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FIRST DIVISION

[G.R. No. 222837. July 23, 2018]

MACARIO LIM GAW, JR., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; COURT OF TAX APPEALS (CTA); A.M. NO. 05-11-07-CTA (REVISED RULES OF THE COURT OF TAX APPEALS); INCLUSION OF CIVIL ACTION IS APPLICABLE ONLY WHEN THE ACTION IS TO RECOVER CIVIL LIABILITY ARISING FROM THE CRIME; THE CIVIL ACTION QUESTIONING THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) IS NOT DEEMED INSTITUTED WITH THE CRIMINAL CASE FOR TAX EVASION, THE CIVIL LIABILITY BEING ONE ARISING FROM AN OBLIGATION CREATED BY LAW.— Rule 9, Section 11 of A.M. No. 05-11-07-CTA,otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), states that: **SEC. 11.** *Inclusion of civil action in criminal action.* – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized. Petitioner claimed that by virtue of the above provision, the civil aspect of the criminal case, which is the Petition for Review *Ad Cautelam,* is deemed instituted upon the filing of the criminal action. Thus, the CTA had long acquired jurisdiction over the civil aspect of the consolidated criminal cases. Therefore, the CTA erred in dismissing the case. *We do not agree.* Rule 111, Section 1(a)of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime.Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action. It is well-settled that the taxpayer's obligation to pay the tax is an obligation

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that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.

2. **ID.; ID.; ID.; WHAT IS DEEMED INSTITUTED WITH THE CRIMINAL ACTION IS ONLY THE GOVERNMENT'S RECOVERY OF THE TAXES AND PENALTIES RELATIVE TO THE CRIMINAL CASE; CASE AT BAR.—** Under Sections 254 and 255 of the NIRC, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. x x x The tax evasion case filed by the government against the erring taxpayer has, for its purpose, the imposition of criminal liability on the latter. While the Petition for Review filed by the petitioner was aimed to question the FDDA and to prevent it from becoming final. The stark difference between them is glaringly apparent. As such, the Petition for Review *Ad Cautelam* is not deemed instituted with the criminal case for tax evasion. In fact, in the Resolution dated June 6, 2012, the CTA recognized the separate and distinct character of the Petition for Review from the criminal case. x x x In the said resolution, what is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.

3. **ID.; ID.; ID.; PAYMENT OF DOCKET FEES IS BOTH MANDATORY AND JURISDICTIONAL; NONPAYMENT OF DOCKET FEES AT THE TIME OF FILING OF THE INITIATORY PLEADING DOES NOT AUTOMATICALLY CAUSE ITS DISMISSAL SO LONG AS THE DOCKET FEES ARE PAID WITHIN A REASONABLE PERIOD AND THE PARTY HAD NO INTENTION TO DEFRAUD THE GOVERNMENT; CASE AT BAR.—**Basic is the rule that the payment of docket and other legal fees is both mandatory and jurisdictional. The court acquires jurisdiction over the case only upon the payment of the prescribed fees. However, the mere failure to pay the docket fees at the time of the filing of the complaint, or in this case the Petition for Review *Ad Cautelam,* does not necessarily cause

the dismissal of the case. As this Court held in *Camaso v. TSM Shipping (Phils.), Inc.,* while the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, its nonpayment at the time of filing of the initiatory pleading does not automatically cause its dismissal so long as the docket fees are paid within a reasonable period; and that the party had no intention to defraud the government.In this case, records reveal that petitioner has no intention to defraud the government in not paying the docket fees. In fact, when he appealed the FDDA insofar as the taxable year 2007 was concerned, he promptly paid the docket fees when he filed his Petition for Review.

4. ID.; ID.; ID.; THE CTA IN DIVISION HAS EXCLUSIVE APPELLATE JURISDICTION OVER DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE; THE SUPREME COURT HAS NO JURISDICTION TO REVIEW TAX CASES AT THE FIRST INSTANCE WITHOUT FIRST LETTING THE CTA TO STUDY AND RESOLVE THE SAME.—Rule 4, Section 3(a), paragraph 1 of the RRCTA provides that the CTA First Division has exclusive appellate jurisdiction over decisions of the Commissioner of Internal Revenue on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR. x x x The [said] provision means that the CTA exercises exclusive appellate jurisdiction to resolve decisions of the commissioner of internal revenue. There is no other court that can exercise such jurisdiction. "[I]t should be noted that the CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems."Thus, this Court has no jurisdiction to review tax cases at the first instance without first letting the CTA to study and resolve the same. x x x To determine as to whether the transaction between petitioner and Eagle I is an isolated transaction or whether the 10 parcels of land sold by petitioner is classified as capital assets or ordinary assets should properly be resolved by the CTA. Thus, it would be more prudent for Us to remand the case to CTA for the latter to conduct a full-blown trial where both parties are given the chance to present evidence of their claim. Well-settled is the rule that this Court is not a trier of facts.

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5. ID.; ID.; ID.; THE SUPREME COURT'S REVIEW OF THE DECISION OF THE COURT OF TAX APPEALS *EN BANC* IS LIMITED IN DETERMINING WHETHER THERE IS GRAVE ABUSE OF DISCRETION ON THE PART OF THE CTA IN RESOLVING THE CASE.—Under Rule 16, Section 1of the RRCTA, this Court's review of the decision of the CTA *En Banc* is limited in determining whether there is grave abuse of discretion on the part of the CTA in resolving the case. Basic is the rule that delving into factual issues in a petition for review on *certiorari* is not a proper recourse, since a Rule 45 petition is only limited to resolutions on questions of law.

APPEARANCES OF COUNSEL

Tan Acut Lopez and Pison Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Macario Lim Gaw, Jr. (petitioner) assailing the Decision[2] dated December 22, 2014 and Resolution[3] dated February 2, 2016 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Criminal Case No. 026.

Antecedent Facts

Sometime in November 2007, petitioner acquired six (6) parcels of land. To finance its acquisition, petitioner applied

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[1] *Rollo,* pp. 38-122.

[2] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Roman G. Del Rosario (Inhibited); *id*. at 11-27.

[3] *Id*. at 28-35.

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for, and was granted a Short Term Loan (STL) Facility from Banco De Oro (BDO) in the amount of ₱2,021,154,060.00.[4]

From April to June 2008, petitioner acquired four (4) more parcels of land. Again, petitioner applied for and was granted an STL Facility from BDO in the amount of ₱2,732,666,785.[5]

Petitioner entered into an Agreement to Sell[6] with Azure Corporation for the sale and transfer of real properties to a joint venture company, which at the time was still to be formed and incorporated. Then on July 11, 2008, petitioner conveyed the 10 parcels of land to Eagle I Landholdings, Inc. (Eagle I), the joint venture company referred to in the Agreement to Sell.[7]

In compliance with Revenue Memorandum Order No. 15-2003,[8] petitioner requested the Bureau of Internal Revenue (BIR)-Revenue District Office (RDO) No. 52 for the respective computations of the tax liabilities due on the sale of the 10 parcels of land to Eagle I.[9]

In accordance with the One Time Transactions (ONETT) Computation sheets, petitioner paid Capital Gains Tax amounting to ₱505,177,213.81[10] and Documentary Stamp Tax amounting to ₱330,390.00.[11]

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[4] *Id*. at 43.

[5] *Id*.

[6] *Id*. at 326-332.

[7] *Id*. at 354-356.

[8] Policies, Guidelines and Procedures in the Processing and Monitoring of One-Time Transactions (ONETT) and the Issuance of Certificates Authorizing Registration (CARs) Covering Transactions Subject to Final Capital Gains Tax on Sale of Real Properties Considered as Capital Assets as well as Capital Gains Tax on the Net Capital Gain on Sale, Transfer or Assignment of Stocks Not Traded in the Stock Exchange(s), Expanded Withholding Tax on Sale of Real Properties Considered as Ordinary Assets, Donor's Tax, Estate Tax and Other Taxes including Documentary Stamp Tax Related to the Sale/Transfer of Properties.

[9] *Rollo,* p. 45.

[10] *Id*. at 424, 426, 429, 431, 433, 435, 437, 439, 441 and 443.

[11] *Id*. at 425, 428, 430, 432, 434, 436, 438, 440, 442 and 444.

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On July 23, 2008, the BIR-RDO No. 52 issued the corresponding Certificates Authorizing Registration and Tax Clearance Certificates.[12]

Two years later, Commissioner of Internal Revenue (respondent) opined that petitioner was not liable for the 6% capital gains tax but for the 32% regular income tax and 12% value added tax, on the theory that the properties petitioner sold were ordinary assets and not capital assets. Further, respondent found petitioner to have misdeclared his income, misclassified the properties and used multiple tax identification numbers to avoid being assessed the correct amount of taxes.[13]

Thus, on August 25, 2010, respondent issued a Letter of Authority[14] to commence investigation on petitioner's tax account.

The next day, respondent filed before the Department of Justice (DOJ) a Joint Complaint Affidavit[15] for tax evasion against petitioner for violation of Sections 254[16] and 255[17] of the National Internal Revenue Code (NIRC).

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[12] *Id*. at 445-454.

[13] *Id*. at 458, 460-462.

[14] *Id*. at 455.

[15] *Id*. at 456-465.

[16] **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 not less than Thirty thousand (₱30,000) but not more than One hundred thousand pesos (₱100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: *Provided,* That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

[17] **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully

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The DOJ then filed two criminal informations for tax evasion against petitioner docketed as CTA Criminal Case Nos. O-206 and O-207.[18] At the time the Informations were filed, the respondent has not issued a final decision on the deficiency assessment against petitioner. Halfway through the trial, the respondent issued a Final Decision on Disputed Assessment (FDDA)[19] against petitioner, assessing him of deficiency income tax and VAT covering taxable years 2007 and 2008.

With respect to the deficiency assessment against petitioner for the year 2007, petitioner filed a petition for review with the CTA, docketed as CTA Case No. 8502. The clerk of court of the CTA assessed petitioner for filing fees which the latter promptly paid.[20]

However, with respect to the deficiency assessment against petitioner for the year 2008, the same involves the same tax liabilities being recovered in the pending criminal cases. Thus, petitioner was confused as to whether he has to separately file an appeal with the CTA and pay the corresponding filing fees considering that the civil action for recovery of the civil liability

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fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (₱10,000) but not more than Twenty thousand pesos (₱20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

[18] *Rollo,* p. 13.

[19] *Id*. at 517-527.

[20] *Id*. at 51.

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for taxes and penalties was deemed instituted in the criminal case.[21]

Thus, petitioner filed before the CTA a motion to clarify as to whether petitioner has to file a separate petition to question the deficiency assessment for the year 2008.[22]

On June 6, 2012, the CTA issued a Resolution[23] granting petitioner's motion and held that the recovery of the civil liabilities for the taxable year 2008 was deemed instituted with the consolidated criminal cases, thus:

> **WHEREFORE,** in light of the foregoing considerations, the prosecution's Motion for Leave of Court to Amend Information and Admit Attached Amended Information filed on May 16, 2012 is **GRANTED.** Accordingly, the Amended Information for CTA Crim. No. O-206 attached thereto is hereby **ADMITTED**. Re-arraignment of [petitioner] in said case is set on **June 13, 2012 at 9:00 a.m.**
>
> As regards, [petitioner's] Urgent Motion (With Leave of Court for Confirmation that the Civil Action for Recovery of Civil Liability for Taxes and Penalties is Deemed Instituted in the Consolidated Criminal Cases) filed on May 30, 2012, the same is hereby **GRANTED.** The civil action for recovery of the civil liabilities of [petitioner] for taxable year 2008 stated in the [FDDA] dated May 18, 2012 is **DEEMED INSTITUTED** with the instant consolidated criminal cases, without prejudice to the right of the [petitioner] to avail of whatever additional legal remedy he may have, to prevent the said FDDA from becoming final and executory for taxable year 2008.
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> Additionally, [petitioner] is not precluded from instituting a Petition for Review to assail the assessments for taxable year 2007, as reflected in the said FDDA dated May 18, 2012.
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> **SO ORDERED.**[24]

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[21] *Id*.

[22] *Id*.

[23] *Id*. at 546-554.

[24] *Id*. at 553.

However, as a caution, petitioner still filed a Petition for Review *Ad Cautelam* (with Motion for Consolidation with CTA Criminal Case Nos. O-206 and O-207).[25] Upon filing of the said petition, the clerk of court of the CTA assessed petitioner with "zero filing fees."[26]

Meanwhile, the CTA later acquitted petitioner in Criminal Case Nos. O-206 and O-207 and directed the litigation of the civil aspect in CTA Case No. 8503 in its Resolution[27] dated January 3, 2013, to wit:

> **WHEREFORE,** all the foregoing considered, the [petitioner's] **"DEMURRER TO EVIDENCE"** is hereby **GRANTED** and CTA Crim. Case Nos. O-206 and O-207 are hereby **DISMISSED.** Accordingly, [petitioner] is hereby **ACQUITTED** on reasonable doubt in said criminal cases.
>
> As regards CTA Case No. 8503, an Answer having been filed in this case on August 17, 2012, let this case be set for Pre-Trial on **January 23, 2013 at 9:00 a.m.**
>
> **SO ORDERED.**[28]

Thereafter, respondent filed a Motion to Dismiss[29] the Petition for Review *Ad Cautelam* on the ground that the CTA First Division lacks jurisdiction to resolve the case due to petitioner's non-payment of the filing fees.

On March 1, 2013, the CTA First Division issued a Resolution[30] granting the Motion to Dismiss. His motion for reconsideration being denied, petitioner elevated the case to the CTA *En Banc.* The latter however affirmed the dismissal of the case in its Decision[31] dated December 22, 2014, thus:

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[25] *Id*. at 555-589.

[26] *Id*. at 184.

[27] *Id*. at 626-639.

[28] *Id*. at 639.

[29] *Id*. at 674-683.

[30] *Id*. at 151-167.

[31] *Id*. at 11-27.

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WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Resolutions of the First Division of this Court promulgated on 01 March 2013 and 24 June 2013 are hereby **AFFIRMED.**

Costs against the petitioner.

SO ORDERED.[32]

Petitioner's motion for reconsideration was likewise denied by the CTA *En Banc* in its Resolution[33] dated February 2, 2016.

Hence, this petition.

Issues

Petitioner raises the following arguments:

IN RESOLVING CTA EB CRIM. CASE NO. 026, THE CTA *EN BANC* HAS NOT ONLY DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT, BUT HAS ALSO DEPRIVED PETITIONER OF HIS RIGHT TO DUE PROCESS AS TO CALL FOR AN EXERCISE OF SUPERVISION, CONSIDERING THAT:

I

THE CTA *EN BANC* COMMITTED SERIOUS REVERSIBLE ERROR AND EFFECTIVELY DENIED PETITIONER DUE PROCESS BY DISMISSING THE PETITION FOR REVIEW *AD CAUTELAM* SUPPOSEDLY FOR LACK OF JURISDICTION DUE TO PETITIONER'S FAILURE TO PAY DOCKET AND OTHER LEGAL FEES.

A

BASED ON APPLICABLE LAWS AND JURISPRUDENCE, AS AFFIRMED BY THE CTA IN ITS PAST PRONOUNCEMENTS IN THE CONSOLIDATED CASES, IT HAD ALREADY ACQUIRED JURISDICTION OVER CTA

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[32] *Id*. at 141.

[33] *Id*. at 28-35.

CASE NO. 8503, AND THEREFORE COULD NOT BE DIVESTED OF SUCH JURISDICTION UNTIL FINAL JUDGMENT.

B

THE ZERO-FILING-FEE ASSESSMENT IN CTA CASE NO. 8503 ISSUED BY THE CLERK OF COURT OF THE CTA WAS CONSISTENT WITH APPLICABLE LAWS AND JURISPRUDENCE, AS AFFIRMED BY THE CTA IN ITS PAST PRONOUNCEMENTS IN THE CONSOLIDATED CASES.

C

PETITIONER WAS DEPRIVED OF DUE PROCESS WHEN HIS PETITION WAS DISMISSED WITHOUT FIRST BEING AFFORDED A FAIR OPPORTUNITY TO PAY PROPERLY ASSESSED FILING FEES.

II

THE CTA *EN BANC* COMMITTED SERIOUS REVERSIBLE ERROR IN DEPRIVING PETITIONER OF HIS RIGHT TO ASSAIL THE DEFICIENCY ASSESSMENTS AGAINST HIM FOR TAXABLE YEAR 2008 AND SANCTIONING RESPONDENT'S DENIAL OF PETITIONER'S RIGHT TO DUE PROCESS DESPITE THE FOLLOWING FACTUAL CIRCUMSTANCES WHICH RENDER THE ASSESSMENTS NULL AND VOID:

A

THE LETTER OF AUTHORITY NO. 2009-00044669 WHICH COVERS THE AUDIT OF "UNVERIFIED PRIOR YEARS" IS INVALID, BEING IN DIRECT CONTRAVENTION OF SECTION C OF REVENUE MEMORANDUM ORDER NO. 43-90.

B

THE FORMAL LETTER OF DEMAND DATED 08 APRIL 2011 AND FINAL DECISION ON DISPUTED ASSESSMENT NO. 2012-0001 DATED 18 MAY 2012 WERE IMPROPERLY SERVED ON PETITIONER.

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C

RESPONDENT DISREGARDED PETITIONER'S PROTEST LETTER DATED 07 JUNE 2011 AND ADDITIONAL SUBMISSIONS IN SUPPORT OF HIS PROTEST.

D

THE DEFICIENCY TAX ASSESSMENTS AGAINST PETITIONER FOR TAXABLE YEAR 2008 HAVE NO FACTUAL AND LEGAL BASES.

E

IT HAS BEEN A CASE OF PERSECUTION RATHER THAN PROSECUTION ON THE PART OF THE RESPONDENT AGAINST PETITIONER, WARRANTING NOT ONLY AN ACQUITTAL BUT ALSO THE DISMISSAL OF THE CIVIL ASPECT OF CTA CRIMINAL CASE NOS. O-206 AND O-207.

III

IN THE INTEREST OF THE EXPEDITIOUS ADMINISTRATION OF JUSTICE, THIS HONORABLE COURT MAY ALREADY RESOLVE THE CIVIL ASPECT OF CTA CRIMINAL CASE NOS. O-206 AND O-207 ON THE MERITS.[34]

Ultimately, the issues for Our resolution are: 1) whether the CTA erred in dismissing CTA Case No. 8503 for failure of the petitioner to pay docket fees; 2) in the event that the CTA erred in dismissing the case, whether this Court can rule on the merits of the case; and 3) whether the petitioner is liable for the assessed tax deficiencies.

Arguments of the Petitioner

Petitioner claims that since the FDDA covering the year 2008 was also the subject of the tax evasion cases, the civil action for the recovery of civil liability for taxes and penalties was deemed instituted in the consolidated criminal cases as a matter of law. Thus, if the civil liability for recovery of taxes and

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[34] *Id*. at 58-61.

penalties is deemed instituted in the criminal case, it is the State, not the taxpayer that files the Information and pays the filing fee. Petitioner claims that there is no law or rule that requires petitioner to pay filing fees in order for the CTA to rule on the civil aspect of the consolidated criminal cases filed against him.[35]

Petitioner likewise asserts that when they filed the Petition for Review *Ad Cautelam* the clerk of court made a "zero filing fee" assessment. It is therefore a clear evidence that the civil action for recovery of taxes was deemed instituted in the criminal actions. Thus, the CTA has long acquired jurisdiction over the civil aspect of the consolidated criminal cases.[36] Therefore, the CTA erred in dismissing the case for nonpayment of docket fees.

Petitioner further argues that in order not to prolong the resolution of the issues and considering that the records transmitted to this Court are sufficient to determine and resolve whether petitioner is indeed liable for deficiency income tax, this Court can exercise its prerogative to rule on the civil aspect of the CTA Criminal Case Nos. O-206 and O-207.[37]

Arguments of the Respondent

Respondent, through the Office of the Solicitor General (OSG) argues that the tax evasion cases filed against petitioner were instituted based on Sections 254 and 255 of the NIRC, that in all criminal cases instituted before the CTA, the civil aspect of said cases, which constitutes the recovery by the government of the taxes and penalties relative to the criminal action shall not be subject to reservation for a separate civil action.[38] On the other hand, the civil remedy to contest

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[35] *Id*. at 62.

[36] *Id*. at 79-80.

[37] *Id*. at 116-117.

[38] *Id*. at 1955.

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the correctness or validity of disputed tax assessment is covered by Section 9[39] of Republic Act (R.A.) No.

[39] Sec. 9. Section 11 of the same Act is hereby amended to read as follows:

SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.

All other cases involving rulings, orders or decisions filed with the CTA as provided for in Section 7 shall be raffled to its Divisions. A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration of new trial before the same Division of the CTA within fifteen (15) days from notice thereof: Provided, however, That in criminal cases, the general rule applicable in regular Courts on matters of prosecution and appeal shall likewise apply.

No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

In criminal and collection cases covered respectively by Section 7(b) and (c) of this Act, the Government may directly file the said cases with the CTA covering amounts within its exclusive and original jurisdiction.

9282.[40] The difference between the criminal case for tax evasion filed by the government for the imposition of criminal liability on the taxpayer and the Petition for Review filed by the petitioner for the purpose of questioning the FDDA is glaringly apparent. The mere appearance of the word "civil action" does not give rise to the conclusion that all "civil" remedies pertain to the same reliefs. The petitioner cannot simultaneously allege that the petition for review is the civil action that is deemed instituted with the criminal action and at the same time avail of the separate taxpayer's remedy to contest the FDDA through a petition for review.[41]

Respondent further argues that in ruling upon the merits of the Petition for Review *Ad Cautelam* would prompt this Court to become a trier of facts, which is improper, especially in a Petition for Review under Rule 45 of the Rules of Court. Additionally, assuming that the CTA *En Banc* erred in affirming the dismissal ordered by the CTA First Division due to non-payment of docket fees, the correct remedy is to remand the case and order the CTA to compute the required docket fees and reinstate the case upon payment of the same.[42]

Ruling of the Court

The petition is partly granted.

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[40] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES. Approved on March 30, 2004.

[41] *Rollo,* p. 1965.

[42] *Id*. at 1977.

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The civil action filed by the petitioner to question the FDDA is not deemed instituted with the criminal case for tax evasion

Rule 9, Section 11 of A.M. No. 05-11-07-CTA,[43] otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), states that:

> **SEC. 11.** *Inclusion of civil action in criminal action.* – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.

Petitioner claimed that by virtue of the above provision, the civil aspect of the criminal case, which is the Petition for Review *Ad Cautelam,* is deemed instituted upon the filing of the criminal action. Thus, the CTA had long acquired jurisdiction over the civil aspect of the consolidated criminal cases. Therefore, the CTA erred in dismissing the case.

We do not agree.

Rule 111, Section 1(a)[44] of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime.[45] Civil liability arising from a different source of obligation, such as

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[43] REVISED RULES OF THE COURT OF TAX APPEALS.

[44] **Sec. 1.** *Institution of criminal and civil actions.* — (a) **When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.** (Emphasis ours)

[45] *Casupanan v. Laroya,* 436 Phil. 582, 595 (2002).

when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.

It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.[46]

In the case of *Republic of the Philippines v. Patanao,*[47] We held that:

Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. x x x Considering that the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or, otherwise stated, since the said civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes. It is error to hold, as the lower court has held that the judgment in the criminal cases Nos. 2089 and 2090 bars the action in the present case. **The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non- existence of the criminal acts charged.** x x x.[48] (Citations omitted and emphasis ours)

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[46] *Proton Pilipinas Corp. v. Republic of the Phils.,* 535 Phil. 521, 533 (2006).

[47] 127 Phil. 105 (1967).

[48] *Id*. at 108-109.

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Further, in a more recent case of *Proton Pilipinas Corp. v. Republic of the Phils.,*[49] We ruled that:

> While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it.** It should be borne in mind that **the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute.** The **payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.**[50] (Citations omitted and emphasis ours)

The civil action for the recovery of civil liability for taxes and penalties that is deemed instituted with the criminal action is not the Petition for Review *Ad Cautelam* filed by petitioner

Under Sections 254 and 255 of the NIRC, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. The crime of tax evasion is committed by the mere fact that the taxpayer

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[49] 535 Phil. 521 (2006).

[50] *Id*. at 532-533.

knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. It is therefore not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper.[51]

While the tax evasion case is pending, the BIR is not precluded from issuing a final decision on a disputed assessment, such as what happened in this case. In order to prevent the assessment from becoming final, executory and demandable, Section 9 of R.A. No. 9282 allows the taxpayer to file with the CTA, a Petition for Review within 30 days from receipt of the decision or the inaction of the respondent.

The tax evasion case filed by the government against the erring taxpayer has, for its purpose, the imposition of criminal liability on the latter. While the Petition for Review filed by the petitioner was aimed to question the FDDA and to prevent it from becoming final. The stark difference between them is glaringly apparent. As such, the Petition for Review *Ad Cautelam* is not deemed instituted with the criminal case for tax evasion.

In fact, in the Resolution[52] dated June 6, 2012, the CTA recognized the separate and distinct character of the Petition for Review from the criminal case, to wit:

> As regards, [petitioner's] Urgent Motion (With Leave of Court for Confirmation that the Civil Action for Recovery of Civil Liability for Taxes and Penalties is Deemed Instituted in the Consolidated Criminal Cases) filed on May 30, 2012, the same is hereby **GRANTED.** The civil action for recovery of the civil liabilities of [petitioner] for taxable year 2008 stated in the [FDDA] dated May 18, 2012 is **DEEMED INSTITUTED** with the instant consolidated criminal cases, **without prejudice to the right of the [petitioner] to avail of whatever additional legal remedy he may have, to prevent the said FDDA from becoming final and executory for taxable year 2008.**[53] (Emphasis ours)

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[51] *Ungab v. Judge Cusi, Jr.,* 186 Phil. 604, 610-611 (1980).

[52] *Rollo,* pp. 546-554.

[53] *Id*. at 553.

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In the said resolution, what is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.

The CTA *En Banc* erred in affirming the dismissal of the case for nonpayment of docket fees

While it is true that the Petition for Review *Ad Cautelam* is not deemed instituted with the criminal case, We hold that the CTA *En Banc* still erred in affirming the dismissal of the case.

Rule 6, Section 3 of the RRCTA provides that:

> **SEC. 3.** *Payment of docket fees.* – The Clerk of Court shall not receive a petition for review for filing unless the petitioner submits proof of payment of the docket fees. Upon receipt of the petition or the complaint, it will be docketed and assigned a number, which shall be placed by the parties on all papers thereafter filed in the proceeding. The Clerk of Court will then issue the necessary summons to the respondent or defendant.

Basic is the rule that the payment of docket and other legal fees is both mandatory and jurisdictional. The court acquires jurisdiction over the case only upon the payment of the prescribed fees.[54]

However, the mere failure to pay the docket fees at the time of the filing of the complaint, or in this case the Petition for Review *Ad Cautelam,* does not necessarily cause the dismissal of the case. As this Court held in *Camaso v. TSM Shipping (Phils.), Inc.,*[55] while the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, its

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[54] *Gipa, et al. v. Southern Luzon Institute,* 736 Phil. 515, 527 (2014).

[55] G.R. No. 223290, November 7, 2016, 807 SCRA 204.

nonpayment at the time of filing of the initiatory pleading does not automatically cause its dismissal so long as the docket fees are paid within a reasonable period; and that the party had no intention to defraud the government.[56]

In this case, records reveal that petitioner has no intention to defraud the government in not paying the docket fees. In fact, when he appealed the FDDA insofar as the taxable year 2007 was concerned, he promptly paid the docket fees when he filed his Petition for Review.

Confusion resulted when the FDDA also covered tax deficiencies pertaining to taxable year 2008 which was also the subject of the consolidated criminal cases for tax evasion. To guide the petitioner, he sought the advise of the CTA First Division on whether he was still required to pay the docket fees. The CTA First Division issued its Resolution[57] dated June 6, 2012 ruling that the civil action for recovery of the civil liabilities of petitioner for taxable year 2008 stated in the FDDA was deemed instituted with the consolidated criminal cases. Pursuant to said CTA Resolution, the Clerk of Court issued a computed "zero filing fees"[58] when petitioner filed his Petition for Review *Ad Cautelam.*

Petitioner merely relied on good faith on the pronouncements of the CTA First Division that he is no longer required to pay the docket fees. As such, the CTA cannot just simply dismiss the case on the ground of nonpayment of docket fees. The CTA should have instead directed the clerk of court to assess the correct docket fees and ordered the petitioner to pay the same within a reasonable period. It should be borne in mind that technical rules of procedure must sometimes give way, in order to resolve the case on the merits and prevent a miscarriage of justice.

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[56] *Id*. at 210.

[57] *Rollo,* pp. 546-554.

[58] *Id*. at 184.

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This Court will not however rule on the merits of the CTA Case No. 8503

Rule 4, Section 3(a), paragraph 1 of the RRCTA provides that the CTA First Division has exclusive appellate jurisdiction over decisions of the Commissioner of Internal Revenue on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, to wit:

SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) **Exclusive original or appellate jurisdiction to review by appeal the following:**

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;**

The above provision means that the CTA exercises exclusive appellate jurisdiction to resolve decisions of the commissioner of internal revenue. There is no other court that can exercise such jurisdiction. "[I]t should be noted that the CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems."[59] Thus, this Court has no jurisdiction to review tax cases at the first instance without first letting the CTA to study and resolve the same.

Under Rule 16, Section 1[60] of the RRCTA, this Court's review of the decision of the CTA *En Banc* is limited in determining

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[59] *Eastern Telecommunications Phils., Inc. v. Commissioner of Internal Revenue,* 757 Phil. 136, 143 (2015).

[60] **SEC. 1.** *Appeal to Supreme Court by petition for review on certiorari.* – **A party adversely affected by a decision or ruling of the Court *en***

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whether there is grave abuse of discretion on the part of the CTA in resolving the case. Basic is the rule that delving into factual issues in a petition for review on *certiorari* is not a proper recourse, since a Rule 45 petition is only limited to resolutions on questions of law.[61]

Here, petitioner insists that the 10 parcels of idle land he sold on July 11, 2008 in a single transaction to Eagle I are capital assets. Thus, the said parcels of land are properly subject to capital gains tax and documentary stamp tax and not to the regular income tax and value-added tax. The CIR, on the other hand argues that the 10 parcels of land sold by petitioner are ordinary assets, hence should be subject to income tax and value-added tax. The CIR reasoned that the sole purpose of petitioner in acquiring the said lots was for the latter to make a profit. Further, the buying and selling of the said lots all occurred within the period of eight months and it involved sale transactions with a ready buyer.[62]

Section 39(A)(1) of the National Internal Revenue Code (NIRC) provides that:

(1) *Capital Assets.* – the term *'capital assets'* means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided

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banc* may appeal therefrom by filing with the Supreme Court a verified petition for review on *certiorari within fifteen days from receipt of a copy of the decision or resolution, as provided in Rule 45 of the Rules of Court. If such party has filed a motion for reconsideration or for new trial, the period herein fixed shall run from the party's receipt of a copy of the resolution denying the motion for reconsideration or for new trial. (Emphasis ours)

[61] *Nenita Quality Foods Corp. v. Galabo, et al.,* 702 Phil. 506, 515 (2013).

[62] *Rollo,* p. 524.

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in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer.

The distinction between capital asset and ordinary asset was further defined in Section 2(a) and (b) Revenue Regulations No. 7-2003,[63] thus:

a. *Capital assets* shall refer to all real properties held by a taxpayer, whether or not connected with his trade or business, and which are not included among the real properties considered as ordinary assets under Sec. 39(A)(1) of the Code.

b. *Ordinary assets* shall refer to all real properties specifically excluded from the definition of capital assets under Sec. 39(A)(1) of the Code, namely:

1. Stock in trade of a taxpayer or other real property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year; or

2. Real property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or

3. Real property used in trade or business (i.e., buildings and/or improvements) of a character which is subject to the allowance for depreciation provided for under Sec. 34(F) of the Code; or

4. Real property used in trade or business of the taxpayer.

The statutory definition of capital assets is negative in nature. Thus, if the property or asset is not among the exceptions, it is a capital asset; conversely, assets falling within the exceptions are ordinary assets.[64]

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[63] Providing the Guidelines in Determining Whether a Particular Real Property is a Capital Asset or an Ordinary Asset Pursuant to Section 39(A)(1) of the National Internal Revenue Code of 1997 for Purposes of Imposing the Capital Gains Tax under Sections 24(D), 25(A)(3), 25(B) and 27(D)(5), or the Ordinary Income Tax under Sections 24(A), 25(A) & (B), 27(A), 28(A)(1) and 28(B)(1), or the Minimum Corporate Income Tax (MCIT) under Sections 27(E) and 28(A)(2) of the same Code.

[64] *Calasanz, et al. v. Commissioner of Internal Revenue,* 228 Phil. 638, 644 (1986).

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To determine as to whether the transaction between petitioner and Eagle I is an isolated transaction or whether the 10 parcels of land sold by petitioner is classified as capital assets or ordinary assets should properly be resolved by the CTA. Thus, it would be more prudent for Us to remand the case to CTA for the latter to conduct a full-blown trial where both parties are given the chance to present evidence of their claim. Well-settled is the rule that this Court is not a trier of facts.

Considering Our foregoing disquisitions, the proper remedy is to remand the case to the CTA First Division and to order the Clerk of Court to assess the correct docket fees for the Petition for Review *Ad Cautelam* and for petitioner to pay the same within ten (10) days from receipt of the correct assessment of the clerk of court.

WHEREFORE, the Petition is hereby **PARTIALLY GRANTED.** The Decision dated December 22, 2014 and Resolution dated February 2, 2016 of the Court of Tax Appeals *En Banc* in CTA EB Criminal Case No. 026 are **REVERSED and SET ASIDE.** The case is **REMANDED** to the Court of Tax Appeals First Division to conduct further proceedings in CTA Case No. 8503 and to **ORDER** the Clerk of Court to assess the correct docket fees. Petitioner Mariano Lim Gaw, Jr., is likewise **ORDERED** to pay the correct docket fees within ten (10) days from the receipt of the correct assessment of the Clerk of Court.

SO ORDERED.

Leonardo-de Castro (*Chairperson*), *Peralta,*[*] *del Castillo,* and *Gesmundo,*[**] *JJ.,* concur.

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[*] Designated additional Member per Raffle dated July 9, 2018 *vice* Associate Justice Francis H. Jardeleza.

[**] Designated as Acting Member pursuant to Special Order No. 2560 dated May 11, 2018.