

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. LUCIO C. TAN, FORTUNE TOBACCO CORPORATION, ANTONIO P. ABAYA, HARRY C. TAN, CARMEN KHAO TAN, FLORENCIO C. SANTOS, SALVADOR F. MISON, RO...

G.R. No. 144707. July 13, 2004

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court which seeks to set aside the Decision[1] of the Court of Appeals dated August 29, 2000 in C.A.-G.R. SP No. 56077, which dismissed petitioner's appeal from the Orders of the Regional Trial Court of Marikina City, Branch 273 (RTC-Marikina) dated August 25, 1999[2] and October 13, 1999[3] in SCA Case No. 95-340-MK. RTC-Marikina dismissed the petition for certiorari filed by the Department of Justice Panel of State Prosecutors, for being filed out of time.

The petition for certiorari before the RTC sought to annul and set aside (a) the Order dated March 22, 1999[4] of the Metropolitan Trial Court, Branch 75, Marikina City (MeTC), dismissing the criminal informations filed by the DOJ Panel against herein respondents; and (b) the Order dated May 17, 1999[5] of said MeTC denying the DOJ Panel's Motion for Reconsideration.

ANTECEDENT FACTS

On September 7, 1993, the Commissioner of Internal Revenue filed a Complaint with the Department of Justice (DOJ), charging Fortune Tobacco Corporation (hereafter "Fortune"), its corporate officers, nine (9) other corporations and their respective corporate officers, with fraudulent tax evasion for supposed non-payment of the correct ad valorem, income and value-added taxes for the year 1992.

The complaint was docketed as I.S. No. 93-508 and referred to the DOJ Task Force on Revenue Cases.

The next day, on September 8, 1993, the DOJ Task Force, through a designated panel of prosecutors (DOJ Panel) issued a Subpoena directing respondents to submit their counter-affidavits not later than September 20, 1993.

On October 15, 1993, Fortune filed a Verified Motion to Dismiss; Alternatively Motion to Suspend.[6]

At the scheduled preliminary investigation on October 15, 1993, the DOJ Panel denied the motion to dismiss and treated the same as respondents' counter-affidavits.

On October 26, 1993, Commissioner Liwayway Vinzons-Chato filed with the DOJ, the 2nd Criminal Complaint against respondents, alleging the same acts of tax evasion, this time for taxable year 1991. The same was docketed as I.S. No. 93-584.

On December 21, 1993, the BIR Commissioner filed the 3rd Criminal Complaint against respondents, this time with the Office of the City Prosecutor of Quezon City, alleging tax evasion for taxable year 1990. The complaint

was docketed as I.S. No. 93-17942.

On January 4, 1994, respondents filed a Petition for Certiorari and Prohibition with the Regional Trial Court of Quezon City (RTC-Quezon City), Branch 88, with prayer for preliminary injunction, which was docketed as Civil Case No. Q-94-18790.

On January 25, 1994, RTC-Quezon City granted respondents' prayer and issued a writ of preliminary injunction, enjoining the conduct of further proceedings before the DOJ Panel in I.S. No. 93-508.

On January 26, 1994 and January 28, 1994, respondents filed two Supplemental Petitions before RTC-Quezon City, also seeking to stay the preliminary investigations of the two other complaints before the DOJ Panel and the Quezon City Prosecutor's Office, respectively.

On February 14, 1994, RTC-Quezon City issued an Order granting respondents' supplemental petitions, thereby also enjoining the preliminary investigations in the two other complaints, I.S. No. 93-584 and I.S. No. 93-17942.

Thus, preliminary investigations for the following three complaints were enjoined:

I.S. No. 93-508 DOJ Task Force Taxable Year 1992

I.S. No. 93-584 DOJ Task Force Taxable Year 1991

I.S. No. 93-17942 Quezon City Prosecutor's Office Taxable Year 1990

G.R. No. 119322

Subsequently,[7] the Commissioner of Internal Revenue filed a Petition for Review before this Court, docketed as G.R. No. 119322.

In a Decision dated June 4, 1996,[8] this Court[9] pronounced:

x x x

The trial court and the Court of Appeals maintained that at that stage of the preliminary investigation, where the complaint and the accompanying affidavits and supporting documents did not show any violation of the Tax Code providing penal sanctions, the prosecutors should have dismissed the complaint outright because of total lack of evidence, instead of requiring private respondents to submit their counter affidavits under Section 3(b) of Rule 112.

We believe that the trial court in issuing its questioned orders, which are interlocutory in nature, committed no grave abuse of discretion amounting to lack of jurisdiction. There are factual and legal bases for the assailed orders. On the other hand, the burden is upon the petitioners to demonstrate that the questioned orders constitute a whimsical and capricious exercise of judgment, which they have not. For certiorari will not be issued to cure errors in proceedings or correct erroneous conclusions of law or fact. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by a special civil action of certiorari. Consequently, the Regional Trial Court acted correctly and judiciously, and as demanded by the facts and the law, in issuing the orders granting the writs of preliminary injunction, in denying petitioners' motion to dismiss and in admitting the supplemental petitions. What petitioners should have done was to file an answer to the petition filed in the trial court, proceed to the hearing and appeal the decision of the court if adverse to them.

WHEREFORE, the instant petition is hereby DISMISSED.

SO ORDERED.

On a subsequent motion for reconsideration, however, this Court En Banc issued a Resolution^[10] dated February 6, 1997, thus:

The Court further Resolved to DENY the motion for reconsideration of the decision dated 4 June 1996, the basic issues raised therein having already been passed upon in said decision and there being no substantial arguments to support said motion.

However, in order to avoid undue delay in the disposition of Civil Case No. Q-94-18790 and the preliminary investigation of the complaints against private respondents, the Court Resolved to:

- REMAND Civil Case No. Q-94-18790 to the Regional Trial Court, Branch 88, Quezon City;
- SET ASIDE the orders of the panel of prosecutors declaring private respondents' "Motion to Dismiss, Alternatively, Motion to Suspend" as private respondents' counter-affidavits, and denying their motions to require petitioner Commissioner of Internal Revenue to submit documents and to inhibit the members of the panel of prosecutors;
- DIRECT the Secretary of Justice to designate as early as possible, a new panel of prosecutors to investigate the complaints against private respondents;
- ORDER the new panel of prosecutors designated by the Secretary of Justice to grant private respondents' motion for the submission by petitioner Commissioner of Internal Revenue to private respondents, thru their counsel of record, of the documents supporting the complaints, and to give private respondents reasonable time to examine the documents and to submit their counter-affidavits;
- ORDER the preliminary investigation to proceed with all reasonable dispatch; and
- DIRECT respondent Judge Tirso Velasco to dismiss Civil Case No. Q-94-18790 on the ground that it has become moot in light of the foregoing dispositions.^[11] (Emphasis ours)

FACTS SUBSEQUENT TO THE G.R. NO. 119322 RESOLUTION

In compliance with this Court's resolution, a New Panel (New DOJ Panel) of prosecutors was created.^[12] The BIR was directed to furnish respondents the documents supporting the complaints and to give respondents time to examine the same and, thereafter, for respondents to submit their counter-affidavits.

On March 20, 1998, the BIR submitted a Manifestation/ Compliance, submitting the required documents with the explanation that it did not produce the other documents (i.e. the Daily Manufacturer's Sworn Statements of other cigarette companies) because to do so would be "inappropriate" as the same "do not, in any manner, bear any relevance" to the preliminary investigation proceedings against Fortune.^[13]

On April 13, 1998, respondents filed a Counter-Manifestation With Motion to produce allegedly lacking or missing documents.

The BIR filed a Comment/Manifestation, reiterating its stand.

Respondents then filed a Motion to Resolve its Motion to Dismiss previously filed with the Old DOJ Panel, prior to the Decision and Resolution in G.R. No. 119322.

Subsequently, on July 24, 1998, the New DOJ Panel ruled that: 1) There was substantial compliance by the BIR with the order to produce documents; 2) on the basis of the evidence submitted by the BIR, the panel finds

sufficient ground to proceed with the preliminary investigation of the cases; and 3) in view of the foregoing findings, the respondents were directed to file their counter-affidavits within 15 days from receipt of the order.

Instead of filing counter-affidavits, the respondents filed a Supplement[14] to its previous Verified Motion to Dismiss; Alternatively Motion to Suspend. Thus, the 15-day period to file counter-affidavits was deemed by the New DOJ Panel to have lapsed, hence, the case was submitted for resolution.

Respondents, thereafter, filed, with the New DOJ Panel, motions to suspend the ongoing preliminary investigation, on the ground that the BIR Legal Service Appellate Division has given due course to Fortune's request for reconsideration/protest of the deficiency tax assessment on Fortune's 1992 tax liabilities.

On November 19, 1998, the New DOJ Panel issued its Resolution[15] stating that as to the Urgent Motion to Suspend, the same is denied since the preliminary investigation was not on the issue of the correctness of the computation of Fortune's tax liabilities and assessment but the determination of whether the acts complained of violate certain provisions of the Tax Code.[16]

The New DOJ Panel resolved the main complaints in favor of the BIR. It found reasonable ground to believe that respondents were probably guilty thereof and should be held for trial.

PROCEEDINGS BEFORE THE MeTC

On December 1, 1998, Informations[17] for nine (9) counts of tax evasion (Taxable Years 1990, 1991 and 1992) were filed by the New DOJ Panel with the Metropolitan Trial Court (MeTC), Marikina City, Branch 75, docketed as Criminal Cases Nos. 98-38181 to 98-38189. The indictments were signed and certified by the New DOJ Panel of state prosecutors.[18]

Said Informations read, as follows:

INFORMATION

The undersigned State Prosecutors of the department of Justice, hereby accuse:

- LUCIO TAN, Chairman; ANTONIO P. ABAYA, President and General Manager; HARRY C. TAN, CARMEN KHAO TAN and FLORENCIO C. SANTOS, Directors; CHUNG POE KEE, Director/Executive Vice-President; ROXAS CHUA, Vice-President/Finance; MARIANO TANENGLIAN, Director/Treasurer; JUANITA TAN LEE, Corporate Secretary; and DAVID R. CORTEZ, External Auditor, all being corporate officers of FORTUNE TOBACCO CORPORATION ("FTC");

- WILLIAM YU, Director/President; LETICIA LIM, Treasurer; GLORIA LOPEZ, Corporate Secretary; ROBERT TANTAMCO, JOSE TIU and FELIPE LOY, Directors, all being corporate officers of TOWNSMAN COMMERCIAL, INC., a dummy corporation of FTC;

- ROLANDO CHUA, President; HONORINA TAN, Treasurer; MILLIE TANTAMCO, Corporate Secretary; HENRY WEECHIE, JESUS LIM, TEODORO TAN, ANTONIO APOSTOL, and DOMINGO TENG, Directors, all being corporate officers of LANDMARK SALES and MARKETING, INC., a dummy corporation of FTC;

- CANDELARIA LI, Director/President; TEODORO TAN, Treasurer; ERLINDA CRUZ, Corporate Secretary; CARLOS TUMPALAN, LARRY JOHN SY, ERNESTO ONG and WOLFREDO MACROHON, Directors, all being corporate officers of CRIMSON CROKER DISTRIBUTORS, INC., a dummy corporation of FTC;

- NEMESIO TAN, President/Director; QUINTIN CALLEJA, Treasurer; YOLANDA MANALILI, Corporate Secretary; CARLOS CHAN, ROMEO TAN, JOHN UY, and VICENTE CO, Directors; all being corporate

officers of DAGUPAN COMBINED COMMODITIES, INC., a dummy corporation of FTC;

- ANTONIO TIU, Director/President; FELIPE LOY, Treasurer; ROSARIO LESTOR, Corporate Secretary; WILFREDO ONG, ROLANDO CHUA, BONIFACIO CHUA, and GO CHING CHUAN, Directors; all being corporate officers of MT. MATUTUM MARKETING CORPORATION, a dummy corporation of FTC;

- HENRY CHAO, Director/President; LOPE LIM GUAN, Director/Treasurer; EMILIO TAN, Director/Corporate Secretary; FELIPE TAN SHE CHUAN and ANDRES CO, Directors, all corporate officers of FIRST UNION TRADING CORPORATION, a dummy corporation of FTC;

- FELIPE KEE, Director/President; HENRY GO CO, Treasurer; NARCISO GO, Secretary; ADOLFO LIM, MAXIMO TAN, CO SHU, and DANIEL YAO, Directors; all being corporate officers of CARLSBERG and SONS, INC., a dummy corporation of FTC;

- GABRIEL QUINTELA, President; NELSON TE, Director/Treasurer; EMILIO GO, Director/Corporate Secretary; EDWIN LEE, CESAR LEDESMA, JR., and JAO CHENG SENG, Directors; all being corporate officers of OMAR ALI DISTRIBUTORS, INC., a dummy corporation of FTC;

- FRANCISCO J. ORIEL, JR., BENJAMIN T. HONG, PHILIP P. JAO, JOSE P. YU and EDISON M. QUE, all corporate directors of ORIEL and CO., INC., a dummy corporation of FTC.

for violation of Section 127[b] (now Section 130[b]), in relation to Section 253 (now Section 254) and Section 252[b] (now Section 253[b]) and Section 255 (now Section 256), of the National Internal Revenue Code (NIRC), as amended, committed as follows: "That during the taxable year 1991, in Marikina City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, as the respective officers of Fortune Tobacco Corporation (FTC) and its nine (9) dummy corporations, conspiring with, and mutually helping each other, with willful intent to evade and defeat payment of the tax due the government, did then and there, unlawfully, feloniously, file with the Bureau of Internal Revenue (BIR) a false and fraudulent ad valorem tax returns for the taxable year 1991, by then and there purposely and maliciously creating, organizing and incorporating the said dummy corporations and employing individual "ghost" buyers to effect/perpetrate fictitious and simulated sales of FTC's cigarette products at a price higher than that of the wholesale price registered with the BIR, thereby facilitating the commission of tax evasion by willfully suppressing the true and accurate sales of FTC and as a consequence of which the FTC, through the above-named accused, fraudulently declared and filed with the BIR for ad valorem tax purposes gross sales of P10,879,999,950.00 and paid only the ad valorem tax in the amount of P4,457,692,647.05 instead of the true aggregate ad valorem tax of P7,154,036,171.00 if the true and accurate gross sales subject to ad valorem tax is declared, thereby defrauding and causing damage and prejudice to the government in undeclared ad valorem taxes in the amount of P6,370,111,575.34 inclusive of increments."

CONTRARY TO LAW.

Manila for Marikina City, Philippines, November 19, 1998.

INFORMATION

The undersigned State Prosecutors of the department of Justice, hereby accuse:

- LUCIO TAN, Chairman; ANTONIO P. ABAYA, President and General Manager; HARRY C. TAN, CARMEN KHAO TAN and FLORENCIO C. SANTOS, Directors; CHUNG POE KEE, Director/Executive Vice-President; ROXAS CHUA, Vice-President/Finance; MARIANO TANENGLIAN, Director/Treasurer; JUANITA TAN LEE, Corporate Secretary; and DAVID R. CORTEZ, External Auditor, all being corporate officers of FORTUNE TOBACCO CORPORATION ("FTC");

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for violation of Section 127[b] (now Section 130[b]), in relation to Section 253 (now Section 254) and Section 252[b] (now Section 253[b]) and Section 255 (now Section 256), of the National Internal Revenue Code (NIRC), as amended, committed as follows:

“That during the taxable year 1990, in Marikina City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, as the respective officers of Fortune Tobacco Corporation (FTC) and its nine (9) dummy corporations, conspiring with, and mutually helping each other, with willful intent to evade and defeat payment of the tax due the government, did then and there, unlawfully, feloniously, file with the Bureau of Internal Revenue (BIR) a false and fraudulent ad valorem tax returns for the taxable year 1990, by then and there purposely and maliciously creating, organizing and incorporating the said dummy corporations and employing individual “ghost” buyers to effect/perpetrate fictitious and simulated sales of FTC’s cigarette products at a price higher than that of the wholesale price registered with the BIR, thereby facilitating the commission of tax evasion by willfully suppressing the true and accurate sales of FTC and as a consequence of which the FTC, through the above-named accused, fraudulently declared and filed with the BIR for ad valorem tax purposes gross sales of P10,581,522,160.00 and paid only the ad valorem tax in the amount of P3,806,272,068.75 instead of the true aggregate ad valorem tax of P6,574,331,124.35 if the true and accurate gross sales subject to ad valorem tax is declared, thereby defrauding and causing damage and

prejudice to the government in undeclared ad valorem taxes in the amount of P7,508,360,188.31 inclusive of increments.”

CONTRARY TO LAW.

Manila for Marikina City, Philippines, November 19, 1998.

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The undersigned State Prosecutors of the department of Justice, hereby accuse:

- LUCIO TAN, Chairman; ANTONIO P. ABAYA, President and General Manager; HARRY C. TAN, CARMEN KHAO TAN and FLORENCIO C. SANTOS, Directors; CHUNG POE KEE, Director/Executive Vice-President; ROXAS CHUA, Vice-President/Finance; MARIANO TANENGLIAN, Director/Treasurer; JUANITA TAN LEE, Corporate Secretary; and DAVID R. CORTEZ, External Auditor, all being corporate officers of FORTUNE TOBACCO CORPORATION (“FTC”);
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for violation of Section 127[b] (now Section 130[b]), in relation to Section 253 (now Section 254) and Section 252[b] (now Section 253[b]) and Section 255 (now Section 256), of the National Internal Revenue Code (NIRC), as amended, committed as follows:

“That during the taxable year 1992, in Marikina City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, as the respective officers of Fortune Tobacco Corporation (FTC) and its nine (9) dummy corporations, conspiring with, and mutually helping each other, with willful intent to evade and defeat payment of the tax due the government, did then and there, unlawfully, feloniously, file with the Bureau of Internal Revenue (BIR) a false and fraudulent ad valorem tax returns for the taxable year 1992, by then and there purposely and maliciously creating, organizing and incorporating the said dummy corporations and employing individual “ghost” buyers to effect/perpetrate fictitious and simulated sales of FTC’s cigarette products at a price higher than that of the wholesale price registered with the BIR, thereby facilitating the commission of tax evasion by willfully suppressing the true and accurate sales of FTC and as a consequence of which the FTC, through the above-named accused, fraudulently declared and filed with the BIR for ad valorem tax purposes gross sales of P11,736,658,580.00 and paid only the ad valorem tax in the amount of P4,805,254,523.00 instead of the true aggregate ad valorem tax of P7,725,832,581.75 if the true and accurate gross sales subject to ad valorem tax is declared, thereby defrauding and causing damage and prejudice to the government in undeclared ad valorem taxes in the amount of P5,792,479,816.24 inclusive of increments.”

CONTRARY TO LAW.

Manila for Marikina City, Philippines, November 19, 1998.

On December 3, 1998, respondents filed an Urgent Opposition to Issuance of Warrants of Arrest.[19] They insist that: (1) Neither law nor evidence justified the filing of the Informations;[20] (2) there was before the New DOJ Panel thousands of documents submitted by the Commissioner of Internal Revenue which negated unequivocally the factual basis of the BIR complaint;[21] (3) there was no evidence of probable cause before the court;[22] (4) the New DOJ Panel should, have acted first on their Motion to Dismiss dated October 14, 1993 and supplemented on July 28, 1998, before proceeding with the preliminary investigation.[23]

In addition, respondents argued that the filing of the Informations was without the approval of the Commissioner of Internal Revenue, a fatal defect, per Section 220, of the National Internal Revenue Code of 1997.[24]

On December 10, 1998, the New DOJ Panel countered by filing a Manifestation with Motion for the Immediate Issuance of Warrants of Arrest.

On December 18, 1998, a Manifestation and Motion[25] was filed before the MeTC by officers[26] of the Litigation and Prosecution Division of the BIR, verified by then incumbent BIR Commissioner Beethoven L. Rualo, praying for the withdrawal of the Informations, stating:

The legal officers of the Bureau of Internal Revenue, particularly the Chief, Litigation & Prosecution Division and the Assistant Chief for Prosecution, conducted a reevaluation of the criminal action subject of the cases under consideration on the basis of a recommendation contained in the memorandum report dated November 11, 1998 of a panel of hearing officers of the Appellate Division duly approved by the Commissioner of Internal Revenue in connection with the administrative hearing of the protested assessment issued by the Bureau of Internal Revenue against Fortune Tobacco Corporation for taxable year 1992, certified true copy of the memorandum report is attached as Annex “A” and is an integral part of this manifestation and motion.

The aforesaid recommendation states:

“1. x x x x x x x x

“2. That the Litigation and Prosecution Division, Legal Service, this Bureau, be directed to conduct a thorough study whether there is still wisdom of proceeding with the criminal complaint.”

As a result, the aforementioned officials of the Bureau have recommended the deinstitutionalization or withdrawal of the criminal complaint filed by then Commissioner Liwayway Vinzons-Chato, a certified true copy of the memorandum recommendation is attached hereto as Annex “B” and is an integral part of this Manifestation and Motion.

This memorandum recommendation has been approved by the Commissioner of Internal Revenue.

On January 15, 1999, MeTC Presiding Judge Alex E. Ruiz ordered the filing of parties’ memoranda.

On March 22, 1999, Judge Ruiz issued an Order[27] dismissing the criminal cases. Citing the provisions of Section 220 of the Tax Reform Act of 1997, Republic Act No. 8424, the trial court ruled:

The Court agrees with the Bureau of Internal Revenue that in view of the aforecited Section of the Tax Reform Act of 1997, a substantive law and the fact that it is evident that the Commissioner of Internal Revenue has not approved the filing of the instant cases, this Court, thus, has no other recourse but to obey the law and dismiss the cases at bar.

x x x

According to the Memorandum dated February 11, 1999 filed by the Bureau of Internal Revenue in connection with its Manifestation and Motion, the Bureau of Internal Revenue in fact conducted several hearings on the tax liability of the accused relative to the protest filed by Fortune Tobacco Corporation regarding its tax liabilities connected with the filing of the instant cases against Lucio C. Tan et al., and that thereafter the Bureau of Internal Revenue found no fraud committed by the Fortune Tobacco Corporation and, that, therefore, there is no legal justification to further pursue the three tax evasion cases against Lucio C. Tan, et al.

This finding of non-fraud was approved by the Commissioner of Internal Revenue.

Again, in view of the Bureau of Internal Revenue’s finding that Fortune Tobacco Corporation has not committed any tax violation relative to these cases now before this Court by the panel of state prosecutors, this Court, xxx has, therefore, no other recourse but to dismiss these cases also for lack of probable cause as found by the Bureau of Internal Revenue itself.[28]

On April 7, 1999, one day before the lapse of the 15-day period to file a Motion for Reconsideration, the New DOJ Panel filed its Motion for Reconsideration.

On May 17, 1999,[29] the motion for reconsideration was denied by the MeTC. A copy of the order denying reconsideration was received by the New DOJ Panel on MAY 18, 1999.

PROCEEDINGS BEFORE THE RTC

On July 14, 1999, the New Panel filed a Petition for Certiorari before the Regional Trial Court of Marikina City, Branch 273 (RTC-Marikina), seeking to nullify the MeTC Orders dated March 22, 1999 and May 17, 1999, alleging grave abuse of discretion on the part of the court a quo.

On August 25, 1999, RTC-Marikina Presiding Judge Olga Palanca Enriquez dismissed the petition, for being filed out of time, thus:

After examining the petition, the Court finds that the petition was filed eleven (11) days late, in violation of Section 4, Rule 65 of the 1997 Rules of Criminal Procedure, as amended by the resolution of the Supreme Court En Banc dated July 21, 1998, Bar Matter No. 803, which provides as follows:

x x x

The Panel of Prosecutors of the Department of Justice (DOJ Panel) admittedly received a copy of the assailed Order dated March 22, 1999 on March 24, 1999 and filed a “Motion for Reconsideration” on April 7, 1999. Thus, a period of fourteen (14) days had elapsed.

According to Section 4 of Rule 65, as amended, this period of fourteen (14) days should be deducted from the total period of sixty (60) days prescribed therein. Hence, the DOJ Panel had the remaining period of forty-six (46) days within which to file the petition for certiorari. The DOJ Panel received a copy of the Order dated May 17, 1999 which denied its “Motion for Reconsideration” on May 18, 1999. It had until July 3, 1999 within which to file the petition for certiorari, and not July 17, 1999, as it claims. Apparently, the DOJ Panel overlooked the aforequoted amendment to Section 4 of Rule 65, thus arriving at the wrong premise that it had the total period of sixty (60) days from notice of denial of the motion for reconsideration, and not the remaining period only, within which to file the petition for certiorari.

It was only on July 14, 1999, eleven days after the lapse of its last day within which to file the petition for certiorari that the DOJ Panel filed the present petition.

Clearly, therefore, the present petition was filed eleven (11) days late.

WHEREFORE, the instant petition for certiorari is hereby DENIED DUE COURSE and is thus DISMISSED.

SO ORDERED.

On August 27, 1999, the New Panel filed a Motion for Reconsideration. On September 2, 1999, a Supplement to the Motion for Reconsideration was also filed.

Respondents filed their Comment to the Motion for Reconsideration. Oral arguments were conducted and Memoranda thereafter submitted.

On October 13, 1999, the Motion for Reconsideration was denied.

On October 18, 1999, the DOJ endorsed the case to the Office of the Solicitor General (OSG).

PROCEEDINGS BEFORE THE COURT OF APPEALS

On October 20, 1999, the OSG appealed the RTC-Marikina Orders dated August 28, 1999 and October 13, 1999, to the Court of Appeals.

On December 13, 1999 the Court of Appeals ordered the parties to file Memoranda.

On August 29, 2000, the Court of Appeals dismissed the petition for lack of merit. A copy of the Court of Appeals’ decision was received by the OSG on September 6, 2000.

THE PRESENT PETITION

The People of the Philippines, through the Office of the Solicitor General, filed this Petition for Review on Certiorari, as earlier stated, submitting the following assignment of errors:

- THE COURT A QUO SERIOUSLY ERRED WHEN IT AFFIRMED THE MeTC’S DISMISSAL OF THE CRIMINAL CASES AGAINST RESPONDENTS WITHOUT THEIR HAVING BEEN PLACED FIRST UNDER THE CUSTODY OF THE LAW.
- THE COURT A QUO GROSSLY ERRED WHEN IT SANCTIONED THE MeTC’S ACT OF GIVING THE BIR, A MERE WITNESS TO THE CASE, THE PREROGATIVE TO CONTROL AND CAUSE THE

DISMISSAL OF THE CASES, THE CRIMINAL ASPECTS OF WHICH THE BIR HAD ITSELF [E]NDORSED TO THE DOJ FOR PROSECUTION.

- THE COURT A QUO SERIOUSLY ERRED IN MAKING THE TAX REFORM ACT OF 1997 RETROACTIVELY APPLY TO CASES PREVIOUSLY ENDORSED TO THE DOJ BY THE BIR LONG BEFORE THE EFFECTIVITY OF SAID LAW.

- THE COURT A QUO GROSSLY ERRED IN SANCTIONING THE MeTC'S ACT OF DELEGATING THE TASK OF DETERMINING PROBABLE CAUSE TO THE BIR, WHICH WAS BUT A WITNESS.

- THE COURT A QUO ERRED WHEN IT IGNORED THE SERIOUS INFIRMITIES COMMITTED IN THE PROCEEDINGS BELOW WHICH SHOULD HAVE WARRANTED A MEASURE OF LIBERALITY TO PAVE THE WAY FOR A THOROUGH DETERMINATION OF THE MERITS OF THE CASES AGAINST THE RESPONDENTS.[30]

ISSUES

A reading of the parties' arguments shows that the resolution of the numerous issues presented hinges upon the issue of whether or not the Metropolitan Trial Court (MeTC) erred in dismissing the criminal cases before it, on the basis of the Manifestation and Motion of the BIR to withdraw the said cases.

First Issue: TIMELINESS

After the MeTC dismissed the criminal cases on March 22, 1999, which Order was received by the New DOJ Panel on March 24, 1999, it filed a Motion for Reconsideration on May 7, 1999, one day before the lapse of the 15-day period to file the Motion for Reconsideration.[31]

The Motion for Reconsideration was thereafter denied on May 17, 1999 and the denial was received by petitioner on May 18, 1999.

Instead of filing an appeal, petitioner filed before RTC-Marikina a Petition for Certiorari, on July 14, 1999.

Respondents argue that: (1) This was the wrong remedy; and (2) even assuming this was the correct mode, the 60-day period to file the petition had also already lapsed.

This Court has allowed resort to the extraordinary remedy of certiorari although the remedy appeal was available. In *Metropolitan Manila Development Authority v. JANCOM Environmental Corporation*,[32] citing *Ruiz, Jr. v. Court of Appeals*,[33] this Court stated the significant exceptions to be, as follows:

xxx when public welfare and the advancement of public policy dictate; or when the broader interests of justice so require, or when the writs issued are null...or when the questioned order amounts to an oppressive exercise of judicial authority.

There can be no question as to the public interest involved in this case.

For the case of the prosecution, if proved, would mean that a fraudulent scheme to evade taxes has been resorted to by respondents, and the amount involved, at the time of the investigation, is nearly P20 billion pesos.

The principle is well established that taxes are the lifeblood of government and every citizen is duty bound to pay taxes and to pay taxes in the right amount.

Technicalities, therefore, will have to yield to the paramount interest of the nation to enforce its laws against tax evasion, especially where the amounts involved are huge. As aptly put by petitioner in its Consolidated Reply, procedural rules should not be applied with rigidity especially when to do so would result in manifest failure or

miscarriage of justice.

Furthermore, the petition for certiorari filed by the prosecution is not late. For the provision under which it can be considered late was subsequently amended and under the amended rules the petition is on time. Said amendment should be retroactively applied since it is a procedural rule and it is also remedial in character, i.e., it is intended precisely to correct the unjust effect of the amended rule. As correctly argued by the petitioner, also in its Consolidated Reply:

The eleven (11)-day delay in the filing of the petition for certiorari before the Regional Trial Court was brought about by the DOJ New Panel's failure to consider the period it had utilized in filing its Motion for Reconsideration. It should be recalled that when the 1997 Rules of Civil Procedure first took effect, the period for filing a petition for certiorari was originally set at sixty (60) days from the time the questioned order or the order denying the motion for reconsideration was received. Section 4, Rule 65 of the 1997 Rules of Civil Procedure was originally couched as follows: Sec. 4 Where petition filed. - The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its jurisdiction. If it involves the acts or omission of a quasi-judicial agency and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable by the Court of Appeals.

Subsequently, the aforequoted provision was amended by Bar Matter No. 803 dated July 21, 1998. Under this amendment, the period used up in filing a motion for reconsideration shall be deducted from the sixty (60)-day period for filing a petition for certiorari.

Recently, however, Section 4, Rule 65 of the 1997 Rules of Civil Procedure was again revised, and the present policy on the matter, effective September 1, 2000, is that "[t]he petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion." (SC. A.M. 00-2-03)

Private respondents, nevertheless, contend that such amendment may only apply to cases filed after, or at least pending as of, September 1, 2000. Private respondents sorely missed the point. The recent amendment to Section 4, Rule 65 of the 1997 Rules of Civil Procedure clearly shows that the Honorable Court had realized that the original prescribed period is inadequate; accordingly, to give the aggrieved party sufficient time, a new 60-day period is given from the time the order denying a motion for reconsideration is received, within which to file a petition for certiorari. In the light of this recent amendment, therefore, there is more reason to relax the rigid application of the old rule and excuse the procedural lapse in the case below.

This Court has consistently held that rules of procedure should not be applied in a very technical sense, for they are adopted to help secure, not override, substantial justice.^[34] Besides, if the issuances involved are a nullity, the same can be assailed at any time.

After a thorough review of the orders of the MeTC dismissing the criminal cases, this Court finds, that said orders were null and void and were a result of a gravely injudicious exercise of judicial authority.

Second Issue: DID THE MeTC GRAVELY ABUSE ITS DISCRETION OR EXCEED ITS JURISDICTION IN DISMISSING THE CRIMINAL CASES?

Petitioner rightly disputes the dismissal of the cases. In the same case of *Martinez v. Court of Appeals, et al.*,^[35] this Court, citing the case of *Crespo v. Mogul*, held:

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.

In another case,[36] this Court affirmed the power conferred upon trial courts, reiterating:

This argument is untenable. The court could have denied the public prosecutor's motion for the withdrawal of the information against petitioner, and there would have been no question of its power to do so. If it could do that, so could it reconsider what it had ordered. Every court has the power and indeed the duty to review and amend or reverse its findings and conclusions when its attention is timely called to any error or defect therein.

Jurisprudence mandates that the grant of a motion to dismiss must be based upon the judge's own personal conviction that there was no case against the accused.[37] The trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.[38]

In the present case, the record clearly shows that the MeTC failed to discharge its duty to judiciously and independently rule upon the motion to withdraw.

In the Order dated March 22, 1999, the trial court stated:

The Court agrees with the Bureau of Internal Revenue that in view of the aforecited Section of the Tax Reform Act of 1997, a substantive law, and the fact that it is evident that the Commissioner of Internal Revenue has not approved the filing of the instant cases, this Court, thus, has no other recourse but to obey the law and dismiss the cases at bar.

Moreover, pursuant to the ruling of the Supreme Court in the case of Commissioner of Internal Revenue et al. vs. The Honorable Court of Appeals, et al., G.R. No. 119322, promulgated June 4, 1996 (257 SCRA 200, 225) said Court held that:

x x x

According to the Memorandum dated February 11, 1999 filed by the Bureau of Internal Revenue in connection with its Manifestation and Motion, the Bureau of Internal Revenue in fact conducted several hearings on the tax liability of the accused relative to the protest filed by Fortune Tobacco Corporation regarding its tax liabilities connected with the filing of the instant cases against Lucio C. Tan, et al., and that thereafter the Bureau of Internal Revenue found no fraud committed by the Fortune Tobacco Corporation and, that, therefore, there is no legal justification to further pursue the three tax evasion cases against Lucio C. Tan, et al.

This finding of non-fraud was approved by the Commissioner of Internal Revenue.

Again, in view of the Bureau of Internal Revenue's finding that Fortune Tobacco Corporation has not committed any tax violation relative to these cases now before this Court by the panel of state prosecutors, this Court, pursuant to the above-mentioned ruling of the Supreme Court, that there must first be a finding of tax fraud by the Bureau of Internal Revenue before a criminal case may be filed against a taxpayer has, therefore,

no other recourse but to dismiss these cases also for lack of probable cause as found by the Bureau of Internal Revenue itself.

x x x

As the Court finds it, the government, that is to say, more accurately, the People, by statute has ordained the government prosecutors not to come to Court and file a criminal case involving violations of the National Internal Revenue Code without first getting the nod and approval of the Commissioner of Internal Revenue. No such Commissioner of Internal Revenue certification has been submitted to this Court against any of the accused in these cases. As to such a primordial statutory requirement, this Court believes that the statute rather than the Rules of Court, applies and governs.

Accordingly, these cases, namely, Criminal Cases Nos. 98-38181 to 98-38189, are hereby dismissed. No costs.

SO ORDERED.

A reading of the MeTC order thus shows that the same was basically anchored only on the Manifestation and Motion of the BIR, praying for the withdrawal of the complaints.

Contrary to its mandate, the trial court abandoned its duty to evaluate the submissions before it. By relying on the manifestation and motion of the BIR alone, it ignored the positive findings of the panel of state prosecutors, which had, themselves, painstakingly conducted the preliminary investigation on the subject criminal liability of the respondents.

Furthermore, it is not quite correct that, as respondents claim, BIR Commissioner Liwayway Vinzons-Chato referred the matter to the Department of Justice for preliminary investigation only. The three letters of referral/complaints she wrote and filed with the Department of Justice and the Office of the City Prosecutor, dated September 6, 1993, October 22, 1993 and December 21, 1993, all stated "I hereby recommend the prosecution of the following for violations of the provisions of the National Internal Revenue Code, as amended, to wit: xxx[39]

Hence, the same clearly constituted approval of the filing of the cases in court.

The fact, moreover, is that the cases had been filed in court and were already under the court's control.

By merely echoing the findings of the BIR, the MeTC abdicated its duty as a court of law, and subjugated itself to the administrative agency. In failing to make an independent finding of the merits of the case and merely anchoring the dismissal on the position of the BIR, the trial court relinquished the discretion it was obliged to exercise, in violation of the ruling in *Crespo v. Mogul*.^[40]

For this reason, this Court is constrained to annul and set aside the Orders of the MeTC.

WHEREFORE, the Petition is GRANTED and the Decision of the Court of Appeals dated August 29, 2000 in CA-G.R. SP No. 56077 and the Orders of the Regional Trial Court of Marikina City dated August 25, 1999 and October 13, 1999 in SCA Case No. 95-340-MK are hereby REVERSED, and the Orders dated March 22, 1999 and May 17, 1999 of the Metropolitan Trial Court (MeTC), Branch 75, Marikina City, dismissing the criminal informations filed by the DOJ Panel against herein respondents, and denying the DOJ Panel's Motion for Reconsideration, are hereby declared NULL and VOID and SET ASIDE, and the criminal informations are reinstated.

Criminal Cases Nos. 98-38181 to 98-38189 are hereby REMANDED to the Metropolitan Trial Court (MeTC), Branch 75, Marikina City,^[41] for appropriate proceedings. Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Tinga, JJ., concur.

Vitug, and Quisumbing, JJ., in the result.

Carpio, J., no part. As Presidential Legal Counsel, has made some recommendations on this and other cases.

[1] Rollo, pp. 74-84.

[2] Ibid, pp. 362-364.

[3] Ibid, pp. 402-405.

[4] Ibid, pp. 144-148.

[5] Ibid, pp. 166-169.

[6] On the following grounds: (1) The complaint filed by the Commissioner allegedly follows a “pattern of persecution” against respondents, in violation of their right to due process and equal protection of the law; (2) Petitioner Commissioner and the Court of Tax Appeals have still to determine Fortune’s tax liability for 1992 in question; without any tax liability, there can be no tax evasion; (3) Exclusive jurisdiction to determine tax liability is vested in the Court of Tax Appeals; therefore, the DOJ is without jurisdiction to conduct preliminary investigation; and (4) The complaint of petitioner Commissioner is not supported by any evidence to serve as adequate basis for the issuance of subpoena to private respondents and to put them to their defense.

[7] After a Petition for Certiorari was decided by the Court of Appeals.

[8] Commissioner on Internal Revenue v. Court of Appeals, 257 SCRA 200, 231-232 (1996).

[9] First Division, voting 3-2. Penned by Justice Kapunan, with the concurrence of Justice Hermosisima and Justice Bellosillo (with concurring and dissenting opinion). Justice Vitug (with separate opinion) and Justice Padilla dissenting.

[10] Supra, note 8.

[11] 267 SCRA 599, 607 (1997).

[12] By Department Order No. 436, November 24, 1997.

[13] Rollo, p. 24.

[14] Dated July 28, 1998.

[15] Rollo, pp. 212-219.

[16] Sec. 45 (now Sec. 52), Sec. 110 (now Sec. 114) in relation to Sec. 100 (now Sec. 106), Sec. 127 [b] (now Sec. 130), penalized under Sec. 253 (now Sec. 254) in relation to Sec. 252[b] (now Sec. 253[b]) and Sec. 255 (now Sec. 256; Sec. 232, penalized under Sec. 256 (now Sec. 257), Sec. 252[b] & [d] of the NIRC, as amended.

[17] Annexes “C,” “C-1” and “C-2” of the Petition; Rollo, pp. 94-111.

[18] Senior State Prosecutor Paulita Acosta Villarante (Chairman), Assistant City Prosecutor Meynard Bautista (Vice-Chairman), State Prosecutor Josefino Subia (Member), State Prosecutor Susan Dacanay (Member) and State Prosecutor Edna Valenzuela (Member).

[19] Annex “D” of the Petition; Rollo, pp. 112-126.

[20] Id. at 112.

[21] Id. at 113.

[22] Id. at 114.

[23] Id. at 124.

[24] Rollo, p. 125.

[25] Annex “F” of the Petition; Rollo, pp. 139-142.

[26] Osias B. Baldovino (Chief) and Romeo P. Buan (Assistant Chief for Prosecution).

[27] Annex “H” of the Petition; Rollo, pp. 144-148.

[28] Id. at 146-147.

[29] MeTC Order, Annex “J” of the Petition; Rollo, pp. 166-169.

[30] Rollo, pp. 43-44.

[31] Rollo, p. 799, Petitioner’s Consolidated Reply.

[32] 375 SCRA 320, 330-331 (2002).

[33] 220 SCRA 490 (1993).

[34] Piglas-Kamau v. NLRC, 357 SCRA 640, 648 (2001); Ramos v. Court of Appeals, 269 SCRA 34, 51-52 (1997).

[35] Supra, note 32.

[36] Mosquera v. Panganiban, 258 SCRA 473, 480-481 (1996).

[37] Martinez v. Court of Appeals, supra, note 32.

[38] Ibid.

[39] Records, pp. 154-156.

[40] Martinez v. Court of Appeals, supra; Perez v. Hagonoy Rural Bank, Inc., 327 SCRA 588 (2000); Roberts, Jr. v. Court of Appeals, 254 SCRA 307 (1996).

[41] The Informations herein were filed before the effectivity of Republic Act No. 9282 giving original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code to the Court of Tax Appeals.

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