoring added*)

Thus, in light 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. To repeat, it is clear that as a general rule, the OSG is the proper party to file the necessary appeal, unless it deputizes other legal officers to continue such cases on its behalf, while retaining supervision and control therein.

Equally important and applicable to the present case is that under the procedure in criminal cases provided in Section 10, Rule 9 of the RRCTA, the rule and concept that it is the Solicitor General who stands as counsel for the People and government officials sued in their official capacity, is likewise echoed therein, to wit:

RULE 9 PROCEDURE IN CRIMINAL CASES

XXX XXX XXX

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**

³⁴ G.R. No. 180993, January 27, 2016.

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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*)

It may also be gleaned from the foregoing that while the Solicitor General may deputize lawyers of the BIR in relation to cases brought under the Tax Code or other laws administered and enforced by the agency, such is qualified by the statement that they must still be under the direct control and supervision of the Solicitor General.

Hence, the foregoing premises considered, this Court *En Banc* finds that a close examination of the instant *Petition for Review* before Us reveals that it is merely filed by the BIR lawyers acting as special prosecutors without any deputization from the OSG, instead of the latter who is the primary responsible party to appear on behalf of the government in appellate proceedings. In fact, as early as the filing of the *Motion for Extension of Time to File Petition for Review*,³⁵ no such authorization from the OSG existed.

Thus, the absence of such written authorization from the OSG on the *Petition* and the *Motion for Extension* is fatal. The present Appeal, although timely filed, cannot, thus prosper. In the recent case of *Commissioner of Internal Revenue v. Second Division of the Court of Tax Appeals*,³⁶ it has been held 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.**

After all, the Court deems it crucial to emphasize that the Supreme Court has consistently ruled that the right to appeal is merely a privilege, not a natural right, and the procedures governing the same must be adhered to. Otherwise, the right to appeal may be lost. We find basis in the case of *Stolt-Nielsen Marine Services Inc. v. National Labor Relations Commission*,³⁷ which provides that:³⁸

³⁵ EB Docket, pp. 1 to 4.

³⁶ G.R. No. 280165, August 4, 2025.

³⁷ G.R. No. 147623, December 13, 2005.

³⁸ G.R. No. 255473, February 13, 2023.

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Time and again, it has been held that the **right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law.** The party who seeks to avail of the same **must comply with the requirements of the rules, failing in which the right to appeal is lost.** (*Emphasis supplied*)

The present Petition for Review cannot likewise prosper as it calls for the review of the acquittal of respondent

Settled is the rule that a judgment of acquittal is final and unappealable

At the outset, the key provision which lays down the rules on appeal in criminal cases is found in Section 1, Rule 122 of the Revised Rules on Criminal Procedure,³⁹ where it is stated that, any party **may file an appeal** from an order or judgment, **except when the accused will be placed in double jeopardy**, to wit:

RULE 122
Appeal

SECTION 1. *Who May Appeal.* — Any party may appeal from a judgment or final order, **unless** the accused will be placed in double jeopardy. (2a) (*Emphasis supplied*)

The rule is clear, while appeals in criminal cases may be pursued, it cannot prosper if the accused will be placed in double jeopardy. This proscription against double jeopardy is enshrined in our fundamental law of the land, 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.*"⁴⁰

The essence of the constitutional prohibition against double jeopardy is further explained in the case of *People v. Nazareno*,⁴¹ where

³⁹ Revised Rules of Criminal Procedure, A.M. No. 00-5-03-SC, October 3, 2000.

⁴⁰ Section 21, Article III, 1987 Constitution.

⁴¹ G.R. No. 168982, August 5, 2009.

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the Supreme Court explicitly pronounced the absolute and inflexible rule that the State is proscribed from appealing the judgment of acquittal under a regular mode of appeal as this is violative of the rule against double jeopardy, *viz.*:

The Constitution has expressly adopted the double jeopardy policy and thus **bars multiple criminal trials**, thereby conclusively presuming that a second trial would be unfair if the innocence of the accused has been confirmed by a previous final judgment. **Further prosecution via an appeal** from a judgment of acquittal is likewise barred because the government has already been afforded a complete opportunity to prove the criminal defendant's culpability; after failing to persuade the court to enter a final judgment of conviction, the underlying reasons supporting the constitutional ban on multiple trials applies and becomes compelling. The reason is not only the defendant's already established innocence at the first trial where he had been placed in peril of conviction, but also the same untoward and prejudicial consequences of a second trial initiated by a government who has at its disposal all the powers and resources of the State. Unfairness and prejudice would necessarily result, as the government would then be allowed another opportunity to persuade a second trier of the defendant's guilt while strengthening any weaknesses that had attended the first trial, all in a process where the government's power and resources are once again employed against the defendant's individual means. That the second opportunity comes *via* an appeal does not make the effects any less prejudicial by the standards of reason, justice and conscience.

Thus, the **absolute and inflexible rule is that the State is proscribed from appealing the judgment of acquittal through either a regular appeal** under Rule 41 of the Rules of Court, or an appeal by *certiorari* on pure questions of law under Rule 45 of the same Rules. (*Emphasis supplied*)

Likewise settled is 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.⁴² Thus, while it is true that the extinction of the penal action does not automatically carry with it extinction of the civil action,⁴³ and hence, the aspect of civil liability of an accused may be appealed despite his or her previous acquittal, such is not attendant in this case.

⁴² *Goodland Company, Inc. v. Co*, G.R. No. 196685, December 14, 2011.

⁴³ Section 2, Rule 111, Revised Rules of Criminal Procedure, A.M. No. 00-5-03-SC, October 3, 2000.

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In the case at hand, it may be recalled that petitioner specifically prays that the present appeal be given due course, and that the First and Second Assailed Resolutions of the CTA Division be reversed and set aside, *insofar as the civil aspect of the case is concerned*, to wit:⁴⁴

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court *En Banc* that:

- (i) The instant petition be given due course;
- (ii) The assailed Resoluti[o]ns promulgated on March 26, 2024 September 06, 2024 be reversed and set aside insofar as the civil aspect of the case is concerned.

Petitioner further prays for such other reliefs and/or remedy this Honorable Court may deem just and equitable under the premises.

Upon careful review, although on the face of such a prayer, petitioner appears to merely seek review of the civil aspect of the case, the Court finds that the discussions pertained in the body of the *Petition for Review* actually pertains to a review of the merits of the previous acquittal of the respondent – and no such arguments and discussion on the civil aspect was thereby exhaustively and sufficiently explained.

Below is an excerpt from one of the arguments raised by herein petitioner in its appeal, which clearly references to the evidence submitted by petitioner to establish the *guilt of the respondent beyond reasonable doubt*, to wit:

31. While the petitioner submits that these pieces of evidence have not been offered by respondent, these supports the **strong contention of the petitioner that it was able to establish the guilt of the respondent beyond reasonable doubt.** xxx⁴⁵
(*Emphasis supplied*)

Likewise, the assignment of errors claimed by herein petitioner, obviously references to the conviction of herein respondent, and the charge against him, to wit:

⁴⁴ EB Docket, p. 18.

⁴⁵ Par. 31, Arguments/Discussions, *Petition for Review*, p. 14.

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ASSIGNMENT OF ERROR OF FACT AND LAW

WITH ALL DUE RESPECT, THE HONORABLE COURT A *QUO* ERRED IN RULING THAT PETITIONER FAILED TO ADDUCE SUFFICIENT EVIDENCE TO CONVICT RESPONDENT LEBITE.

WITH ALL DUE RESPECT, THE HONORABLE COURT A *QUO* ERRED IN RULING THAT THE OFFENSE CHARGED HAD ALREADY PRESCRIBED.⁴⁶ (*Emphasis and underscoring supplied*)

Settled is the rule that *what determines the nature and character of an action is not the prayer but the essential basic allegations of fact set forth in the pertinent pleading*.⁴⁷ As likewise held in *Hirakawa v. Lopzcom Realty Corp.*,⁴⁸ to wit:

Indeed, allegations in **the body of the pleading** or the complaint, and not its title or nomenclature, **determine the nature of an action**, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted. (*Emphasis supplied*)

The Court *En Banc* finds that the present *Petition* is apparently an appeal from a judgment of acquittal. It seeks to throw the case wide open, and at the risk of herein respondent being again punished for the same offense already previously threshed upon. We thus, find that the Appeal cannot prosper as it questions the acquittal of the respondent, which is in violation of the latter's constitutional safeguard against double jeopardy. The case of *Villareal v. Aliga*,⁴⁹ is thus instructive, to wit:

If the petition, regardless of its nomenclature, merely calls for an ordinary review of the findings of the court a quo, the constitutional right of the accused against double jeopardy would be violated. (*Emphasis supplied*)

To recall, the CTA Division previously granted the *Demurrer to Evidence (with prior leave of Court)* filed by respondent, and acquitted the latter on the grounds of insufficiency of evidence and prescription of the offense charged. To briefly recap, it was previously ruled that considering the prosecution failed to prove that the alleged assessment and other BIR correspondences were served to respondent, such

⁴⁶ Division Docket, p. 11.

⁴⁷ *Schenker v. Gemperle*, G.R. No. L-16449, August 31, 1962.

⁴⁸ G.R. No. 213230, December 5, 2019.

⁴⁹ G.R. No. 166995, January 13, 2014.

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assessment is void and negates the presence of willfulness as an element of the crime of failure to pay under Section 255 of the Tax Code charged against herein respondent. Hence, the case was dismissed and the accused, herein respondent was acquitted.

Clearly, the prosecution was afforded an opportunity to establish its case by presenting its evidence which would support its premise that respondent is guilty of the crime charged. Unfortunately, finding no merit, and insufficient to overcome its presumption of the innocence of the latter, the CTA Division acquitted the accused and thus, cannot thereafter be questioned on appeal. Besides, a judicial action on a demurrer to evidence is best left to the exercise of sound judicial discretion.⁵⁰ The 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.*⁵¹

Considering that herein respondent was already previously acquitted when the CTA Division granted his demurrer to evidence, such a grant is equivalent to a judgment on the merits that terminates the case.⁵² Hence, legal jeopardy has already attached,⁵³ and any attempt to review or appeal the same would amount to double jeopardy – which right against the same is constitutionally protected. Oft repeated by jurisprudence is that a **judgment of an acquittal is final and unappealable**⁵⁴ because doing so places the accused in double jeopardy.

In *Philippine Savings Bank v. Spouses Bermoy*,⁵⁵ the High Court was explicit in ruling 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:

Thus, we held in an earlier case:

⁵⁰ *People v. Sandiganbayan*, G.R. No. 164577, July 5, 2010.

⁵¹ *People v. Orteza*, G.R. No. 173051 [Formerly G.R. No. 161678], July 31, 2007.

⁵² *Philippine Savings Bank v. Spouses Bermoy*, G.R. No. 151912, September 26, 2005.

⁵³ 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).

⁵⁴ *People of the Philippines v. Asis*, G.R. No. 173089, August 25, 2010.

⁵⁵ G.R. No. 151912, September 26, 2005.

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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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Thus, premises considered, aside from the absence of the BIR's legal authority to pursue the present appeal, such appeal to this Court *En Banc* by virtue of a *Petition for Review* under the ordinary rules of a regular appeal cannot be countenanced since it seeks a review of the previous acquittal of herein respondent, and therefore violative of the latter's constitutional right against double jeopardy.

Petitioner is clearly mistaken in its appellate pursuit, and the Court cannot allow such a legal maneuver to reopen and review the acquittal of respondent in the guise of specifically only elevating the civil aspect of the case, when clearly it is not.

Thus, premises considered, it is worthy to reiterate that a judgment of acquittal, "even if seemingly erroneous," is the final verdict.⁵⁶ 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.⁵⁷

Finally, at the risk of being repetitive, it is worthy to note and inculcate the essence of the finality of a judgment of an acquittal as held by the Supreme Court in *Mandagan v. Jose M. Valero Corp.*,⁵⁸ to wit:

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.

Thus, We shall no longer belabor to rule on the errors assigned by herein petitioner.

WHEREFORE, in view of the foregoing, the *Petition for Review* is **DISMISSED**.

SO ORDERED.

⁵⁶ *People v. Sandiganbayan*, G.R. No. 164577, July 5, 2010.

⁵⁷ *People v. Court of Appeals*, G.R. No. 128986, June 21, 1999.

⁵⁸ G.R. No. 215118, June 19, 2019.

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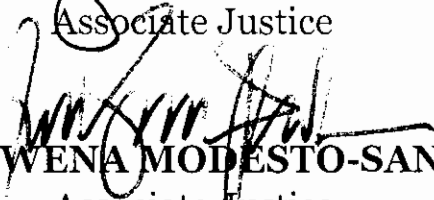
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HENRY S. ANGELES
Associate Justice

WE CONCUR:


MA. BELEN M. RINGPIS-LIBAN
Presiding Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


PAOLO S. TESTON
Associate Justice


DEBBIE JEAN I. 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