REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA Crim. Case Nos. O-599, O-601, O-603 & O-604 For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended.
- versus -	Members: DEL ROSARIO, *PJ*, *Chairperson;* FABON-VICTORINO, and MANAHAN, *JJ.*
REBECCA S. TIOTANGCO Entrepreneur of Anilos Trading and Construction, Accused.	Promulgated: JUN 15 2020 10:32am

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RESOLUTION

FABON-VICTORINO, *J.*

This resolves the following:

1. Plaintiff's *Motion for Partial Reconsideration* filed on November 28, 2019, with accused's *Comment* thereto filed on February 7, 2020; and

2. Accused's *Motion for Reconsideration* filed on November 28, 2019, with plaintiff's *Comment/Opposition* thereto filed on January 27, 2020.

Both parties assail the Decision promulgated on November 13, 2019, the dispositive portion of which reads:

> **WHEREFORE**, the Court finds accused Rebecca S. Tiotangco **GUILTY BEYOND REASONABLE DOUBT** on three (3) counts of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and sentences her **for each of the offense charged** in CTA Criminal Case No. O-599, CTA Criminal Case No. O-603, and CTA Criminal Case No. O-604, to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum term of imprisonment, and is **ORDERED TO PAY** a fine in the amount of Php10,000.00, with subsidiary imprisonment in case she has no property with which to meet such fine pursuant to Section 180 of the NIRC of 1997, as amended.
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> Accused Rebecca S. Tiotangco is however, **ACQUITTED** in CTA Criminal Case No. O-601, for failure of the prosecution to prove her guilt beyond reasonable doubt.
>
> **SO ORDERED**.

In its *motion*, plaintiff asks the Court to reconsider the dismissal of the civil actions to collect the tax deficiencies saying that:

> The Court committed a reversible error in holding that the presentation of the computation of the unreported income cannot be used as basis for the determination of the civil liabilities of accused.

Plaintiff avers that as a general rule, collection of taxes through the courts cannot be done without an assessment. However, plaintiff submits that this rule admits of exception found in Section 222 of the NIRC of 1997, as amended, which states that *"[I]n the case of a false or fraudulent return with intent to evade tax or of failure to file return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment."*

Plaintiff claims that it was able to prove that accused violated Section 255 of the NIRC of 1997, as amended, in CTA Crim. Case No. O-599, CTA Crim. Case No. O-603, and CTA Crim. Case No. O-604 for they fall under the exception to the general rule, hence, an assessment is not necessary.

Section 7(b)(1) of Republic Act (RA) No. 9282 is also in line with the exception provided in Section 222 of the NIRC of 1997, as amended, which provides that the filing of the criminal action carries with it the filing of the civil action. To require a separate assessment to determine the civil liability in exceptional cases under Section 222 of the NIRC of 1997, as amended, is not only contrary to the provision of law but also runs counter to Section 7(b)(1) of RA No. 9282.

Insofar as due process requirement on assessment is concerned, plaintiff contends that the same had been complied with as accused (1) was informed of the tax deficiency/civil liabilities; (2) had the opportunity to contest the tax deficiency/civil liabilities starting from the investigation in the Department of Justice (DOJ); and (3) had the opportunity to confront and cross-examine during the trial the examining Revenue Officers.

Plaintiff admits no faults in its non-presentation of the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN) which it reserved for presentation as stated in the Pre-Trial Order of February 7, 2018, as they were not yet available at that time. The prosecution however, was not able to present the said documents as its intention to recall its witness Jose Maria Y. Reyes to identify them was denied by the Court.

Albeit the non-presentation of the PAN and FAN, the assessment procedure was properly observed, says the prosecution. Besides, the Joint Complaint Affidavit dated September 11, 2014 identified by its witnesses in court states their finding on accused's Value-Added Tax (VAT) liabilities.

In her *Comment*, accused argues that plaintiff's *motion* should be denied for it failed to present evidence that an assessment was issued against her by the Bureau of Internal Revenue (BIR). Without such evidence, there can be no proper determination of her alleged civil liabilities.

On the other hand, accused, in asking for a reconsideration of her conviction, asserts that the prosecution failed to prove beyond reasonable doubt that she willfully failed to supply correct and accurate information in her Quarterly VAT Returns for the 3rd and 4th quarters of taxable year (TY) 2008 and the 2nd quarter of TY 2010, contending that:

a. She should not be faulted for relying on her accountant to prepare the Quarterly VAT Returns for the 3rd and 4th quarters of taxable year 2008 and the 2nd quarter of taxable year 2010 because the preparation of VAT returns requires technical knowledge which she is not fully aware or which she is not able to fully understand;

b. She relied in good faith that the payments made to her by the Provincial Government of Palawan should no longer be declared in her VAT returns as the latter already withheld the VAT on the said payments; and

c. She consistently complied with the filing and paying of VAT for TYs 2008, 2009, and 2010 which negates willfulness in not supplying correct and accurate information in the said VAT returns.

At most, the inaccurate information in the subject VAT returns was done in good faith or, without negligence.

In its *Comment/Opposition*, plaintiff counters that it was able to prove beyond reasonable doubt all the elements of the crime charged by competent testimonial and documentary evidence adduced during the trial of the cases.

Accused is capable of understanding the content as well as the instructions in the tax forms that were prepared by her accountant before she affixed her signature therein, negating her claim that she merely relied on what her accountant prepared for her.

Further, accused's own document, i.e., BIR Form No. 2550Q includes the item "*Sale to Government*" to be accomplished if a taxpayer has VATable sales of goods or services to government agencies. This requirement negates accused's claim that she was not obliged to declare her sales to the Provincial Government of Palawan in her quarterly VAT returns as the same had already been subjected to final withholding VAT.

Finally, plaintiff agrees with the finding that accused's repeated acts of substantial under-declaration (more than 30%) of her gross sales/receipts in her quarterly VAT returns are clear manifestation of her willful and deliberate failure to supply correct and accurate information in the subject VAT returns.

The Court's Ruling

Both *motions* must fail.

Plaintiff's Motion for Reconsideration

Plaintiff claims that the Court erred in holding that the presentation of the "computation" of the unreported income could not be used as basis for the determination of the civil liabilities of accused. For the plaintiff, tax deficiency may be collected without an assessment in a court proceeding when there is filing of false or fraudulent returns with intent to evade tax or of failure to file tax returns pursuant to Section 222 of the NIRC of 1997, as amended. The present cases fall under the exception to the general rule that *collection of taxes by a court proceeding cannot be done without assessment* given that it was able to establish beyond reasonable doubt that accused violated Section 255 of the NIRC of 1997, as amended.

The Court is not convinced.

Section 7(b)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, categorically provides that "*criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.*"

Relevantly, Section 205 of the NIRC of 1997, as amended, provides that "*[T]he 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***". Thus, for a civil liability to be included in the judgment, it must be the final decision of the CIR — referring to a **formal assessment**.

Thus, while an assessment is not required in the prosecution of the criminal case, the final determination of the Commissioner of Internal Revenue as to the tax liability is necessary for the Court to rule on the civil liability of the accused.

As admitted, plaintiff only presented the Joint-Compliant Affidavit dated September 11, 2014, which contained the "computation" of deficiency VAT due from accused. Certainly, the said "computation" cannot be deemed or take the place of the formal assessment referred to in Section 205 of the NIRC of 1997, as amended. To reiterate, the presentation of the "computation" of the unreported income cannot be used as basis for the determination of accused civil liabilities.

Anent plaintiff's contention that it cannot be faulted for non-presentation of the PAN and FAN, the prosecution obviously failed to recall that at the time plaintiff manifested its intension to recall its witness, Jose Y. Reyes, to identify the alleged PAN and FAN, the said documents were still unavailable. The testimony of its own witness belies the prosecution's contention. During his cross-examination, witness Reyes confirmed that there was no PAN or Letter of

Demand ever issued in this case. Thus, to allow the plaintiff to recall its witness to identify certain documents he previously testified to have never issued or existed, is a waste of time if not a way of impeaching its own witness, which, as the Court pointed out, is not allowed.[1]

Accused's Motion for Reconsideration

In her *motion*, accused asserts that the prosecution failed to prove beyond reasonable doubt that she willfully failed to supply correct and accurate information in her Quarterly VAT Returns for the 3rd and 4th quarters of taxable year 2008 and the 2nd quarter of taxable year 2010 on the ground that she merely relied on her accountant in the preparation of the subject VAT returns, and that she believes that the payments made to her by the Provincial Government of Palawan should no longer be declared in her VAT returns as the same were already subjected to final withholding VAT.

Accused's contention failed to convince.

As the Court pointed out, the Quarterly VAT Return (BIR Form No. 2550Q) includes the item "***Sale to Government***" which must be accomplished or filled up if a taxpayer, such as accused, has VATable sales of goods or services to government agencies.

Accused is a retired school teacher who is more than capable of understanding the content and even the instructions in the tax forms. Besides, it appears that she's been in the construction business for quite a time. Significantly, she admitted that she would first read the tax returns prepared by her accountant before she would affix her signature therein, negating her claim that she merely relied on what her accountant prepared for her.

To conclude, while accused complied with the required filing of Quarterly VAT Returns for the pertinent periods, she

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[1] Section 12, Rule 132 of the Rules of Court.

willfully supplied incorrect and inaccurate information therein. Her repeated act of substantial under-declaration of her gross sales/receipts (more than 30%) manifests her willful intention to deprive the government of the taxes due it.

WHEREFORE, the parties' respective *Motions for Reconsideration* are **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

(I maintain my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice