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SECOND DIVISION

[G.R. No. 197590. November 24, 2014]

BUREAU OF INTERNAL REVENUE, as represented by the COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **COURT OF APPEALS, SPOUSES ANTONIO VILLAN MANLY, and RUBY ONG MANLY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL NOT PROSPER IF THE REMEDY OF AN APPEAL IS AVAILABLE BECAUSE IT IS NOT A SUBSTITUTE FOR A LOST APPEAL; EXCEPTIONS.— [T]he remedy of a party aggrieved by a decision, final order, or resolution of the CA is to file a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which is a continuation of the appellate process over the original case. And as a rule, if the remedy of an appeal is available, an action for *certiorari* under Rule 65 of the Rules of Court, which is an original or independent action based on grave abuse of discretion amounting to lack or excess of jurisdiction, will not prosper because it is not a substitute for a lost appeal. There are, however, exceptions to this rule, to wit: 1) when public welfare and the advancement of public policy dictate; 2) when the broader interest of justice so requires; 3) when the writs issued are null and void; 4) when the questioned order amounts to an oppressive exercise of judicial authority; 5) when, for persuasive reasons, the rules may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure; 6) when the judgment or order is attended by grave abuse of discretion; or 7) in other meritorious cases.

2. ID.; ID.; ID.; ID.; JUDICIAL INTRUSION, IN THE FORM OF JUDICIAL REVIEW, IN THE CONDUCT AND DETERMINATION OF PROBABLE CAUSE IS ALLOWED WHEN THERE IS PROOF OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE EXECUTIVE DEPARTMENT IN MAKING ITS DETERMINATION;

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GRAVE ABUSE OF DISCRETION, DEFINED.— Although the Court has consistently adopted the policy of non-interference in the conduct and determination of probable cause, which is exclusively within the competence of the Executive Department, through the Secretary of Justice, judicial intrusion, in the form of judicial review, is allowed when there is proof that the Executive Department gravely abused its discretion in making its determination and in arriving at the conclusion it reached. Grave abuse of discretion is defined as a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction, a blatant abuse of authority so grave and so severe as to deprive the court of its very power to dispense justice, or an exercise of power in an arbitrary and despotic manner, due to passion, prejudice or personal hostility, so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of the law. Such is the situation in this case.

3. CRIMINAL LAW; TAX EVASION; TAX DEFICIENCY ASSESSMENT IS NOT REQUIRED IN A CRIMINAL PROSECUTION FOR TAX EVASION BUT BEFORE ONE CAN BE PROSECUTED, THE FACT THAT A TAX IS DUE MUST FIRST BE PROVED.— In *Ungab v. Judge Cusi, Jr.*, we ruled that tax evasion is deemed complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. Corollarily, an assessment of the tax deficiency is not required in a criminal prosecution for tax evasion. However, in *Commissioner of Internal Revenue v. Court of Appeals*, we clarified that although a deficiency assessment is not necessary, the fact that a tax is due must first be proved before one can be prosecuted for tax evasion.

4. TAXATION; NATIONAL INTERNAL REVENUE CODE; INCOME TAX; DETERMINATION OF TAXPAYER'S INCOME; EXPENDITURE METHOD; THE THEORY OF THIS METHOD IS THAT WHEN THE AMOUNT OF MONEY THAT A TAXPAYER SPENDS DURING A GIVEN YEAR EXCEEDS HIS DECLARED INCOME AND THE SOURCE OF SUCH MONEY IS UNEXPLAINED, IT MAY BE INFERRED THAT SUCH EXPENDITURES REPRESENT UNDECLARED INCOME.— In the case of income, for it to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded by law or treaty

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from taxation. The government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income. A method commonly used by the government is the expenditure method, which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income. The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE, DEFINED; THE DETERMINATION OF PROBABLE CAUSE ONLY REQUIRES REASONABLE BELIEF OR PROBABILITY THAT MORE LIKELY THAN NOT A CRIME HAS BEEN COMMITTED BY THE ACCUSED.— [W]e are convinced that there is probable cause to indict respondent spouses for tax evasion as petitioner was able to show that a tax is due from them. Probable cause, for purposes of filing a criminal information, is defined as such facts that are sufficient to engender a well-founded belief that a crime has been committed, that the accused is probably guilty thereof, and that he should be held for trial. It bears stressing that the determination of probable cause does not require actual or absolute certainty, nor clear and convincing evidence of guilt; it only requires reasonable belief or probability that more likely than not a crime has been committed by the accused.

APPEARANCES OF COUNSEL

Claro B. Ortiz & Noel A. Bulaong for petitioner.
Arturo S. Santos & Law Office for private respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

There is grave abuse of discretion when the determination of probable cause is exercised in an arbitrary or despotic manner, due to passion or personal hostility, so patent and gross as to

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amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law.[1]

This Petition for *Certiorari*[2] under Rule 65 of the Rules of Court assails the Decision[3] dated October 28, 2010 and the Resolution[4] dated May 10, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 112479.

Factual Antecedents

Respondent Antonio Villan Manly (Antonio) is a stockholder and the Executive Vice-President of Standard Realty Corporation, a family-owned corporation.[5] He is also engaged in rental business.[6] His spouse, respondent Ruby Ong Manly, is a housewife.[7]

On April 27, 2005, petitioner Bureau of Internal Revenue (BIR) issued Letter of Authority No. 2001 00012387[8] authorizing its revenue officers to investigate respondent spouses' internal revenue tax liabilities for taxable year 2003 and prior years.

On June 6, 2005, petitioner issued a letter[9] to respondent spouses requiring them to submit documentary evidence to substantiate the source of their cash purchase of a 256-square

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[1] *Spouses Chua v. Hon. Ang*, 614 Phil. 416, 432 (2009); *Callo-Claridad v. Esteban*, G.R. No. 191567, March 20, 2013, 694 SCRA 185, 200; and *Alberto v. Court of Appeals*, G.R. Nos. 182130 and 182132, June 19, 2013, 699 SCRA 104, 129.

[2] *Rollo,* pp. 2-28.

[3] CA *rollo,* pp. 614-629; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo.

[4] *Id.* at 665-666.

[5] *Rollo,* p. 374.

[6] *Id.*

[7] *Id.* at 375.

[8] *Id.* at 149.

[9] *Id.* at 152.

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meter log cabin in Tagaytay City worth ₱17,511,010.00. Respondent spouses, however, failed to comply with the letter.[10]

On June 23, 2005, the revenue officers executed a Joint Affidavit[11] alleging that respondent Antonio's reported or declared annual income for the taxable years 1998-2003 are as follows:

	Taxable Compensation Income	Net Profit Rental Business (1169-73 G. Masangkay St., Tondo, Manila	Total sources of Funds	Tax Due/ paid	CASH
1998	[₱]133,532.36	[₱]191,915.10	[₱]325,447.46	[₱]55,834.00	[₱]269,613.46
1999	142,550.50	260,961.78	403,512.28	79,254.00	324,258.28
2000	141,450.00	213,740.67	355,190.67	64,757.21	290,433.46
2001	151,500.00	233,396.62	384,896.62	73,669.00	311,227.62
2002	148,500.00	186,106.62	334,606.62	58,581.00	276,025.62
2003	148,100.00	152,817.53	300,917.93	48,729.00	252,188.93
[Total]	₱865,633.26	₱1,238,938.32	₱2,104,571.58	₱380,824.21	₱1,723,747.37[12]

and that despite his modest income for the said years, respondent spouses were able to purchase in cash the following properties:

1) a luxurious vacation house in Tagaytay City valued at ₱17,511,010.00[13] in the year 2000, evidenced by a Deed of Absolute Sale[14] dated October 24, 2000;

2) a Toyota RAV4 for ₱1,350,000.00 in the year 2001, evidenced by a Sales Invoice[15] dated June 28, 2001; and

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[10] *Id*. at 375.

[11] *Id*. at 47-52.

[12] *Id*. at 47-48.

[13] Total Acquisition Cost; *id*. at 49.

[14] *Id*. at 137-143.

[15] *Id*. at 146.

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3) a Toyota Prado for ₱2,000,000.00 in 2003, evidenced by a Deed of Sale[16] dated July 9, 2003.[17]

Since respondent spouses failed to show the source of their cash purchases, the revenue officers concluded that respondent Antonio's Income Tax Returns (ITRs) for taxable years 2000, 2001, and 2003 were underdeclared.[18] And since the underdeclaration exceeded 30% of the reported or declared income, it was considered a *prima facie* evidence of fraud with intent to evade the payment of proper taxes due to the government.[19] The revenue officers, thus, recommended the filing of criminal cases against respondent spouses for failing to supply correct and accurate information in their ITRs for the years 2000, 2001, and 2003, punishable under Sections 254[20] and 255[21] in

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[16] *Id*. at 147.

[17] *Id*. at 48.

[18] *Id*. at 49.

[19] *Id*. at 50.

[20] SEC. 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 of not less than Thirty thousand pesos (₱30,000.00) but not more than One hundred thousand pesos (₱100,000.00) 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.

[21] 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 and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such 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 (₱10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

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relation to Section 248(B)[22] of Republic Act No. 8424 or the "Tax Reform Act of 1997," hereinafter referred to as the National Internal Revenue Code (NIRC).[23]

Respondent spouses, in their Joint Counter-Affidavit,[24] denied the accusations hurled against them and alleged that they used their accumulated savings from their earnings for the past 24 years in purchasing the properties.[25] They also contended that the criminal complaint should be dismissed because petitioner failed to issue a deficiency assessment against them.[26]

In response, the revenue officers executed a Joint Reply-Affidavit.[27] Respondent spouses, in turn, executed a Joint Rejoinder-Affidavit.[28]

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[22] SEC. 248. *Civil Penalties.* –

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(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is wilfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

[23] *Rollo*, p. 51.

[24] *Id*. at 274-277.

[25] *Id*. at 276.

[26] *Id*. at 275.

[27] *Id*. at 278-282.

[28] *Id*. at 283-286.

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Ruling of the State Prosecutor

On August 31, 2006, State Prosecutor Ma. Cristina A. Montera-Barot issued a Resolution[29] in I.S. No. 2005-573 recommending the filing of criminal charges[30] against respondent spouses, to wit:

> WHEREFORE, premises considered, it is respectfully recommended that [respondent] spouses ANTONIO VILLAN MANLY and RUBY ONG MANLY be charged [with] the following:
>
> (1) Three (3) counts of Violation of Section 254 – Attempt to Evade or Defeat Tax of the NIRC for taxable years 2000, 2001, and 2003;
>
> (2) Three (3) counts for Violation of Section 255 of the NIRC – Failure to Supply Correct and Accurate Information for taxable years 2000, 2001 and 2003;
>
> (3) Three counts of Violation of Section 255 of the NIRC – Failure to Pay, as a consequence of [respondent spouses'] failure to supply correct and accurate information on their tax returns for taxable years 2000, 2001, and 2003.[31]

Respondent spouses moved for reconsideration[32] but the State Prosecutor denied the same in a Resolution[33] dated November 29, 2007.

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[29] *Id.* at 290-303. The Resolution bears the recommending approval of Assistant Chief State Prosecutor Miguel F. Gudio, Jr. and the approval of Chief State Prosecutor Jovencito R. Zuño.

[30] *Id*. at 463-481. Seven separate Informations were filed against respondent spouses before the Court of Tax Appeals, the Regional Trial Court, and the Metropolitan Trial Court, which were subsequently dismissed without prejudice (See pp. 496-498, 542-546, 556, 558-564, 565, and 730-731).

[31] *Id.* at 301-302.

[32] *Id.* at 304-310.

[33] *Id.* at 311-313.

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Ruling of the Secretary of Justice

On appeal to the Secretary of Justice via a Petition for Review,[34] Acting Justice Secretary Agnes VST Devanadera (Devanadera) reversed the Resolution of the State Prosecutor. She found no willful failure to pay or attempt to evade or defeat the tax on the part of respondent spouses as petitioner allegedly failed to specify the amount of tax due and the likely source of income from which the same was based.[35] She also pointed out petitioner's failure to issue a deficiency tax assessment against respondent spouses which is a prerequisite to the filing of a criminal case for tax evasion.[36] The dispositive portion of the Resolution[37] dated July 27, 2009 reads:

> WHEREFORE, the assailed Resolution is hereby REVERSED and SET ASIDE. The Chief State Prosecutor is hereby directed to withdraw the Information filed against [respondent spouses] Antonio Villan Manly and Ruby Ong Manly, if one has been filed, and report the action taken thereon within ten (10) days from receipt hereto.
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> SO ORDERED.[38]

Petitioner sought reconsideration[39] but Acting Justice Secretary Devanadera denied the same in a Resolution[40] dated November 5, 2009.

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[34] *Id*. at 317-326.

[35] *Id*. at 376-382.

[36] *Id*. at 381.

[37] *Id*. at 374-383; penned by Acting Justice Secretary Agnes VST Devanadera.

[38] *Id*. at 382.

[39] *Id*. at 384-403.

[40] *Id*. at 404-405.

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Ruling of the Court of Appeals

Unfazed, petitioner filed a Petition for *Certiorari*[41] with the CA imputing grave abuse of discretion on the part of Acting Justice Secretary Devanadera in finding no probable cause to indict respondent spouses for willful attempt to evade or defeat tax and willful failure to supply correct and accurate information for taxable years 2000, 2001 and 2003.

On October 28, 2010, the CA rendered the assailed Decision[42] dismissing the Petition for *Certiorari*. Although it disagreed that an assessment is a condition *sine qua non* in filing a criminal case for tax evasion, the CA, nevertheless, ruled that there was no probable cause to charge respondent spouses as petitioner allegedly failed to state their exact tax liability and to show sufficient proof of their likely source of income.[43] The CA further said that before one could be prosecuted for tax evasion, the fact that a tax is due must first be proved.[44] Thus:

> IN LIGHT OF ALL THE FOREGOING, the instant petition is hereby DENIED, and the assailed Resolution of the Secretary of Justice dated July 27, 2009 dismissing I.S. No. 2005-573 against private respondents, AFFIRMED. However, the dismissal of the instant case is without prejudice to the refiling by the BIR of a complaint sufficient in form and substance before the appropriate tribunal.
>
> SO ORDERED.[45]

The CA likewise denied petitioner's Motion for Reconsideration[46] in its Resolution[47] dated May 10, 2011.

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[41] CA *rollo*, pp. 1-31.

[42] *Id*. at 614-629.

[43] *Id*. at 623-628.

[44] *Id*. at 626-627.

[45] *Id*. at 628.

[46] *Id*. at 635-651.

[47] *Id*. at 665-666.

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Issues

Hence, petitioner filed the instant Petition contending that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that:

I. A CATEGORICAL FINDING OF THE EXACT AMOUNT OF TAX DUE FROM THE PRIVATE RESPONDENT SHOULD BE SPECIFICALLY ALLEGED [AND THAT] SINCE THE BIR FAILED TO MAKE SUCH FINDINGS THEY CONSEQUENTLY FAILED TO BUILD A CASE FOR TAX EVASION AGAINST [RESPONDENT SPOUSES] DESPITE THE WELL ESTABLISHED DOCTRINE THAT IN TAX EVASION CASES, A PRECISE COMPUTATION OF THE [TAX] DUE IS NOT NECESSARY.

II. THE BIR FAILED TO SHOW SUFFICIENT PROOF OF A LIKELY SOURCE OF [RESPONDENT SPOUSES'] INCOME DESPITE THE FACT THAT THE BIR WAS SUFFICIENTLY ABLE TO SHOW PROOF OF SUCH INCOME.[48]

Petitioner's Arguments

Petitioner imputes grave abuse of discretion on the part of the CA in affirming the dismissal of the criminal cases against respondent spouses. Petitioner contends that in filing a criminal case for tax evasion, a prior computation or assessment of tax is not required because the crime is complete when the violator knowingly and willfully filed a fraudulent return with intent to evade a part or all of the tax.[49] In this case, an analysis of respondent spouses' income and expenditure shows that their cash expenditure is grossly disproportionate to their reported or declared income, leading petitioner to believe that they underdeclared their income.[50] In computing the unreported or undeclared income, which was likely sourced from respondent

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[48] *Rollo*, p. 13.

[49] *Id*. at 697-699.

[50] *Id*. at 704.

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Antonio's rental business,[51] petitioner used the expenditure method of reconstructing income, a method used to determine a taxpayer's income tax liability when his records are inadequate or inaccurate.[52] And since respondent spouses failed to explain the alleged unreported or undeclared income, petitioner asserts that criminal charges for tax evasion should be filed against them.

Respondent spouses' Arguments

Respondent spouses, on the other hand, argue that the instant Petition should be dismissed as petitioner availed of the wrong remedy in filing a Petition for *Certiorari* under Rule 65 of the Rules of Court.[53] And even if the Petition is given due course, the same should still be dismissed because no grave abuse of discretion can be attributed to the CA.[54] They maintain that petitioner miserably failed to prove that a tax is actually due.[55] Neither was it able to show the source of the alleged unreported or undeclared income as required by Revenue Memorandum Order No. 15-95, Guidelines and Investigative Procedures in the Development of Tax Fraud Cases for Internal Revenue Officers.[56] As to the method used by petitioner, they claim that it completely ignored their lifetime savings because it was limited to the years 1998-2003.[57]

Our Ruling

The Petition is meritorious.

Before discussing the merits of this case, we shall first discuss the procedural matter raised by respondent spouses that petitioner

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[51] *Id*. at 703-706.

[52] *Id*. at 700-703.

[53] *Id*. at 733-738.

[54] *Id*. at 738-744.

[55] *Id*. at 739.

[56] *Id*. at 741.

[57] *Id*.

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availed of the wrong remedy in filing a Petition for *Certiorari* under Rule 65 of the Rules of Court, instead of a Petition for Review on *Certiorari* under Rule 45.

Indeed, the remedy of a party aggrieved by a decision, final order, or resolution of the CA is to file a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which is a continuation of the appellate process over the original case.[58] And as a rule, if the remedy of an appeal is available, an action for *certiorari* under Rule 65 of the Rules of Court, which is an original or independent action based on grave abuse of discretion amounting to lack or excess of jurisdiction, will not prosper[59] because it is not a substitute for a lost appeal. [60]

There are, however, exceptions to this rule, to wit: 1) when public welfare and the advancement of public policy dictate; 2) when the broader interest of justice so requires; 3) when the writs issued are null and void; 4) when the questioned order amounts to an oppressive exercise of judicial authority; 5) when, for persuasive reasons, the rules may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure; 6) when the judgment or order is attended by grave abuse of discretion; or 7) in other meritorious cases.[61]

In this case, after considering the arguments raised by the parties, we find that there is reason to give due course to the instant Petition for *Certiorari* as petitioner was able to convincingly show that the CA committed grave abuse of

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[58] *Chua v. Santos*, 483 Phil. 392, 400-401 (2004).

[59] *Beluso v. Commission on Elections*, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456.

[60] *Teh v. Tan*, G.R. No. 181956, November 22, 2010, 635 SCRA 593, 604.

[61] *Associated Anglo-American Tobacco Corporation v. Court of Appeals*, G.R. No. 167237, April 23, 2010, 619 SCRA 250, 257; *Bausa v. Heirs of Juan Dino*, 585 Phil. 526, 532 (2008); *Galzote v. Briones*, G.R. No. 164682, September 14, 2011, 657 SCRA 535, 541; *Santos v. Orda, Jr.*, G.R. No. 189402, May 6, 2010, 620 SCRA 375, 384.

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discretion when it affirmed the dismissal of the criminal charges against respondent spouses despite the fact that there is probable cause to indict them.

Although the Court has consistently adopted the policy of non-interference in the conduct and determination of probable cause,[62] which is exclusively within the competence of the Executive Department, through the Secretary of Justice,[63] judicial intrusion, in the form of judicial review, is allowed when there is proof that the Executive Department gravely abused its discretion in making its determination and in arriving at the conclusion it reached.[64]

Grave abuse of discretion is defined as a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction, a blatant abuse of authority so grave and so severe as to deprive the court of its very power to dispense justice, or an exercise of power in an arbitrary and despotic manner, due to passion, prejudice or personal hostility, so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of the law.[65] Such is the situation in this case.

Having resolved the foregoing procedural matter, we shall now proceed to determine the main issue in this case.

Sections 254 and 255 of the NIRC pertinently provide:

SEC. 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

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[62] *Elma v. Jacobi*, G.R. No. 155996, June 27, 2012, 675 SCRA 20, 56-57.

[63] *Callo-Claridad v. Esteban, supra* note 1 at 189.

[64] *Elma v. Jacobi, supra* note 62 at 57.

[65] *People v. Lagos*, G.R. No. 184658, March 6, 2013, 692 SCRA 602, 608-609.

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a fine of not less than Thirty thousand pesos (₱30,000.00) but not more than One hundred thousand pesos (₱100,000.00) 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.

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 and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such 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 (₱10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

In *Ungab v. Judge Cusi, Jr.*,[66] we ruled that tax evasion is deemed complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax.[67] Corollarily, an assessment of the tax deficiency is not required in a criminal prosecution for tax evasion.[68] However, in *Commissioner of Internal Revenue v. Court of Appeals*,[69] we clarified that although a deficiency assessment is not necessary, the fact that a tax is due must first be proved before one can be prosecuted for tax evasion.[70]

In the case of income, for it to be taxable, there must be a gain realized or received by the taxpayer, which is not excluded

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[66] 186 Phil. 604 (1980).

[67] *Id*. at 610-611.

[68] *Id*. at 610.

[69] 327 Phil. 1 (1996).

[70] *Id*. at 35.

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by law or treaty from taxation.[71] The government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income.[72] A method commonly used by the government is the expenditure method, which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income.[73] The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income.[74]

In the case at bar, petitioner used this method to determine respondent spouses' tax liability. Petitioner deducted respondent spouses' major cash acquisitions from their available funds. Thus:

	Cash	Loans (business)	Withdrawal of Capital	Funds available	Major Acquisitions	Unexplained Sources of Funds
1998	₱ 269,613.46	900,000.00	130,638.98	1,300,252.44		
1999	324,258.28	(400,000.00)	39,281.87	1,263,792.59		
2000	290,433.46	-	102,024.97	1,656,251.02	17,511,010.00	(15,854,758.98)
2001	311,227.62	-	406,309.70	717,537.32	1,350,000.00	(632,462.68)
2002	276,025.62	(100,000.00)	184,092.03	360,117.65		
2003	252,188.93	-	245,167.97	857,474.55	2,000,000.00	(1,142,525.45)
[Total:]	₱1,723,747.37				20,861,010.00	(17,629,747.11)[75]

[71] *Chamber of Real Estate and Builders' Associations, Inc. v. Romulo*, G.R. No. 160756, March 9, 2010, 614 SCRA 605, 627.

[72] *Li Yao v. Collector of Internal Revenue*, 119 Phil. 207, 222 (1963).

[73] *Collector of Internal Revenue v. Jamir*, 114 Phil. 650, 651-652 (1962).

[74] See Annex "A" of Revenue Memorandum Order No. 15-95, Guidelines and Investigative Procedures in the Development of Tax Fraud Cases for Internal Revenue Officers.

[75] *Rollo*, p. 156.

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	2000	2001	2003
Unexplained funds – under declaration	[₱]15,854,758.98	[₱]632,462.68	[₱] 1,142,525.45
Taxable income	[₱]15,854,758.98	[₱]632,462.68	[₱] 1,142,525.45
Income Tax due thereon:			
First Php500,000.00	125,000.00	125,000.00	125,000.00
In excess of Php500,000.00	4,913,522.87	42,388.06	205,608.14
Total income tax due (net tax paid)	4,973,765.66	93,719.06	281,879.14
Add: 50% Surcharge	2,486,882.83	46,859.53	165,304.07
20% Interest (up to 5/31/2005) - 825	4,104,376.29	77,337.43	272,751.72
Total Tax Due inclusive of Increments	[₱]11,565,024.79	[₱]217,916.02	[₱] 655,369.01[76]

Particulars	2000	2001	2003
Unexplained Funds [Underdeclaration]	[₱]15,854,758.98	[₱]632,462.68	[₱]1,142,525.45
Sources of Funds as per Financial Statements as attached to the Income Tax Return	[₱]1,656,251.02	[₱]717,537.32	[₱]817,474.55
Percentage of underdeclaration	957.27%	88.14%	133.24%[77]

And since the underdeclaration is more than 30% of respondent spouses' reported or declared income, which under Section 248(B) of the NIRC constitutes as *prima facie* evidence of false or fraudulent return, petitioner recommended the filing of criminal cases against respondent spouses under Sections 254 and 255, in relation to Section 248(B) of the NIRC.

The CA, however, found no probable cause to indict respondent spouses for tax evasion. It agreed with Acting Justice Secretary Devanadera that petitioner failed to make "a categorical finding of the exact amount of tax due from [respondent spouses]" and "to show sufficient proof of a likely source of [respondent spouses'] income that enabled them to purchase the real and personal properties adverted to x x x."[78]

We find otherwise.

The amount of tax due from respondent spouses was specifically alleged in the Complaint-Affidavit.[79] The

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[76] *Id.* at 50.

[77] *Id.*

[78] CA *rollo*, p. 627.

[79] *Rollo*, p. 50.

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computation, as well as the method used in determining the tax liability, was also clearly explained. The revenue officers likewise showed that the underdeclaration exceeded 30% of the reported or declared income.

The revenue officers also identified the likely source of the unreported or undeclared income in their Reply-Affidavit. The pertinent portion reads:

> 7. x x x x x x x x x
> [Respondent spouses] are into rental business and the net profit for six (6) years before tax summed only to ₱1,238,938.32 (an average of more or less Php200,000.00 annually). We asked respondent [Antonio] if we can proceed to his rented property to [appraise] the earning capacity of the building [for] lease/rent, but he declined our proposition. Due to such refusal made by the respondent, [petitioner], thru its examiners, took pictures of the subject property and came up with the findings that indeed the unexplained funds sought to have been used in acquiring the valuable property in Tagaytay x x x came from the underdeclaration of rental income.[80]

Apparently, the revenue officers considered respondent Antonio's rental business to be the likely source of their unreported or undeclared income due to his unjustified refusal to allow the revenue officers to inspect the building.

Respondent spouses' defense that they had sufficient savings to purchase the properties remains self-serving at this point since they have not yet presented any evidence to support this. And since there is no evidence yet to suggest that the money they used to buy the properties was from an existing fund, it is safe to assume that that money is income or a flow of wealth other than a mere return on capital. It is a basic concept in taxation that income denotes a flow of wealth during a definite period of time, while capital is a fund or property existing at one distinct point in time.[81]

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[80] *Id.* at 281.

[81] *Chamber of Real Estate and Builders' Associations, Inc. v. Romulo, supra* note 71.

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Moreover, by just looking at the tables presented by petitioner, there is a manifest showing that respondent spouses had underdeclared their income. The huge disparity between respondent Antonio's reported or declared annual income for the past several years and respondent spouses' cash acquisitions for the years 2000, 2001, and 2003 cannot be ignored. In fact, it makes us wonder how they were able to purchase the properties in cash given respondent Antonio's meager income.

In view of the foregoing, we are convinced that there is probable cause to indict respondent spouses for tax evasion as petitioner was able to show that a tax is due from them. Probable cause, for purposes of filing a criminal information, is defined as such facts that are sufficient to engender a well-founded belief that a crime has been committed, that the accused is probably guilty thereof, and that he should be held for trial.[82] It bears stressing that the determination of probable cause does not require actual or absolute certainty, nor clear and convincing evidence of guilt; it only requires reasonable belief or probability that more likely than not a crime has been committed by the accused.[83]

In completely disregarding the evidence presented and in affirming the ruling of the Acting Justice Secretary Devanadera that no probable cause exists, we find that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction. As we have said, if there is grave abuse of discretion, the court may step in and proceed to make its own independent determination of probable cause as judicial review is allowed to ensure that the Executive Department acts within the permissible bounds of its authority or does not gravely abuse the same.[84]

We must make it clear, however, that we are only here to determine probable cause. As to whether respondent spouses are guilty of tax evasion is an issue that must be resolved during

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[82] *Advincula v. Court of Appeals*, 397 Phil. 641, 650 (2000).

[83] *Alberto v. Court of Appeals, supra* note 1 at 130-131.

[84] *Aguilar v. Department of Justice*, G.R. No. 197522, September 11, 2013, 705 SCRA 629, 639.

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the trial of the criminal case, where the quantum of proof required is proof beyond reasonable doubt.

Before we close, we must stress that our ruling in this case should not be interpreted as an unbridled license for our tax officials to engage in fishing expeditions and witch-hunting. They should not abuse their investigative powers, instead they should exercise the same within the bounds of the law. They must properly observe the guidelines in making assessments and investigative procedures to ensure that the constitutional rights of the taxpayers are well protected as we cannot allow the floodgates to be opened for frivolous and malicious tax suits.

WHEREFORE, the Petition is hereby **GRANTED.** The Decision dated October 28, 2010 and the Resolution dated May 10, 2011 of the Court of Appeals in CA-G.R. SP No. 112479 are hereby **REVERSED** and **SET ASIDE**. The Resolutions dated August 31, 2006 and November 29, 2007 of State Prosecutor Ma. Cristina A. Montera-Barot in I.S. No. 2005-573 finding probable cause to indict respondent spouses Antonio Villan Manly and Ruby Ong Manly for Violation of Sections 254 and 255 of the National Internal Revenue Code are hereby **REINSTATED.**

SO ORDERED.

Carpio (Chairperson), Brion, Mendoza, and *Leonen, JJ.,* concur.

SPECIAL THIRD DIVISION

[G.R. No. 204700. November 24, 2014]

EAGLERIDGE DEVELOPMENT CORPORATION, MARCELO N. NAVAL and CRISPIN I. OBEN, *petitioners, vs.* **CAMERON GRANVILLE 3 ASSET MANAGEMENT, INC.,** *respondent.*