

THIRD DIVISION

[G.R. No. 173176, August 26, 2008]

**JUDY ANNE L. SANTOS, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND BUREAU OF INTERNAL REVENUE,
RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Court filed by petitioner Judy Anne L. Santos (Santos) seeking the reversal and setting aside of the Resolution,^[2] dated 19 June 2006, of the Court of Tax Appeals (CTA) *en banc* in C.T.A. EB. CRIM. No. 001 which denied petitioner's Motion for Extension of Time to File Petition for Review. Petitioner intended to file the Petition for Review with the CTA *en banc* to appeal the Resolutions dated 23 February 2006^[3] and 11 May 2006^[4] of the CTA First Division in C.T.A. Crim. Case No. 0-012 denying, respectively, her Motion to Quash the Information filed against her for violation of Section 255, in relation to Sections 254 and 248(B) of the National Internal Revenue Code (NIRC), as amended; and her Motion for Reconsideration.

There is no controversy as to the facts that gave rise to the present Petition.

On 19 May 2005, then Bureau of Internal Revenue (BIR) Commissioner Guillermo L. Parayno, Jr. wrote to the Department of Justice (DOJ) Secretary Raul M. Gonzales a letter^[5] regarding the possible filing of criminal charges against petitioner. BIR Commissioner Parayno began his letter with the following statement:

I have the honor to refer to you for preliminary investigation and filing of an information in court if evidence so warrants, the herein attached Joint Affidavit of **RODERICK C. ABAD, STIMSON P. CUREG, VILMA V. CARONAN, RHODORA L. DELOS REYES** under Group Supervisor **TEODORA V. PURINO**, of the National Investigation Division, BIR National Office Building, BIR Road, Diliman, Quezon City, recommending the criminal prosecution of **MS. JUDY ANNE LUMAGUI SANTOS** for **substantial underdeclaration of income, which constitutes as *prima facie* evidence of false or fraudulent return** under Section 248(B) of the NIRC and punishable under Sections 254 and 255 of the Tax Code.

In said letter, BIR Commissioner Parayno summarized the findings of the investigating BIR officers that petitioner, in her Annual Income Tax Return for taxable year 2002 filed with the BIR, declared an income of P8,033,332.70 derived from her talent fees solely from ABS-CBN; initial documents gathered from the BIR offices and those given by petitioner's accountant and third parties, however,

confirmed that petitioner received in 2002 income in the amount of at least P14,796,234.70, not only from ABS-CBN, but also from other sources, such as movies and product endorsements; the estimated tax liability arising from petitioner's underdeclaration amounted to P1,718,925.52, including incremental penalties; the non-declaration by petitioner of an amount equivalent to at least 84.18% of the income declared in her return was considered a substantial underdeclaration of income, which constituted *prima facie* evidence of false or fraudulent return under Section 248(B)^[6] of the NIRC, as amended; and petitioner's failure to account as part of her income the professional fees she received from sources other than ABS-CBN and her underdeclaration of the income she received from ABS-CBN amounted to manifest violations of Sections 254^[7] and 255,^[8] as well as Section 248(B) of the NIRC, as amended.

After an exchange of affidavits and other pleadings by the parties, Prosecution Attorney Olivia Laroza-Torrevillas issued a Resolution^[9] dated 21 October 2005 finding probable cause and recommending the filing of a criminal information against petitioner for violation of Section 255 in relation to Sections 254 and 248(B) of the NIRC, as amended. The said Resolution was approved by Chief State Prosecutor Jovencito R. Zuno.

Pursuant to the 21 October 2005 DOJ Resolution, an Information^[10] for violation of Section 255 in relation to Sections 254 and 248(B) of the NIRC, as amended, was filed with the CTA on 3 November 2005 and docketed as C.T.A. Crim. Case No. 0-012. However, the CTA First Division, after noting several discrepancies in the Information filed, required the State Prosecutor to clarify and explain the same, and to submit the original copies of the parties' affidavits, memoranda, and all other evidence on record.^[11]

Consequently, Prosecution Attorney Torrevillas, on behalf of respondent People, submitted on 1 December 2005 a Compliance with *Ex Parte* Motion to Admit Attached Information.^[12] Prosecution Attorney Torrevillas moved that the documents submitted be admitted as part of the record of the case and the first Information be substituted by the attached second Information. The second Information^[13] addressed the discrepancies noted by the CTA in the first Information, by now reading thus:

The undersigned Prosecution Attorney of the Department of Justice hereby accuses **JUDY ANNE SANTOS y Lumagui** of the offense of violation of Section 255, of Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997," as amended, committed as follows:

"That on or about the 15th day of April, 2003, at Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully, and feloniously file a false and fraudulent income tax return for taxable year 2002 by indicating therein a gross income of P8,033,332.70 when in truth and in fact her correct income for taxable year 2002 is P16,396,234.70 or a gross underdeclaration/difference of P8,362,902 resulting to an income tax deficiency of P1,395,116.24 excluding interest and penalties thereon of P1,319,500.94 or a total income tax

deficiency of P2,714,617.18 to the damage and prejudice of the government of the same amount.["]

In a Resolution^[14] dated 8 December 2005, the CTA First Division granted the People's *Ex Parte* Motion and admitted the second Information.

The CTA First Division then issued on 9 December 2005 a warrant for the arrest of petitioner.^[15] The tax court lifted and recalled the warrant of arrest on 21 December 2005 after petitioner voluntarily appeared and submitted herself to its jurisdiction and filed the required bail bond in the amount of P20,000.00.^[16]

On 10 January 2006, petitioner filed with the CTA First Division a Motion to Quash^[17] the Information filed in C.T.A. Crim. Case No. 0-012 on the following grounds:

1. The facts alleged in the INFORMATION do not constitute an offense;
2. The officer who filed the information had no authority to do so;
3. The Honorable Court of Tax Appeals has no jurisdiction over the subject matter of the case; and
4. The information is void ***ab initio***, being violative of due process, and the equal protection of the laws.

In a Resolution^[18] dated 23 February 2006, the CTA First Division denied petitioner's Motion to Quash and accordingly scheduled her arraignment on 2 March 2006 at 9:00 a.m. Petitioner filed a Motion for Reconsideration and/or Reinvestigation,^[19] which was again denied by the CTA First Division in a Resolution^[20] dated 11 May 2006.

Petitioner received a copy of the 11 May 2006 Resolution of the CTA First Division on 17 May 2006. On 1 June 2006, petitioner filed with the CTA *en banc* a Motion for Extension of Time to File Petition for Review, docketed as C.T.A. EB. CRIM. No. 001. She filed her Petition for Review with the CTA *en banc* on 16 June 2006. However, in its Resolution^[21] dated 19 June 2006, the CTA *en banc* denied petitioner's Motion for Extension of Time to File Petition for Review, ratiocinating that:

In the case before Us, the petitioner is asking for an extension of time to file her Petition for Review to appeal the denial of her motion to quash in C.T.A. Crim. Case No. 0-012. As stated above, a resolution denying a motion to quash is not a proper subject of an appeal to the Court *En Banc* under Section 11 of R.A. No. 9282 because a ruling denying a motion to quash is only an interlocutory order, as such, it cannot be made the subject of an appeal pursuant to said law and the Rules of Court. Section 1 of Rule 41 of the Rules of Court provides that "no appeal may be taken from an interlocutory order" and Section 1 (i) of Rule 50 provides for the dismissal of an appeal on the ground that "the order or judgment appealed from is not appealable". Time and again, the Supreme Court had ruled that the remedy of the accused in case of denial of a motion to quash is for the accused to enter a plea, go to trial

and after an adverse decision is rendered, to appeal therefrom in the manner authorized by law.

Since a denial of a Motion to Quash is not appealable, granting petitioner's Motion for Extension of Time to File Petition for Review will only be an exercise in futility considering that the dismissal of the Petition for Review that will be filed by way of appeal is mandated both by law and jurisprudence.^[22]

Ultimately, the CTA *en banc* decreed:

WHEREFORE, premises considered, petitioner's Motion for Extension of Time to File Petition for Review filed on June 1, 2006 is hereby DENIED for lack of merit.^[23]

Now comes petitioner before this Court raising the sole issue of:

WHETHER A RESOLUTION OF A CTA DIVISION DENYING A MOTION TO QUASH IS A PROPER SUBJECT OF AN APPEAL TO THE CTA *EN BANC* UNDER SECTION 11 OF REPUBLIC ACT NO. 9282, AMENDING SECTION 18 OF REPUBLIC ACT NO. 1125.^[24]

Section 18 of Republic Act No. 1125,^[25] as amended by Republic Act No. 9282,^[26] provides:

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

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

Petitioner's primary argument is that a resolution of a CTA Division denying a motion to quash is a proper subject of an appeal to the CTA *en banc* under Section 18 of Republic Act No. 1125, as amended, because the law does not say that only a resolution that constitutes a final disposition of a case may be appealed to the CTA *en banc*. If the interpretation of the law by the CTA *en banc* prevails, a procedural void is created leaving the parties, such as petitioner, without any remedy involving erroneous resolutions of a CTA Division.

The Court finds no merit in the petitioner's assertion.

The petition for review under Section 18 of Republic Act No. 1125, as amended, may be new to the CTA, but it is actually a mode of appeal long available in courts of general jurisdiction.

Petitioner is invoking a very narrow and literal reading of Section 18 of Republic Act

No. 1125, as amended.

Indeed, the filing of a petition for review with the CTA *en banc* from a decision, resolution, or order of a CTA Division is a remedy newly made available in proceedings before the CTA, necessarily adopted to conform to and address the changes in the CTA.

There was no need for such rule under Republic Act No. 1125, prior to its amendment, since the CTA then was composed only of one Presiding Judge and two Associate Judges.^[27] Any two Judges constituted a quorum and the concurrence of two Judges was necessary to promulgate any decision thereof.^[28]

The amendments introduced by Republic Act No. 9282 to Republic Act No. 1125 elevated the rank of the CTA to a collegiate court, with the same rank as the Court of Appeals, and increased the number of its members to one Presiding Justice and five Associate Justices.^[29] The CTA is now allowed to sit *en banc* or in two Divisions with each Division consisting of three Justices. Four Justices shall constitute a quorum for sessions *en banc*, and the affirmative votes of four members of the Court *en banc* are necessary for the rendition of a decision or resolution; while two Justices shall constitute a quorum for sessions of a Division and the affirmative votes of two members of the Division shall be necessary for the rendition of a decision or resolution.^[30]

In A.M. No. 05-11-07-CTA, the Revised CTA Rules, this Court delineated the jurisdiction of the CTA *en banc*^[31] and in Divisions.^[32] Section 2, Rule 4 of the Revised CTA Rules recognizes the exclusive appellate jurisdiction of the CTA *en banc* to review by appeal the following decisions, resolutions, or orders of the CTA Division:

SEC. 2. *Cases within the jurisdiction of the Court en banc.* - The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

- (1) Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
- (2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and
- (3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;

x x x x