REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

LILY PEDROSO, ERNESTO PEDROSO, and ELVIN PEDROSO,
Petitioners,

- versus -

THE HONORABLE ALMA CRISPINA B. COLLADO-LACORTE, PRESIDING JUDGE, REGIONAL TRIAL COURT CITY OF MANILA BRANCH 21, and BUREAU OF INTERNAL REVENUE,
Respondents.

CTA AC NO. 240

Members:

CASTAÑEDA, JR., *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
FEB 18 2022 9:15 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for *Certiorari*[1] filed by petitioners Lily Pedroso (**Lily**), Ernesto Pedroso (**Ernesto**) and Elvin Pedroso (**Elvin**) [**petitioners**] under Rule 65[2] of the Rules of Court imputing grave

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[1] Filed on 25 September 2020, Division Docket, pp. 5-19.

[2] **Section 1.** *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

abuse of discretion amounting to lack or in excess of jurisdiction on the part of public respondent Honorable Alma Crispina B. Collado-Lacorte, Presiding Judge, Regional Trial Court City of Manila Branch 21 (**public respondent**) in issuing the assailed Orders dated 02 December 2019[3] (**first assailed Order**) and 27 July 2020[4] (**second assailed Order**), denying petitioners' Motion to Quash[5] and Motion for Reconsideration[6] (**MR**), respectively.

Petitioners Lily and Ernesto are Filipino citizens, of legal ages, and married to each other. Petitioner Elvin is a Filipino citizen, of legal age and single. Petitioners are general partners of R-Jell Marketing & Construction Co. (**R-Jell**) with business address at 1456 Felix Huertas St., Brgy. 317, Zone 032, Sta. Cruz, Manila.[7]

Public respondent is the Presiding Judge of the Regional Trial Court, City of Manila (**RTC Manila**), Branch 21.[8]

Private respondent Bureau of Internal Revenue (**private respondent/BIR**) is the government agency charged with, among other powers and duties, the responsibility of collecting all national internal revenue taxes.[9]

The antecedent facts follow.

On 03 July 2014, private respondent, through 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[10] against petitioners before the Department

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The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

3 Division Docket, pp. 20-24.
4 Id., pp. 26-28.
5 Id., pp. 29-33.
6 Id., pp. 46-49.
7 Paragraph 8, Petition for *Certiorari*, id., p. 6.
8 Paragraph 9, id., pp. 6-7.
9 Paragraph 10, id., p. 7.
10 Id., pp. 92-100.

of Justice (**DOJ**) for alleged violations of Section 254[11] and 255[12] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.[13]

In response, petitioners filed their Counter-Affidavit and thereafter, the said ROs filed their Joint Reply-Affidavit.[14]

The DOJ, through Assistant State Prosecutor Mary Ann S. Parong (**ASP Parong**) and approved by Senior Deputy State Prosecutor Richard Anthony D. Fadullon (**SDSP Fadullon**) issued a Resolution, dated 10 September 2018[15], finding probable cause against petitioners for their alleged failure to supply correct and accurate information in [R-Jell's] Quarterly Value Added Tax (**VAT**) returns resulting to deficiency VAT.[16]

Petitioners thus filed before the DOJ a Motion for Reconsideration & to Hold in Abeyance Filing of Information[17] (**Motion for Reconsideration and to Hold in Abeyance**), which was denied in Resolution dated 29 April 2019.[18]

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11 **Section 254.** *Attempt to Evade or Defeat Tax.* – Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand (P30,000) but not more than One hunderd thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

12 **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

13 Paragraph 11, Petition for *Certiorari*, Division Docket, p. 7.

14 Paragraph 12, id.

15 Id., pp. 150-162.

16 Paragraph 13, Petition for *Certiorari*, id., p. 7.

17 Id., pp. 163-169.

18 Id., pp. 170-172.

On 12 April 2019, twelve (12) Informations were filed in RTC Manila which were raffled to Branches 21 and 47. Upon motion of petitioners, all cases were consolidated before the court of public respondent (Branch 21) where the case with the lowest docket number was raffled.[19]

On 05 August 2020, petitioners filed a Motion to Quash[20] claiming that the inordinate delay in the conduct of the preliminary investigation violated their right to speedy trial; thus, the Informations filed against them should be quashed.[21]

Private respondent filed its Comment[22] dated 08 August 2019, while the public prosecutor filed his own Comment/Opposition[23] dated 16 August 2019.[24]

On 22 August 2019, petitioners filed their Reply[25] to the BIR's Comment and the Comment/Opposition of the public prosecutor.[26]

On 12 February 2020, petitioners received the first assailed Order.[27] The dispositive portion of which reads:

> ...
>
> IN VIEW OF ALL THE FOREGOING, the Motion to Quash the respective Information is hereby DENIED.
>
> Let the initial presentation of prosecution's evidence be set on February 28, 2020 at 8:30 o'clock in the morning.
>
> SO ORDERED.
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> ...

In denying the Motion to Quash, public respondent reasoned that: (1) the cases against petitioners are complex and involve several

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19 Paragraph 14, Petition for *Certiorari*, id., p. 7.
20 Dated 02 August 2020. Supra at note 5.
21 Paragraph 15, Petition for *Certiorari*, Division Docket, p. 7.
22 Id., pp. 34-37.
23 Id., pp. 38-40.
24 Paragraph 16, Petition for *Certiorari*, id., p. 8.
25 Id., pp. 41-45.
26 Paragraph 17, Petition for *Certiorari*, id., p. 8.
27 Supra at note 3.

taxable years; (2) petitioners were not able to show that they have asserted their right to a speedy disposition of cases during the four (4) years of preliminary investigation and instead, waited until the Information[s] were filed in court; (3) contrary to their claim that there was no contributory act on their part, petitioners in fact filed the Motion for Reconsideration and to Hold in Abeyance; and, (4) petitioners have been arraigned, pre-trial has already been conducted and terminated, and the presentation of prosecution's evidence was about to commence when petitioners filed the Motion to Quash.

On 24 February 2020, petitioners filed their MR[28], to which the public prosecutor filed his Comment/Opposition[29] on 20 July 2020.

On 27 July 2020, petitioners received the second assailed Order[30] *via* electronic mail denying petitioners' MR.

On 25 September 2020, petitioners filed the instant Petition for *Certiorari*[31], to which private respondent filed its Comment/ Opposition[32] on 05 November 2020.

In compliance with the directive of the Court[33], private respondent filed its Memorandum dated 11 February 2021[34], while petitioners filed their own dated 15 February 2021.[35] Consequently, on 18 February 2021, the case was submitted for decision.[36]

Petitioners raise the following grounds in support of the instant petition:

I.

PUBLIC RESPONDENT HONORABLE ALMA CRISPINA B. COLLADO-LACORTE, PRESIDING JUDGE, REGIONAL TRIAL COURT CITY OF MANILA BRANCH 21 GRAVELY ABUSED HER

28 Supra at note 6.
29 Division Docket, pp. 50-51.
30 Supra at note 4.
31 Supra at note 1.
32 Division Docket, pp. 58-69.
33 *Per* Resolution dated 07 January 2021, id., pp. 73-74.
34 Id., pp. 75-91.
35 Id., pp. 249-260.
36 *Per* Resolution dated 18 February 2021, id., p. 262.

DISCRETION IN FAILING TO CONSIDER [THAT] INORDINATE DELAY ATTENDED THE RESOLUTION OF THE CASES OF PETITIONERS LILY PEDROSO, ERNESTO PEDROSO, AND ELVIN PEDROSO, THUS, THEIR CONSTITUTIONAL RIGHT TO SPEEDY DISPOSITION OF CASES WERE VIOLATED;

II.

PUBLIC RESPONDENT HONORABLE ALMA CRISPINA B. COLLADO-LACORTE, PRESIDING JUDGE, REGIONAL TRIAL COURT CITY OF MANILA BRANCH 21 GRAVELY ABUSED HER DISCRETION IN AGREEING WITH THE BUREAU OF INTERNAL REVENUE (BIR) THAT THE DELAY WAS JUSTIFIED DUE TO THE COMPLEXITY OF THE CASE AGAINST PETITIONERS LILY PEDROSO, ERNESTO PEDROSO, AND ELVIN PEDROSO;

III.

PUBLIC RESPONDENT HONORABLE ALMA CRISPINA B. COLLADO-LACORTE, PRESIDING JUDGE, REGIONAL TRIAL COURT CITY OF MANILA BRANCH 21 GRAVELY ABUSED HER DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAILING TO RECOGNIZE THAT INORDINATE DELAY HAD ALREADY SET IN PRIOR TO THE FILING OF A MOTION FOR RECONSIDERATION WITH THE DEPARTMENT OF JUSTICE (DOJ); AND,

IV.

PUBLIC RESPONDENT HONORABLE ALMA CRISPINA B. COLLADO-LACORTE, PRESIDING JUDGE, REGIONAL TRIAL COURT CITY OF MANILA BRANCH 21 GRAVELY ABUSED HER DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN STATING THAT THE MOTION TO QUASH WAS NOT FILED ON TIME.

Petitioners argue that from the filing of the Joint Complaint-Affidavit against them on 03 July 2014, the DOJ spent more than 4 years completing the preliminary investigation. Thereafter, it took almost one (1) year before the Informations were filed in court. Thus, petitioner waited for an aggregate period of 4 years and nine (9) months during which they were burdened with uncertainty and extreme anxiety. According to them, the inordinate delay in the conduct of preliminary investigation violated their constitutional right to speedy trial which is guaranteed under Section 16[37], Article III of the 1987 Constitution.

[37] **SEC. 16.** All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Citing the case of *Francisco S. Tatad v. The Sandiganbayan, et al.*[38], petitioners aver that "[a] delay of close to three (3) years can not be deemed reasonable or justifiable in the light of the circumstance obtaining in the case at bar."

Additionally, in a case[39] decided by this Court, it was also found that there was inordinate delay when it took more than 3 years to resolve the preliminary investigation and six (6) months to actually file the Information with this Court.

Petitioners also contend that the delay in the conduct of the preliminary investigation damaged their good business reputation. They added that petitioner Lily has already suffered stroke twice since the onset of the filing of the criminal complaint. On the other hand, petitioner Elvin's participation in the alleged crime was never shown. In fact, he was gainfully employed and had no actual participation in the management and affairs of the company but due to stress and negative impression of being a party to a criminal case, he was forced to resign from his previous employment.

As to public respondent's ruling that the complexity of the case justified the delay, petitioners submit that the cases filed against them are not complex as to warrant a delay in the preliminary investigation for more than 4 years.

Petitioners posit that the investigating prosecutor is already in possession of the documentary evidence summarizing the payments of Amkor Technology Philippines Inc. (**Amkor**) to R-Jell in the total amount of ₱83,407,088.62 as well as the sales of R-Jell in the total amount of ₱25,672,222.93, all for taxable years 2005 to 2008. Aside from that, the investigating prosecutor already noted that petitioners were not able to present any Philippine Economic Zone Authority (**PEZA**) certifications to exempt them from VAT. Hence, the investigating prosecutor could have easily and promptly resolved the preliminary investigation and file the necessary Information in court.

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38 G.R. Nos. 72335-39, 21 March 1988.
39 *People of the Philippines v. Emelino T. Maestro*, CTA Crim. Case No. O-661, 24 May 2018.

Petitioners also aver that the mere fact that they have not asserted their rights to speedy disposition of cases when the same were still pending before the DOJ does not constitute waiver of their rights.

Petitioners add that they did not file any motion or pleading that could have contributed to the inordinate delay. Their filing of a Motion for Reconsideration and to Hold in Abeyance did not contribute to the inordinate delay because at the time of such filing, cases against petitioners had already been pending for more than 4 years.

The reorganization in the DOJ that allegedly caused the further delay is misleading as the same occurred only on 09 July 2018 while the complaint against them was filed as early as 03 July 2014. Thus, even before the DOJ's reorganization, the cases were already pending resolution for 4 years.

Petitioners also claim that they filed the Motion to Quash on 05 August 2019 while they were arraigned only on 07 August 2019 for Criminal Case Nos. R-MNL-19-03524-CR, R-MNL-19-03526-CR, R-MNL-19-03528-CR, R-MNL-19-03533, R-MNL-19-03534-CR and only on 09 August 2019 for Criminal Case Nos. R-MNL-19-03532-CR and R-MNL-19-03535-CR. As such, the Motion to Quash was timely filed prior to the arraignment and pre-trial.

On the other hand, private respondent contends that there was no violation of the right to speedy disposition of their cases.

Private respondent submits that in view of the change of administration and the reorganization of the prosecution team in the DOJ, the cases were acted upon sixty (60) days after their reorganization. Hence, there was no inaction or delay to speak of since there was an inevitable change in the administration which necessarily affects the disposition of cases.

Private respondent likewise countered that petitioners should have asserted the right to the speedy disposition of their cases with the DOJ and not wait until the respective Informations were already filed

in court. On the contrary, it was them who asked for the withholding of the filing of the Informations.

Private respondent further claims that petitioners have been arraigned, and the pre-trial has been conducted and terminated when petitioners filed their Motion to Quash.

According to respondent, under the Rules of Court[40], once the accused is arraigned, a motion to quash will not prosper except on the grounds that failure to charge an offense, lack of jurisdiction, extinction of criminal action or liability and double jeopardy.

Lastly, private respondent argues that petitioners actively participated in the proceedings even before the cases were consolidated in RTC Manila Branch 21. In fact, trial was about to commence when they filed their Motion to Quash and thus was not filed on time.

The Court's ruling follows.

After a careful review of the records of the case, the Court finds no merit in the instant Petition for *Certiorari.*

At the onset, in filing the present petition, petitioners deliberately disregarded a fundamental condition for initiating a special civil action for *certiorari*, that is, there must be no plain, speedy, and adequate remedy in the ordinary course of law. As succinctly summarized in the introductory paragraph in *Godofredo Enrile, et al. v. Hon. Danilo A. Manalastas, et al.*[41]:

> ...
> The remedy against the denial of a motion to quash is for the movant accused to enter a plea, go to trial, and should the decision be adverse, reiterate on appeal from the final judgment and assign as

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40 **Section 9.** *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule. (Rule 117, Rules of Court)

41 G.R. No. 166414, 22 October 2014.

error the denial of the motion to quash. The denial, being an interlocutory order, is not appealable, and may not be the subject of a petition for certiorari because of the availability of other remedies in the ordinary course of law.

...

This was reiterated in the case of *Senator Leila M. De Lima v. Hon. Juanita Guerrero, et al.*[42], where the Supreme Court ruled:

...
The third option available to the trial court is the **denial of the motion to quash**. Even granting, for the nonce, the petitioner's position that the trial court's issuance of the warrant for her arrest is an implied denial of her Motion to Quash, **the proper remedy against this court action is to proceed to trial, not to file the present petition for *certiorari***. This Court in *Galzote v. Briones* reiterated this established doctrine:

> A preliminary consideration in this case relates to the propriety of the chosen legal remedies availed of by the petitioner in the lower courts to question the denial of his motion to quash. In the usual course of procedure, **a denial of a motion to quash filed by the accused results in the continuation of the trial and the determination of the guilt or innocence of the accused**. If a judgment of conviction is rendered and the lower court's decision of conviction is appealed, the accused can then raise the denial of his motion to quash not only as an error committed by the trial court but as an added ground to overturn the latter's ruling.
>
> In this case, the petitioner did not proceed to trial but opted to immediately question the denial of his motion to quash via a special civil action for *certiorari* under Rule 65 of the Rules of Court.
>
> As a rule, **the denial of a motion to quash is an interlocutory order and is not appealable; an appeal from an interlocutory order is not allowed under Section 1 (b), Rule 41 of the Rules of Court. Neither can it be a proper subject of a petition for *certiorari* which can be used only in the absence of an appeal or any other adequate,**

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42 G.R. No. 229781, 10 October 2017; Citation omitted, emphasis, underscoring and italics in the original text.

> **plain and speedy remedy. <u>The plain and speedy remedy upon denial of an interlocutory order is to proceed to trial</u>** as discussed above.
>
> ...

From the foregoing, it is clear that the instant Petition for *Certiorari* is without merit considering the absence of a requisite thereof which necessitates that there must be no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. As discussed in the above-mentioned cases, the plain, speedy, and adequate remedy for petitioners is to proceed to trial; and should the decision be adverse, assign as error the denial of the Motion to Quash in their appeal.

Aside from the fact that the filing of the instant petition is not proper, there are also procedural lapses on petitioners' part adding to the reason for the Court's denial hereof.

First, the filing of the said Motion to Quash which is grounded on the alleged violation of petitioners' right to speedy disposition of their cases is a prohibited motion and should have been denied outright.

The Revised Guidelines for Continuous Trial of Criminal Cases[43] (**Revised Guidelines**) provide:

> ...
> 2. Motions
> ...
>
> (b) Prohibited Motions. - Prohibited motions shall be denied outright before the scheduled arraignment without need of comment and/or opposition.
>
> The following motions are prohibited:
> ...
>
> iv. Motion to quash information when the ground is not one of those stated in Sec. 3, Rule 117.
> ...

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43 A.M. No. 15-06-10-SC dated 25 April 2017.

Corollary, Section 3, Rule 117 of The Revised Rules of Criminal Procedure reads:

> ...
>
> **Section 3.** *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:
>
> (a) That the facts charged do not constitute an offense;
>
> (b) That the court trying the case has no jurisdiction over the offense charged;
>
> (c) That the court trying the case has no jurisdiction over the person of the accused;
>
> (d) That the officer who filed the information had no authority to do so;
>
> (e) That it does not conform substantially to the prescribed form;
>
> (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
>
> (g) That the criminal action or liability has been extinguished;
>
> (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
>
> (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.
>
> ...

From the foregoing, it is evident that petitioners' Motion to Quash not based on any of the aforementioned grounds is a prohibited motion which should have been denied outright.

Second, assuming for the sake of argument that their Motion to Quash can be considered a meritorious motion, petitioners' MR on the first assailed Order was not filed on time.

As admitted by petitioners, they received the first assailed Order on 12 February 2020.[44] Petitioners thus contend that they timely filed their MR within fifteen (15) days therefrom or on 24 February 2020. Petitioners are mistaken.

Under the Revised Guidelines, "[t]he motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution[.]"

As such, petitioners had only 5 days from receipt of the first assailed Order or until 17 February 2020 within which to file their MR. Since the said MR was filed only on 24 February 2020, the same was belatedly made; resultantly, the first assailed Order is already considered final.

In sum, the Court finds that the filing of the instant petition is not the proper remedy. As such, it is no longer necessary or fruitful to address the other issues raised herein.

WHEREFORE, in view of the foregoing, the instant Petition for *Certiorari* filed by petitioners Lily Pedroso, Ernesto Pedroso and Elvin Pedroso dated 25 September 2020 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[44] Paragraph 18, Petition for *Certiorari*, Division Docket, p. 8.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice