REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

BIENVENIDO S. DIMSON and GILBERT P. DIMSON, DIMSON (Manila) Inc., Couperville Mansions, 17 East Riverside, San Francisco Del Monte, Quezon City.
Accused.

CTA Crim. Case No. O-304
XV-07-INV-10I-07263

For: Violation of Sec. 255 in rel. to Sec. 253(d) and 256, Tax Reform Act of 1997 as amended by R.A. No. 8424

Members:

DEL ROSARIO, P.J., Chairperson,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

OCT 03 2017 : 1:40pm

x - x

RESOLUTION

UY, J.:

For resolution is plaintiff's **"MOTION FOR RECONSIDERATION ON THE CIVIL ASPECT OF THE DECISION"** filed on June 1, 2017, with accused's **"MOTION TO ADMIT THIS OPPOSITION TO MOTION FOR RECONSIDERATION [ON THE CIVIL ASPECT OF THE DECISION]"** filed on July 18, 2017, praying, in effect, for the reconsideration of the civil aspect of this Court's Decision dated May 17, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, accused **BIENVENIDO S. DIMSON** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.
>
> Insofar as the case against accused **GILBERT P. DIMSON**, who to date, remains at large, let the same be

sent to the ARCHIVES, to be revived upon his arrest.

Further, the Assessment Notice No. 32-2002 dated October 19, 2005, the Demand Letter No. 32-2002 dated October 19, 2005, and the Final Notice Before Seizure dated May 3, 2006 are declared **VOID**.

SO ORDERED."

Plaintiff additionally prays, in the instant *Motion for Reconsideration On the Civil Aspect of the Decision*, that the assessment issued by the Bureau of Internal Revenue (BIR) against Dimson Manila, Inc. (DMI) and accused, be declared valid, and that the accused and DMI be ordered to pay the delinquent tax deficiencies, inclusive of charges and interests.

In the Resolution dated August 3, 2017, the Court granted accused's *Motion to Admit This Opposition to the Motion for Reconsideration [On the Civil Aspect of the Decision]* filed on July 18, 2017, and accused's *Opposition* was admitted. Thus, plaintiff's motion was submitted for resolution.

In support of its *Motion for Reconsideration On the Civil Aspect of the Decision*, plaintiff raises the following arguments, to wit:

1. The right of the BIR to collect is based on a valid assessment that is final, executory and demandable.

2. The assailed Decision delved on an issue not raised by the parties.

On the other hand, accused, in his *Opposition*, counters that:

1. The arguments in support of the present motion for reconsideration which are mere rehash were already squarely ruled upon in the decision sought to be reconsidered, and outlandish, since plaintiff is still trying to pursue the civil aspect on the basis of a void deficiency tax assessment.

2. No right can spring from a void act as it confers no legal rights for no less than the Decision sought to be reconsidered states that a void assessment bears no valid fruit.

THE COURT'S RULING

Plaintiff's *Motion for Reconsideration On the Civil Aspect of the Decision* lacks merit.

A void assessment bears no valid fruit and cannot attain finality.

Plaintiff argues, in effect, that antecedent facts prior to attainment of finality like the issuance and service of PAN is of no moment, and that the right of the BIR to collect is based on a valid assessment that is final, executory and demandable. Simply put, plaintiff is of the view that We ought not to look whether there was a valid service of the PAN to DMI.

We are not convinced.

To reiterate, in *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[1] the Supreme Court ruled that the sending of a PAN is part of the due process requirement in the issuance of a deficiency tax assessment, to wit:

> "From the provision quoted above, it is clear that **the sending of a PAN to taxpayer to inform him of the assessment made is but part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment made by the tax authorities**. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. **Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void**.
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> xxx xxx xxx

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[1] G.R. No. 185371, December 8, 2010.

> The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for **it is well-settled that a void assessment bears no fruit**." *(Emphases supplied)*

In addition, it must be stressed that tax laws are civil in nature. Under our Civil Code, acts executed against the mandatory provisions of law are void, except when the law itself authorizes the validity of those acts. Failure to comply with Section 228 of the National Internal Revenue Code (NIRC) of 1997, which requires, *inter alia*, the issuance of a PAN except in specific situations, does not only render the assessment void, but also finds no validation in any provision in the NIRC.[2]

In this case, the situation calls for the issuance of a PAN against DMI. However, plaintiff miserably failed to adduce proof that the said corporate taxpayer was notified of the PAN.[3] The testimonial evidence presented by the prosecution only showed that it was prepared by Myla O. Gulle, and that she transmitted it for mailing to the Administrative Division. Ms. Gulle admitted that she had no personal knowledge if the PAN was indeed sent to DMI and received by the latter.[4]

Considering that the prosecution failed to prove that the PAN was indeed served to the taxpayer, either personally or through registered mail, the subject deficiency tax assessment is therefore *void,* in accordance with the doctrine laid down in the aforequoted case.

Correspondingly, considering that a void assessment bears no valid fruit, the subject assessment cannot attain finality, and thus, the corporate taxpayer cannot be held civilly liable therefor.

Valid service of the PAN is essential in the determination of the existence of the first element of the crime charged.

Plaintiff argues that the assailed Decision delved on an issue not raised by the parties.

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[2] *Commissioner of Internal Revenue vs. Azucena T. Reyes,* G.R. Nos. 159694 & 163581, January 27, 2006.
[3] Exhibit "P-15" and Exhibit "A-27," Docket, Vol. I, pp. 213 to 214.
[4] TSN dated March 19, 2014, pp. 13 to 18.

We do not agree.

As already intimated in the assailed Decision, the determination of whether the accused is guilty of a violation of Section 255 of NIRC of 1997 rests on the existence of the following three (3) elements of the said crime, to wit:

1. That a corporate taxpayer is **required under the NIRC of 1997 to pay any tax**, make a return keep any 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; and

2. That the corporate taxpayer **failed to pay the required tax**, make a return or keep the required record, or supply the correct and accurate information; and

3. That accused, as the employee responsible for the violation, **willfully failed 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.

To reiterate, and as can be gleaned from the foregoing, the *second* and *third* elements of the crime charged are both dependent on the existence of the *first* element, *i.e.*, the corporate taxpayer is required to pay any tax. In the instant case, the corporate taxpayer was assessed for deficiency income tax or taxable year 2002.

Relative thereto, the issue as to whether or not DMI, the corporate taxpayer, had been required to pay the subject tax assessment by the BIR necessitates a determination as to whether or not DMI was duly notified about the corresponding assessment for deficiency income tax by the BIR. This is in accordance with Section 6(A) of the NIRC of 1997, which provides as follows:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* – xxx
>
> **The tax or any deficiency tax so assessed shall**

> **be paid upon notice and demand from the Commissioner or from his duly authorized representative.**" *(Emphasis supplied.)*

Thus, based on the foregoing legal provision, from the moment that the Commissioner or his duly authorized representative issues a notice and demand for the payment of tax, or any deficiency tax, the legal obligation to pay the assessed tax arises.

Clearly, the legal obligation to pay tax or deficiency tax, arises only when the assessment is, first and foremost, valid and not void, because as already stated, a void assessment bears no fruit. It is for this reason that in the assailed Decision, the Court made a determination as to whether or not the subject PAN was validly served.

Considering that in the assailed Decision, the Court found the deficiency tax assessment as void, because the subject PAN was not shown to have been received by DMI or its duly authorized representative, it logically follows that there could be no obligation or requirement to pay the deficiency tax being assessed. Hence, the *first* element of Section 255, in relation to Sections 253 (d) and 256, all of the NIRC of 1997, is not present. Correspondingly, this Court, in the assailed Decision, found it unnecessary to determine the existence of the *second* and *third* elements of the crime.

WHEREFORE, in light of the foregoing considerations, plaintiff's *Motion for Reconsideration On the Civil Aspect of the Decision* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice