REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

BERNARDO ANACTA y BASADA a.k.a. BERNARD ANACTA y BASADA,
Accused.

CTA CRIM. CASE NO. O-415

For: Tax Evasion (Violation of Section 255, NIRC of 1997, as amended)

Members:

CASTAÑEDA, JR., *Chairperson, and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JUN 27 2019

1:50 p.m.

x - x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is the prosecution's **Motion for Reconsideration (Decision promulgated on May 6, 2019)**, filed on May 21, 2019, with accused's **Comment/Opposition (Re: Motion for Reconsideration dated 21 May 2019)**, filed on June 10, 2019.

In its motion, the prosecution argues that the Court erred in setting aside the evidence it presented to prove the guilt of the accused beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

The prosecution contends that the absence of a date on the assessment notice is irrelevant in the present case. Section 222 of the NIRC of 1997, as amended, provides that in case of a false or fraudulent return with intent to evade tax or failure to supply correct and accurate information in a return, a proceeding in court for collection of taxes may be filed without assessment. The prosecution alleges that it was already proven that the accused filed a false and fraudulent return with intent to evade taxes. Hence, the prosecution argues that Section 222 of the NIRC of 1997, as amended, is applicable and the Bureau of Internal Revenue (BIR) is allowed to seek collection of deficiency taxes through a civil action before the courts, despite the absence of a date in the assessment notice.

The prosecution also argues that the United States Internal Revenue Code, from which Section 222 of the NIRC of 1997 was based on, also states that in case of no returns or the filing of false or fraudulent returns, tax may be collected in court even without an assessment. Thus, while there is yet no Philippine jurisprudence in so far as Section 222 of the NIRC of 1997 is concerned, respondent contends that the Supreme Court has acknowledged that our income tax laws are of American origin, hence, interpretations by American courts of our parallel tax laws have persuasive effect on the interpretation of these laws. According to the prosecution, American courts have ruled that the Internal Revenue Service need not make an assessment before instituting a civil action for collection of taxes before the courts and that an assessment of tax is not a prerequisite for the imposition of tax liability.

To require an assessment notice before deficiency taxes may be collected in a civil action deemed instituted with a criminal action not only runs counter to Section 222 of the NIRC of 1997 and Republic Act No. 9282, it results in an incongruous situation wherein two government entities, namely, the Court of Tax Appeals and the BIR, may be independently conducting its own determination as to the tax liabilities of a taxpayer, considering that an assessment notice is not necessary before a criminal action is filed before the courts.

In sum, the prosecution argues that under existing laws and American jurisprudence, the absence of an assessment notice against the accused in the present case is irrelevant for an assessment is not required when a civil action for collection of taxes is instituted before the Courts in case of false or fraudulent returns or failure to file returns.

Moreover, the prosecution avers that although the Preliminary Assessment Notice (PAN) and the Formal Letter of Demand (FLD) did not indicate the exact date when the same were issued, what matters is the exactness of the receipt of the accused where he can avail of the remedies provided by law. The prosecution claims that the Final Assessment Notice (FAN) contains not only a computation of tax liabilities but also a demand for payment within a prescribed period and as soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, the prosecution argues that the due date for payment of taxes is based on the date of receipt of the accused and is clearly provided by law.

Thus, the prosecution prays for the Court to reconsider the Decision dated May 6, 2019 and rendered a decision finding accused guilty as charged of the offense stated in the Information and to pay the corresponding civil liability.

On the other hand, accused contends that the prosecution's argument that "the absence of a date on the assessment notice is irrelevant" does not hold water. Accused argues that Section 222 of the NIRC of 1997, as amended, applies only in cases where it involves false or fraudulent return or in cases where there is failure to file a return by the person obliged to file such return. Accused points out that he filed his income tax return (ITR) and there is no finding that the return was false or fraudulent in order for Section 222 to be applied in this case. Hence, accused claims that the motion's allegation that "it was already proven that accused filed a false and fraudulent return with intent to evade taxes" is misleading.

Accused also points out that while the instant motion prays for the reconsideration of the Court's Decision to find accused guilty of the offense charged in the Information and pay the corresponding civil liability, the motion actually pertains only for the reconsideration of the civil aspect of the case. Accused notes that the prosecution's allegations or errors and grounds for reconsideration of the Court's acquittal of the accused are scant. Hence, accused claims that the prosecution is satisfied with the finding that "the evidence presented in this case raises doubt and confusion as to whether accused supplied incorrect and inaccurate information in his ITR for taxable year 2009". As to the civil liability, accused argues that the prosecution never rebutted or pointed out the Court's finding that "there was no enclosed assessment notice that shows the due date for payment of the deficiency income tax".

At the outset, the prosecution's motion for reconsideration as to the criminal aspect should be denied outright considering that a judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation[1]

As a general rule, the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case. The reason is that a judgment of acquittal is immediately final and executory, and the prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated. Despite acquittal, however, either the offended party or the accused may appeal, but only with respect to the civil aspect of the decision. Or, said judgment of acquittal may be assailed through a petition for certiorari under Rule 65 of the Rules of Court showing that the lower court, in acquitting the accused, committed not merely reversible errors of judgment, but also exercised grave abuse of discretion amounting to lack or excess of jurisdiction, or a denial of due process, thereby rendering the assailed judgment null and void.[2]

In this case, the prosecution's motion merely alleged that the Information filed in Court is complete, arguing that the sufficiency of the allegations of the facts and circumstances constituting the elements of the crime charged is crucial in every criminal prosecution because of the ever-present obligation of the State to duly inform the accused of the nature and the cause of the accusation. Clearly, the acquittal was not even questioned on the basis of grave abuse of discretion or denial of due process. Hence, the motion for reconsideration on the criminal aspect of the case should be denied outright.

As to the civil aspect, the Court cannot order the payment of the deficiency income tax subject of the instant criminal case since the deficiency income tax "as finally decided by the Commissioner" was declared invalid.

Section 222(a) of the NIRC of 1997, as amended, provides that "[i]n 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".

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[1] *Villareal vs. Aliga*, G.R. No. 166995, January 13, 2014.

[2] *People of the Philippines and AAA vs. Court of Appeals, et al.*, G.R. No. 183652, February 25, 2015.

In the case of *Ungab vs. Cusi, Jr., et al.*[3], the Supreme Court held that "[w]hile there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code".

Moreover, in the case of *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*[4], the Supreme Court held that an assessment is not necessary before filing a criminal complaint, to wit:

> Private respondents maintain that the filing of a criminal complaint must be preceded by an assessment. This is incorrect, because **Section 222 of the NIRC specifically states that in cases where a false or fraudulent return is submitted or in cases of failure to file a return such as this case, proceedings in court may be commenced without an assessment.** Furthermore, Section 205 of the same Code clearly mandates that the civil and criminal aspects of the case may be pursued simultaneously. In *Ungab v. Cusi*, petitioner therein sought the dismissal of the criminal Complaints for being premature, since his protest to the CTA had not yet been resolved. The Court held that such protests could not stop or suspend the criminal action which was independent of the resolution of the protest in the CTA. This was because the commissioner of internal revenue had, in such tax evasion cases, discretion on whether to issue an assessment or to file a criminal case against the taxpayer or to do both.
>
> Private respondents insist that Section 222 should be read in relation to Section 255 of the NLRC, which penalizes failure to file a return. They add that a tax assessment should precede a criminal indictment. We disagree. To reiterate, said Section 222 states that **an assessment is not necessary before a criminal charge can be filed**. This is the general rule. Private respondents failed to show that they are entitled to an exception. Moreover, the criminal charge need only be supported by a *prima facie* showing of failure to file a

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[3] G.R. No. L-41919-24, May 30, 1980.
[4] G.R. No. 128315, June 29, 1999.

required return. This fact need not be proven by an assessment. (*Emphasis supplied*)

However, 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.**"

From all of the foregoing, while an assessment is not necessary before there can be a criminal prosecution, still, the final determination of the Commissioner as to the accused's tax liability is necessary in order for the Court to render judgment on the civil aspect of the case.

In this case, the Court noted that there was no assessment notice presented in evidence although the FLD mentioned that there was an "enclosed assessment notice". Considering that there was no enclosed assessment notice that shows the due date for payment of the deficiency income tax, the FLD did not contain a definite and actual demand to pay rendering the the subject assessment invalid for failure to demand payment of taxes within a prescribed period.

In view of the invalidity of the assessment, then, it is as if there is still no final decision by the Commissioner as to the deficiency income tax liability of the accused which is required in order for the Court to render judgment on the civil aspect of the case.

WHEREFORE, premises considered, the prosecution's **Motion for Reconsideration (Decision promulgated on May 6, 2019)** is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

CIELITO N. MINDARO-GRULLA
Associate Justice