REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-271** (I.S. No. 2007-285) For: Violation of Sec. 255 of the NIRC of 1997
versus-	Members: **CASTAÑEDA, JR.**, *Chairperson and* **MANAHAN**, *JJ.*
LEONILA TOLENTINO ARCEO, doing business under the name and style L.T. Arceo Trading, *Accused.*	Promulgated: NOV 19 2018 2:45 p.m.

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RESOLUTION

MANAHAN, *J.:*

On September 3, 2018, the Court promulgated its Decision acquitting accused Leonila Tolentino Arceo of the offense charged. In the same Decision, the Court ruled that it has no basis upon which to rule upon the civil liability of the accused.

On September 18, 2018, plaintiff filed its *Motion for Reconsideration (Of the Decision dated September 3, 2018)*, praying that the Court reconsider its ruling on accused's civil liability, and to order the accused to pay the deficiency income tax amounting to Php6,806,418.22 for taxable year 2005, as well as the applicable penalties, surcharges, deficiency and delinquency interest.

In its *Motion*, plaintiff cites Sections 205 and 222 of the 1997 National Internal Revenue Code, as amended (NIRC), as follows:

> SEC. 205. *Remedies for the Collection of Delinquent Taxes.* – The civil remedies for the collection of internal revenue

taxes, fees or charges, and any increment thereto resulting from delinquency shall be:

(a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; and

(b) By civil or criminal action.

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however,* That the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).

The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.

The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon.

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SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. xxx

Based on the foregoing provisions, plaintiff states that a criminal case for false or fraudulent return with intent to evade tax or failure to file a return is a mode for collecting taxes even without an assessment. A criminal case filed by the Bureau of Internal Revenue, duly endorsed by the Commissioner of Internal Revenue, is considered a final determination of the Commissioner as to the tax liability of an accused. Thus, in the present case, the tax liability of the accused was already ascertainable from the moment the CIR endorsed the criminal complaint to the Department of Justice, attaching therewith the accused's deficiency taxes and the facts and the law upon which the deficiency was based.

Plaintiff also states that by harmonizing the phrase "by civil or criminal action" and the phrase "the judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the commissioner", the only logical conclusion from Section 205 is that the NIRC allows collection of delinquent taxes through a criminal action without an assessment. Plaintiff further cites various jurisprudence relating to the United States Internal Revenue Code to bolster its position that a tax may be collected in court even without an assessment.

Plaintiff also states that the Court found that there is failure to supply correct and accurate information considering that there is no purchase of Php20,250,000.00 reflected in the income statements. Thus, plaintiff submits that it has been proven that there was a failure to supply correct information, which renders accused liable for the deficiency income tax amounting to Php6,806,418.22 for taxable year 2005.

Accused submitted her counter-arguments through a Comment/Opposition (Motion for Reconsideration dated September 18, 2018), filed through registered mail on October 5, 2018. Accused argues that the Court correctly ruled that her lack of knowledge of the transaction points to the lack of intent to willfully fail to report the transactions by her husband and his business partners with the Privatization Management Office (PMO). Accused further states that the prosecution failed to prove that the proper assessment procedures were followed.

The motion has no merit.

It is well-settled that the acquittal of a taxpayer in the criminal case cannot operate to discharge him or her from the duty to pay tax, because that duty is imposed by statute prior to and independent of any attempt on the part of the taxpayer to evade payment. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information, nor is it a mere civil liability derived from crime that would be wiped out by the judicial declaration that the criminal acts charged did not exist.[1]

It is equally settled that in *Ungab v. Cusi*,[2] the Supreme Court held that "there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code." However, Section 205 of the NIRC provides that "the judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner." Based on these two principles, while there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution, it is still required that "in order to be included in the judgment of said civil liability, it must be the final decision of petitioner [CIR]. Thus, it refers to a formal assessment."[3]

In the instant case, accused Arceo was charged with willful failure to supply correct and accurate information, in violation of Section 255 of the NIRC. However, prosecution failed to prove the element of willfulness and intent, necessitating the acquittal of the accused.

In proving the elements of said violation of Section 255, the amount of tax deficiency need not be proven. The amount becomes material only when the issue is about the imposition of civil liability.[4] Thus, in compliance with Section 205 of the NIRC, an "assessment becomes necessary when the payment of taxes is imposed as part of the civil liability in the final adjudication of the criminal case."[5]

Here, no assessment notices were presented to prove the assessment of deficiency income tax against accused Arceo,

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[1] *People v. Laxamana y Baluyot*, CTA Crim. Case Nos. O-445 to 448, January 17, 2018, citing *Castro v. The Collector of Internal Revenue*, G.R. No. L-12174, April 26, 1962.
[2] GR. Nos. L-41919-24, May 30, 1980.
[3] *People v. Mendez*, CTA EB Crim. Nos. 038 and 039, September 8, 2017.
[4] *People v. Mendez*, CTA EB Crim. Nos. 038 and 039, December 7, 2017.
[5] *People v. Mendez*, CTA EB Crim. Nos. 038 and 039, December 7, 2017.

therefore, there is no basis for the Court to rule upon the civil liability of the accused.

WHEREFORE, premises considered, plaintiff's *Motion for Reconsideration (Of the Decision dated September 3, 2018)* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice