REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, -versus- GENOVEVA S. SUAREZ, Accused-appellant.	CTA CRIM. CASE NO. A-4 Members: FABON-VICTORINO, *Acting Chairperson* and RINGPIS LIBAN, *JJ.* Promulgated: FEB 20 2019 10:48 a.m.

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RESOLUTION

Fabon-Victorino, J.:

For Court action is the Motion for Reconsideration filed by appellant Genoveva S. Suarez, praying for the reconsideration of the Decision dated July 5, 2018 on the ground of failure of the prosecution to prove her guilt beyond reasonable doubt. The dispositive portion of the assailed Decision reads as follows:

> **WHEREFORE**, the appealed Decision dated June 2, 2016 rendered by Branch 21 of the Regional Trial Court of Manila in Criminal Case No. 08-263206 is hereby **AFFIRMED with modifications** as to the penalties imposed.
>
> Appellant Genoveva S. Suarez, is hereby sentenced to suffer the indeterminate imprisonment ranging from one (1) year and three (3) months, as minimum, to three (3) years and three (3) months, as maximum, and to pay a fine of Ten Thousand Pesos (Php10,000), pursuant to Section 255 of NIRC of 1997, as

amended, with subsidiary imprisonment in case she has no property with which to meet the said fine, pursuant to Section 280 of the NIRC of 1997, as amended.

On the other hand, 21st Century Entertainment, Inc. is hereby ordered to pay the amount of Php458,333.11 representing the aggregate amount of basic deficiency Income Tax, Improperly Accumulated Earnings Tax, Minimum Corporate Income Tax, Expanded Withholding Tax and Value-Added Tax for taxable year 2000.

In addition, 21st Century Entertainment, Inc., shall also pay the following:

a) twenty-five percent (25%) surcharge, pursuant to Section 248(A)(3) of the NIRC of 1997, as amended;

b) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, value-added tax, expanded withholding tax, computed from the dates indicated below until December 31, 2017 pursuant to Section 249(B) of the NIRC of 1997, as amended;

Tax type	**Reckoning date for the computation of Deficiency Interest**
Income Tax	April 15, 2001
Value-Added Tax	January 25, 2011
Expanded Withholding Tax	January 15, 2011
Minimum Corporate Income Tax	April 15, 2001
Improperly Accumulated Earnings Tax	April 15, 2001

c) delinquency interest at the rate of 20% per annum on the unpaid amount (basic deficiency tax + 25% surcharge + 20% deficiency interest which have accrued as afore-stated in (b), computed from March 17, 2006 until December 31, 2017 pursuant to Section 249(C) of the NIRC of 1997, as amended); and

d) delinquency interest at the rate of 12% per annum on the unpaid amount (basic deficiency tax + 25% surcharge + 20% deficiency interest which have accrued as stated (b), computed from January 1, 2018 until the amount is fully paid pursuant to the relevant provisions of the Republic Act No. 10963[1], otherwise known as the TRAIN Law which took effect on January 1, 2018)[2].

e) Finally, 21st Century Entertainment, Inc. is ordered to pay a fine of Php50,000.00, as mandated in Section 256 of the NIRC of 1997, as amended.

SO ORDERED.

Appellant claims that the Court erred when it affirmed the Decision dated June 2, 2016 rendered by Branch 21 of the Regional Trial Court (RTC) of Manila as there was no evidence on record to prove her true position in the company. Her admission that during the relevant period she was the Executive Vice-President (EVP) of 21st Century Entertainment, Inc. (21st Century) in itself would not make her responsible for the unpaid deficiency taxes of the said company. Appellant also points out that in the Second Notice of Delinquent Account issued by the Bureau of Internal Revenue (BIR) on January 3, 2006, she was referred to as the Treasurer of 21st Century Entertainment, Inc., however, in the Criminal Information filed against her, she was charged as its President. Clearly, the BIR and the prosecution were confused on this matter. Even prosecution witnesses Ma. Paz Arcilla

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[1] Section 249, as amended by Republic Act No. 10963, reads as follows:

Section 249. Interest. - (A) In General. There shall be assessed and collected on any unpaid amount of legal interest at the rate of DOUBLE THE LEGAL INTEREST RATE FOR LOANS OR FORBEARANCE OF ANY MONEY IN THE ABSENCE OF ANY EXPRESS STIPULATION AS SET BY THE BANGKO SENTRAL NG PILIPINAS, from the date prescribed for payment until the amount is fully paid, PROVIDED THAT IN NO CASE SHALL THE DEFICIENCY AND DELINQUENCY INTEREST PRESCRIBED UNDER SUBSECTION (B) AND (C) HEREOF, BE IMPOSED SIMULTANEOUSLY.' (B) Deficiency Interest- Any deficiency in the tax due as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof, OR UPON ISSUANCE OF A NOTICE AND DEMAND BY THE COMMISSIONER OF INTERNAL REVENUE, WHICHEVER COMES EARLIER. (with emphasis supplied on the amended provisions)

[2] *Moog Controls Corporation-Philippine Branch v. Commissioner of Internal Revenue*, CTA Case No. 9077, February 22, 2018.

and Armando Macatangay were not able to identify her as the responsible officer of 21st Century.

Moreover, under Section 253 (d) of the NIRC of 1997, as amended, only the president, general manager, branch manager, treasurer, officer-in-charge and employees responsible for the violation are in the enumeration of responsible officers upon which the penalties shall be imposed. Therefore, the EVP is not among the responsible officers upon which the penalties for non-payment of taxes may be imposed.

Appellant also claims that the Court erred in applying the doctrine in the case of *United States v. Sataoa Bungaoil*[3] as the issue in the present case is not the mere variance between the allegation in the Information and the evidence presented, but substantive law as well. Considering the enumeration of responsible officers of the erring corporation in Section 253 of the NIRC, as amended, the prosecution must prove that she was among those enumerated to justify her conviction. However, the prosecution failed in this regard.

Even assuming that she was a responsible officer of 21st Century, that alone would not warrant her conviction. To sustain her conviction there must be willful, knowing and deliberate intent on her part to evade payment of taxes to the BIR. All these however were negated by the fact that she even negotiated with the BIR on the tax liabilities of the company and even offered a compromise to settle its alleged tax liabilities. The said positive acts showed her good intentions to settle the company's tax liabilities. Consequently, the element of "intention of evading the payment of taxes" was lacking.

Finally, appellant contends that her non-presentation of evidence to defend herself should not be taken against her since the burden of proof was on the prosecution. She claims that the evidence adduced by the prosecution fell short of the quantum of evidence required to convict her.

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[3] G.R. No. L-11505, August 25, 1916.

The prosecution, on the other hand, by way of Comment[4] contends that the Court did not commit reversible error in affirming the June 2, 2016 Decision rendered by the RTC. More importantly, appellant, in her bid for reconsideration of the Decision of July 5, 2018, merely mimics her previous arguments/discussion which had been squarely and amply passed upon by the Court. Thus, there is no cogent reason to annul or set aside the assailed Decision of the Court in Division.

THE RULING OF THE COURT

Indeed, there is no compelling reason to reverse or modify the assailed Decision of July 5, 2018 promulgated by the Court in Division.

There is nothing in the Motion for Reconsideration filed by appellant that was not squarely addressed and determined by the Court in the assailed of Decision of July 5, 2018. Appellant merely mirrors her discussion in her previous pleading without stating any ground that will justify deviation from the previous ruling of the Court.

To repeat, her categorical admission during the Pre-Trial Conference conducted by the RTC that she was the EVP of 21st Century at the time the assessment was issued, which she confirmed in her pleadings on appeal, was a judicial admission which under Section 4, Rule 129 of the Rules of Court, requires no proof.[5]

Further, Section 253 of the NIRC imputes the criminal liability upon the "partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation." The qualifying word "responsible" is understood as referring to all the corporate officers and employees responsible for the commission of the

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[4] Comment to Accused-Appellant's Motion for Reconsideration filed on August 31, 2018.

[5] Section 4 of Rule 129 of the Rules of Court, states:

> Section 4. Judicial admissions. — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

alleged infraction. This conclusion is confirmed in Section 256 of the same Code which provides that "(a)ny corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees." Verily, the enumeration includes appellant, who admittedly was the Executive Vice-President of the erring corporate taxpayer, 21st Century.

Nevertheless, in arriving at its ruling, or any ruling for that matter, the Court considered not just the admission, or a solitary testimony of the witness, or a single document taken in isolation, but consider the totality of all the evidence presented and observation during the trial.

Finally, the appellant is also incorrect in insisting that the evidence adduced against her failed to justify her conviction for lack of willful intention to evade payment of tax liabilities. It was never denied that 21st Century, through its responsible officers, was aware of the assessment issued against it and that as an officer of 21st Century, appellant admitted receipt of several assessment notices from the BIR. She even admitted on several occasions in her pleadings that she was the one who negotiated with the BIR on the company's tax liabilities and even offered a compromise to settle the same, only that she was not able to fully settle the tax obligation to the Government. Willfulness involves the mental state of the offender, and as reflected in the record and established during trial before the Court a *quo*, appellant willfully refused to pay the tax liabilities of 21st Century, of which she was the EVP.

WHEREFORE, the **Motion for Reconsideration** filed by appellant on July 27, 2018 is **DENIED.** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice