REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

WONG YAN TAK,
GERALYN BOBIER,
and PIC N' PAC MART, INC.,
Accused.

CTA CRIM. CASE NO. O-090
(I.S. No. 07K-19049)
For: Violation of Sec. 255, in relation to Sections 253(d) and 256 of the 1997 National Internal Revenue Code

Members:
BAUTISTA*, Chairperson*
PALANCA-ENRIQUEZ, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JAN 8 2013
Afternoon 2:20 p.m.

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AMENDED DECISION

BAUTISTA, J.:

For resolution is the "Omnibus Motion (In the nature of Motion To Admit Accused Under Probation and Partial Motion for Reconsideration)," filed by accused Wong Yan Tak on October 30, 2012.

In the Decision[1] dated October 17, 2012, the Court held that:

> **"WHEREFORE,** premises considered, the Court finds and so holds that:
>
> 1) Accused **WONG YAN TAK** is **GUILTY BEYOND REASONABLE DOUBT** of Violation of Section 255 of the National Internal Revenue Code of 1997, *as amended*, and is hereby sentenced to suffer an indeterminate penalty of imprisonment of one (1) year, as minimum, to two (2) years, as maximum, and is **ORDERED** to pay a fine in the amount of P10,000.00, with subsidiary imprisonment in case accused has no property with

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[1] *Records* (CTA Crim Case No. O-090), pp. 669-690.

which to meet the said fine, pursuant to Section 280 of the same Code;

2) As regards the civil liability, Court hereby **ORDERS** the accused **WONG YAN TAK** to pay the Bureau of Internal Revenue the amount of Php3,552,716.81, representing the 2002 deficiency value-added tax assessment, plus 20% delinquency interest per annum from September 9, 2005, until fully paid pursuant to Section 249 of the National Internal Revenue Code of 1997, as amended, taking into consideration the amount of Php232,134.00, already paid on March 17, 2009;

3) In addition, Court hereby **ORDERS** Pic N' Pac Mart, Inc. to pay Fifty thousand pesos (P50,000.00), pursuant to Section 256 of the same Code.

SO ORDERED."

Accused is asking the Court to reconsider his civil liability, wherein the Court ordered him to pay the amount totaling to Php3,552,716.81, which represents the 2002 deficiency value-added tax assessment, plus 20% delinquency interest per annum from September 9, 2005, until fully paid.

Accused is also asking the Court to place him under Presidential Decree No. 968, otherwise known as the Probation Law of 1976, as amended.

On November 29, 2012, the prosecution filed a "Comment/Opposition (To Accused's Omnibus Motion dated October 30, 2012)," in response to the Resolution[2] promulgated by the Court on November 13, 2012. In the "Comment/Opposition (To Accused's Omnibus Motion dated October 30, 2012)," prosecution is asking the Court to deny the "Omnibus Motion (In the nature of Motion To Admit Accused Under Probation and Partial Motion for Reconsideration)," as the points raised by the accused have no merit.

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[2] *Id.*, pp. 704-705.

After a careful study of the issues raised by the parties, the Court finds the "Omnibus Motion (In the nature of Motion To Admit Accused Under Probation and Partial Motion for Reconsideration)," partially meritorious.

On the issue of the civil liability, the Court finds that accused is correct in pointing out that Pic N' Pac Mart, Inc., a corporation, is a separate and distinct entity. Thus, while accused Wong Yan Tak is the president of the said corporation, he himself is ***not*** the corporation, but merely a responsible officer. Only when the circumstances warrant the application of the doctrine of "piercing the corporate veil" can the Court hold stockholders and/or officers of the Corporation directly liable for corporate tax liabilities.[3]

However, in this case, no allegation was ever made that the corporation was being used merely as an adjunct, business conduit or alter ego of another corporation or by its stockholders, nor was their an allegation that the corporation was being used to perpetuate fraud in relation to our tax laws. Only in these circumstances can the fiction of separate and distinct corporate identities shall be set aside, making the individuals liable for the tax liabilities of the said corporation.

Thus, the civil liability arising from the assessment should be collected from Pic N' Pac Mart, Inc. and not the accused Wong Yan Tak. Thus, Pic N' Pac Mart, Inc. has a tax liability in the amount of Php3,552,716.81, representing the 2002 deficiency value-added tax assessment, plus 20% delinquency interest per annum

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[3] *CIR vs. Toda*, G.R. No. 147188, September 14, 2004, 438 SCRA 290; *CIR vs. Menguito*, G.R. No. 167560, September 17, 2008, 461 SCRA 565.

from September 9, 2005, until fully paid pursuant to Section 249 of the National Internal Revenue Code of 1997, as amended, taking into consideration the amount of Php232,134.00.

On the subject of probation, the Court deems it proper to discuss this at a later date.

WHEREFORE, the "Omnibus Motion (In the nature of Motion to Admit Accused under Probation and Partial Motion for Reconsideration)" filed by accused Wong Yan Tak, insofar as the Partial Motion for Reconsideration, is hereby **GRANTED**.

Accordingly, the order of the Court in its Decision dated October 17, 2012, insofar as the civil liability amounting to Php3,552,716.81, plus 20% delinquency interest per annum is hereby **CANCELLED**.

The resolution on the Motion to Admit Accused under Probation, is hereby **HELD IN ABEYANCE**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(Retired)
OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice