REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,* -*versus*- **RITCHE S. BARRIGA,** *Accused.*	**CTA Crim. Case No. O-266** For: Violation of Section 255 of the NIRC of 1997, as amended
PEOPLE OF THE PHILIPPINES, *Plaintiff,* -*versus*- **RITCHE S. BARRIGA,** *Accused*	**CTA Crim. Case No. O-267** For: Violation of Section 255 of the NIRC of 1997, as amended
PEOPLE OF THE PHILIPPINES, *Plaintiff,* -*versus*- **RITCHE S. BARRIGA,** *Accused*	**CTA Crim. Case No. O-268** For: Violation of Section 255 of the NIRC of 1997, as amended
PEOPLE OF THE PHILIPPINES, *Plaintiff,* -*versus*- **RITCHE S. BARRIGA,** *Accused.*	**CTA Crim. Case No. O-269** For: Violation of Section 255 of the NIRC of 1997, as amended Members: **DEL ROSARIO, *P.J.***, *Chairperson* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.* Promulgated: JUN 17 2020 ; 10:25 am

x- x

RESOLUTION

MANAHAN, *J.*:

On February 5, 2020, plaintiff, Burau of Internal Revenue (BIR), filed a **Motion for Reconsideration (Decision**

promulgated on January 21, 2020)[1]. On the other hand, Accused filed its **Opposition (To Plaintiff's Motion for Reconsideration dated 4 February 2020)**[2] on February 28, 2020 after being ordered and duly notified by this Court per this Court's Resolution dated February 11, 2020.

Plaintiff prays that the *Decision* dated January 21, 2020 (assailed Decision) be reconsidered and instead for the Court to render a new judgment finding the Accused guilty as charged of the offense stated in the Information and ordering him to pay the corresponding civil liability. The dispositive portion of the assailed decision reads as follows:

> **WHEREFORE**, accused RITCHE S. BARRIGA is hereby **ACQUITTED** in CTA Crim. Case Nos. O-266, O-267, O-268, and O-269 for failure of the prosecution to establish the accused's guilt beyond reasonable doubt. (without civil liability)
>
> The cash bail bonds posted by accused are hereby **CANCELLED** and **ORDERED RELEASED** to the accused upon presentation of the proper documents, in accordance with usual accounting rules and regulations.
>
> **SO ORDERED**.

Plaintiff faulted the Honorable Court in setting aside the evidence presented by the prosecution to prove the guilt of the accused beyond reasonable doubt for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended.

On the other hand, Respondent argues that acquittal in a criminal case bars further litigation on the guilt of the accused. Thus, no Motion for Reconsideration of the same is allowed. Further, accused argues that a Motion for Reconsideration does not fall as one of the exceptions to the double jeopardy rule.

We deny the instant motion.

Plaintiff should be aware that this Court did not arbitrarily set aside its evidence but what it presented during

---

[1] Docket, CTA Crim. Case No. O-266, Motion for Reconsideration (Decision promulgated on January 21, 2020) dated February 4, 2020.

[2] Opposition (To Plaintiff's Motion for Reconsideration dated 4 February 2020) dated February 28, 2020.

the trial was insufficient to meet the required quantum of evidence that will find the accused guilty beyond reasonable doubt. To emphasize, we reiterate our findings in the assailed decision, to wit:

> To prove such allegation, the prosecution presented the respective Tax Returns of the accused. It also presented the Annual Information Return of Creditable Income Taxes Withheld (Expanded)/ Income Payments Exempt from Withholding Tax (Form 1604-E) for taxable year 2009 and Certificate of Creditable Tax Withheld at Source (Form 2307) for taxable year 2009.
>
> However, this Court did not admit into evidence the VAT Return for 2nd quarter of taxable year 2009 as well as those Bureau of Internal Revenue (BIR) Form Nos. 1604-E's and Form 2307's, which were supposed to prove the abovementioned alleged true income earned by the accused. Thus, there was no evidence on the alleged true income of the accused. These documents were vital to prove the allegation of the prosecution that the accused had indeed failed to supply correct and accurate information as the same were the sources of the alleged correct income.
>
> Although the prosecution's witnesses identified and testified on said exhibits, their testimony cannot anymore be corroborated by valid documentary evidence. Hence, it cast doubts as to the accuracy of such testimony.
>
> Further, the income earned by the accused in the Amended Post Reporting Notice dated May 23, 2012 and the Details of Delinquency from the BIR which were presented by the accused as his evidence marked as Exhibits "A-34" to "A-34-d" reveal otherwise. The prosecution did not object nor made any comment in the introduction of said exhibits.
>
> The Net Taxable Income after adjustment as determined by the BIR amounted only to Php19,545,997.93 and not the alleged amount of Php72,835,095.99. Further, the VAT payable after adjustment as determined by the BIR for the entire taxable year 2009 amounted only to Php2,216,563.61. Thus, the deficiency income tax and VAT before surcharge and interest amounted only to Php401,938.87 and Php2,024,281.88, respectively, which were already paid according to the Termination Letter dated October 16, 2012 from the BIR Revenue Region No. 19, Davao City.
>
> In the Details of Discrepancies attached to the Preliminary Assessment Notice (PAN) presented by the prosecution during trial, the basis for the assessment was the variation between the sales figures as determined by the BIR Examiners in Tagum as compared to the one determined by its examiners in Davao. Further, the alleged income earned by the accused was based only on the list of

purchases made by the accused from several of its suppliers including the list of payees from STANFILCO and LAPANDAY which were not admitted into evidence by this Court.

xxx xxx xxx

As to the third element of the offense, the prosecution alleged that the accused willfully failed to supply correct and accurate information.

As repartee to said accusation, the accused explained that the alleged discrepancy could be attributable to his adoption of a cash method of accounting in contrast with his four customers, i.e. STANFILCO, LAPANDAY, First Davao Consolidated Joint Venture, and Sumifru (Philippine) Corporation, using an accrual method of accounting, which usage was advised by his lawyer, to wit:

xxx xxx xxx

As discussed above, **the prosecution failed to establish the existence of the second and third elements constitutive of the offense charged under Section 255 of the 1997 NIRC, as amended.** Thus, there is reasonable doubt if indeed the accused willfully failed to supply correct and accurate information in his ITR and VAT Returns. (*Emphasis supplied*)

As stated above, the prosecution failed to corroborate the testimony of its witnesses by documentary evidence, which was fatal to its case. Thus, such failure casts doubt on the allegations of the plaintiff in the Information.

As to the instant motion, we agree with the accused that the filing of such was improperly made and it violates the Rule on Double Jeopardy.

In *People of the Philippines v. Lino Alejandro y Pimentel*[3], the Supreme Court ruled that any appeal from an acquittal of an accused in a criminal prosecution may only be done through the filing of a petition for *certiorari* under Rule 65 of the Rules of Court, to wit:

"In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable.

The 1987 Constitution guarantees the right of the accused against double jeopardy, thus:

[3] G.R. No. 223099, January 11, 2018.

> Section 7, Rule 117 of the 1985 and 2000 Rules on Criminal Procedure strictly adhere to the constitutional proscription against double jeopardy and provide for the requisites in order for double jeopardy to attach. For double jeopardy to attach, the following elements must concur: *(1)* a valid information sufficient in form and substance to sustain a conviction of the crime charged; *(2)* a court of competent jurisdiction; *(3)* the accused has been arraigned and had pleaded; and *(4)* the accused was convicted or acquitted or the case was dismissed without his express consent.
>
> xxx xxx xxx
>
> The rule on double jeopardy, however, is not without exceptions, which are: (1) Where there has been deprivation of due process and where there is a finding of a mistrial, or (2) Where there has been a grave abuse of discretion under exceptional circumstances. We find that these exceptions do not exist in this case. Here, there was no deprivation of due process or mistrial because the records show that the prosecution was actually able to present their case and their witnesses.
>
> A mere manifestation also will not suffice in assailing a judgment of acquittal. A petition for *certiorari* under Rule 65 of the Rules should have been filed. A judgment of acquittal may only be assailed in a petition for *certiorari* under Rule 65 of the Rules. If the petition, regardless of its nomenclature, merely calls for an ordinary review of the findings of the court *a quo*, the constitutional right of the accused against double jeopardy would be violated."

Plaintiff should be aware that an acquittal by an accused in a criminal case is equivalent to a finality of a decision, hence, the power of the court to modify its own decision does not extend to such acquittal. In *Miguel Argel v. Judge Herminia M. Pascua, RTC-Br. 25, Vigan, Ilocos Sur*[4], the Supreme Court ruled:

> In criminal cases, a judgment of acquittal is immediately final upon its promulgation. It cannot be recalled for correction or amendment except in the cases already mentioned nor withdrawn by another order reconsidering the dismissal of the case since **the inherent power of a court to modify its order or decision does not extend to a judgment of acquittal in a criminal case**. (*Emphasis supplied*)

The filing, therefore, of the instant motion is improper. Hence, it must be dismissed.

---

[4] A.M. No. RTJ-94-1131, August 20, 2001.

WHEREFORE, premises considered, the *Motion for Reconsideration (Decision promulgated on January 21, 2020)* is hereby **DENIED**. Accordingly, the **assailed *Decision*** dated January 21, 2020 is hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice