REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. NO. O36
(CTA Crim. Case No. O-263)

-versus-

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, ***and***
Manahan, *JJ.*

OFELIA B. MIRANDILLA,
Respondent.

Promulgated:
JUL 19 2017 4:10 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* is a Petition for Review filed by petitioner People of the Philippines seeking nullification of the Resolution[1] dated November 12, 2015, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, accused's Demurrer to Evidence is **GRANTED.** Accordingly, Criminal Case No. O-263 is **DISMISSED** for failure of the prosecution to

[1] Rollo CTA EB Case No. 036, pp.11-17.

present sufficient evidence to establish the guilt of the accused. Consequently, the accused is **ACQUITTED** of the crime charged.

SO ORDERED."

and the Resolution on the Motion for Reconsideration[2] dated February 5, 2016, of the Second Division of the Court (Court in Division) denying petitioner's "Motion for Reconsideration (Resolution dated November 12, 2015)".

THE FACTS

Filed before the Court in Division is the Information for violation of Sections 56(b), 106(a) and 255 in relation to Sections 27 and 108 of Republic Act No. 8424 otherwise known as the Tax Reform Act of 1997, as amended, allegedly committed as follows:

"AMENDED INFORMATION

The undersigned accuses **OFELIA B. MIRANDILLA of VIOLATION OF SECTIONS 56(b), SECTION 106(a) & SECTION 255 in relation to SECTION 27 & SECTION 108, all of the 1997 TAX CODE,** committed as follows:

That on or about the 13th day of May 2009 and for sometime prior thereto and persisting up to the present, in Quezon City, Philippines, the above-named accused, did then and there willfully and unlawfully fail, neglect and still fails and refuses and neglects to pay the **Deficiency Income Tax** in the amount of **P522,694.80, Deficiency Value Added Tax of P627,800.00** of **JAPTIN TRADING & CONSTRUCTION,** exclusive of interest and surcharges of **P814,935.78** or a total of **P1,995,430.68** computed as of **May 13, 2009** covering **taxable year 2005**, under Assessment Notice No. **FO8-040-11** dated **December 10, 2008** which she failed and refused to pay the aforesaid deficiency Income Tax and Value Added Tax for taxable year 2005 resulting in the deprivation of revenues for the Government and/or the **BUREAU OF INTERNAL REVENUE** herein represented by **ATTY. PHILIP A. MAYO** in the amount aforementioned.

CONTRARY TO LAW."

[2] Rollo pp. 18-23.

When arraigned on July 30, 2014,[3] accused, assisted by her counsel de parte, Atty. Silvino L. Sumagaysay, Jr., pleaded not guilty to the crime charged.

The pre-trial was conducted on April 8, 2014 and the Pre-Trial Order was issued on October 10, 2014.[4]

During the trial of the case, the prosecution presented Revenue Officer Jerry D. Vista, Revenue Officer Glenda Ann A. Salvador, Revenue Officer Arnold C. Larrosa, and Revenue Officer Glicerio A. Jurado, as witnesses to establish its case against the accused.

On May 29, 2015, the prosecution filed its Formal Offer of Evidence.[5]

On June 10, 2015, accused,[6] through her counsel, filed a "Motion for Leave of Court to File Demurrer to Evidence."[7]

In the Resolution dated July 28, 2015, the Court admitted the prosecution's documentary evidence except for Exhibit "P-23" for failure of the actual exhibit to correspond to the description in the Formal Offer of Evidence, Exhibits "P-26" and "P-26-A", for not being found in the records.[8] In the same Resolution, the Court in Division ordered the plaintiff to file its Comment on the "Motion for Leave of Court to File Demurrer to Evidence" within ten (10) days from notice.

The plaintiff failed to file its comment to the said motion, hence, on August 18, 2015, the Court in Division issued a Resolution granting accused's "Motion for Leave of Court to File Demurrer to Evidence."

On September 11, 2015, accused through her counsel, filed her "Demurrer to Evidence."[9]

On November 12, 2015, the Court in Division issued the questioned Resolution, granting the accused's "Demurrer to Evidence."

On December 1, 2015, the plaintiff[10] filed its "Motion for Reconsideration (Resolution dated November 12, 2015)".[11]

---

[3] Resolution, CTA Crim. Case No. O-263, Docket, pp. 272-273.
[4] CTA Crim. Case No. O-263, Docket, pp. 292-298.
[5] Docket, pp. 414-424 with Annexes.
[6] Respondent in this case.
[7] Docket, pp. 450-452.
[8] Resolution, Docket, pp. 460-462.
[9] Docket, pp. 466-481.
[10] Petitioner in this case.
[11] Docket, pp. 491-495.

On December 28, 2015, accused, through her counsel, filed a Comment/Opposition.

On February 5, 2016, the Court in Division issued the assailed Resolution denying for lack of merit, the plaintiff's Motion for Reconsideration (Resolution dated November 12, 2015).

On February 26, 2016, petitioner filed before the Court *En Banc* a "Motion for Extension of Time to File Petition for Review" stating that the petitioner received the February 5, 2016 Resolution on February 11, 2016; that due to voluminous workload, petitioner prayed that it be given an additional fifteen (15) days from February 26, 2016 within which to file a Petition for Review.[12]

In the Minute Resolution of the Court *En Banc*[13] dated March 3, 2016, the Court *En Banc* granted petitioner's motion for extension of time. Hence, petitioner was given until March 12, 2016 to file its Petition for Review.

On March 14, 2016, petitioner filed the instant Petition for Review.[14]

On March 16, 2016, petitioner filed a "Motion to Admit Verification"[15] praying that the attached verification be admitted for incorporation with the Petition for Review.

In the Resolution[16] dated April 21, 2016, respondent was directed by the Court *En Banc* to file her Comment in this case within ten (10) days from notice. The Court *En Banc* likewise admitted the Verification and Certification.

On May 23, 2016, respondent filed her Comment/Opposition[17], and sought for this Court *En Banc* to dismiss this Petition for Review for lack of merit.

Thereafter, both parties were ordered to file their respective Memoranda[18].

Respondent filed her Memorandum on August 1, 2016.[19]

---

[12] Rollo, pp. 1-4.
[13] Ibid. p.5.
[14] Ibid. pp.6-10, with Annexes. The last day to file the Petition for Review was on March 12, 2016, a Saturday. Hence, the instant Petition for Review was filed on the next working day.
[15] Ibid. pp. 28-33.
[16] Ibid pp. 34-35.
[17] Ibid pp. 36-44.
[18] Ibid pp. 46-47.
[19] Ibid. pp-48-64,

In the Records Verification Report of the Judicial Records Division of this Court dated August 22, 2016,[20] it was stated that petitioner failed to file its Memorandum.

Hence, in the Resolution dated September 5, 2016, this case was deemed submitted for decision.[21]

ISSUE

Whether or not the Court in Division erred in holding that respondent's supposed civil liability had been extinguished by her acquittal, and in holding that there is no final, demandable and executory assessment from which the accused is required to pay.

PETITIONER'S ARGUMENTS

Petitioner argues that the civil liability of respondent was not extinguished by her acquittal; that the Court in Division failed to consider that there was a final, demandable, and executory assessment; that the plaintiff has proven by competent testimonial and documentary evidence that respondent failed to pay the taxes as shown by Exhibits "P-1" to "P-28"; that the deficiency tax assessments became final when respondent failed to file a valid protest or to pay the tax within thirty (30) days from receipt of the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD); and that the Preliminary Assessment Notice (PAN), FAN with attached FLD and Details of Discrepancies were sent to the registered address of respondent through registered mail.

RESPONDENT'S ARGUMENTS

On the other hand, respondent counter-argues that the Resolution of the Court in Division holding that the civil liability of respondent is extinguished by her acquittal is based on the evidence proferred by the parties and in accordance with law and applicable jurisprudence; that there is no proof of receipt of the PAN, FAN and FLD; and that there is no final, demandable and executory assessment. Respondent prayed that the assailed Resolutions of the Court in Division be affirmed *in toto* and that the Petition for Review be dismissed for lack of merit.

RULINGS OF THE COURT EN BANC

[20] Ibid. p. 65.
[21] Ibid. pp. 67-68.

The evidence of the petitioner failed to establish that there was final, demandable and executory assessment from which respondent is liable to pay deficiency taxes

In its attempt to overturn the Court in Division's Resolution denying petitioner's Motion for Reconsideration (Resolution dated November 12, 2015), petitioner argues that there were final, demandable and executory assessment notices because the said notices were sent to respondent through registered mail, thus, the notices are deemed received by respondent and respondent failed to file a valid protest.

Contrary to the position taken by the petitioner, the Court in Division did not err in holding that there was no final, demandable and executory assessment which would give rise to an obligation to pay the assessed deficiency taxes.

In its Resolution dated November 12, 2016, the Court in Division held:[22]

> "Considering the alleged deficiency income and value-added tax arose from an assessment, as stated in the information it becomes necessary for the prosecution to prove that there was a valid assessment against accused. Resolving this issue will likewise enable the prosecution to prove the required element of "willfulness" in the instant criminal prosecution.
>
> Section 228 of the 1997 NIRC, as amended, in relation to Section 3 of Revenue Regulations No. 12-99, provides the due process requirements for an assessment. Section 228 states:
>
>> "Sec. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>>
>> xxx
>>
>> <u>The taxpayer shall be informed in writing of the law and the facts which the assessment is made; otherwise, the assessment shall be void.</u>
>>
>> xxx"
>
> In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue,* the Supreme Court held that it is

[22] Pages 4 to 6 of the Resolution. Citations omitted.

a requirement of due process that the taxpayer must actually receive the assessment, to wit:

> "Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer receive said notice xxx Although there is no specific requirement that the taxpayer should receive the notice within said period, due process requires at the very least that such notice actually be received. " In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
> > An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.
> >
> > xxx.
> >
> > It appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory. (citations omitted; underscoring ours)"

A perusal of the records of this case shows that the prosecution failed to prove the actual receipt of the assessment notices. The transmittal notices from one office to another within the Bureau of Internal Revenue is not sufficient to prove receipt by the taxpayer of the notices. As correctly found by the Court in Division:

> "In the instant case, the prosecution submitted into evidence the Pre-Assessment Notice dated May 5, 2008 (Exhibit "P-20"), Final Assessment Notice for Deficiency Income and Value-Added Taxes (Exhibits "P-1" and "P-2"), and Formal Letter of demand (Exhibit "P-3"). The Preliminary Assessment Notice (Exhibit "P-23) was denied admission.
>
> Prosecution submitted into evidence Registry Receipt No. 3800 (Exhibit "P-21) to prove that the Pre-Assessment Notice was duly served against accused. Prosecution also submitted into evidence the Transmittal Receipts of the mailing of the Preliminary Assessment Notice and the Final Assessments and Formal Letter of Demand.

However, while the prosecution submitted into evidence the registry receipt for the Pre-Assessment Notice, which was admitted into evidence as Exhibit "P-21", with respect to the Preliminary Assessment Notice, Final Assessments and the Formal Letter of Demand, the Court finds that the transmittal receipts (Exhibit"P-4" and "P-24") presented by prosecution are not sufficient to prove the fact of mailing the same.

Further, the evidence and the testimony of prosecution's witnesses were insufficient to prove that the accused actually received the pre-assessment notice, preliminary assessment notice, final assessments and formal letter of demand. Prosecution failed to present and submit into evidence the Registry Return Receipts, and prosecution's witnesses could not positively testify that the said assessment notices were actually received by the accused.

From the foregoing, considering that prosecution failed to prove the fact of mailing of the preliminary assessment notice, final assessments and formal letter of demand, and no evidence was presented to prove that accused actually received the assessments, the Assessment Notice No. F08-040-11, which is the basis of the criminal complaint and information for willful failure to pay tax under Section 255, cannot be considered as final, demandable and executory which would give rise to an obligation to pay the assessed deficiency taxes on the part of the accused. The subsequent issuance of the Preliminary Collection Letter, First Notice Before Issuance of Warrant of Distraint and Levy, and the Issuance of the Warrant of Distraint and/or Levy do not correct infirmities in the due process of the assessment.

There being no final, demandable and executory assessment which the accused is required to pay, said accused cannot be found to have willfully failed to pay the deficiency income tax and value-added taxes alleged in the amended Information."

To emphasize the importance of due process in sending the assessment notices, the Supreme Court in the case of *Barcelon Roxas Securities, Inc., (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[23], ruled that:

"Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to respondent to prove by contrary evidence

[23] G.R. No. 157064, August 7, 2006. Citations omitted.

that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (*Republic vs. Court of Appeals, 149 SCRA 351*).

xxx

xxx. **What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts**. xxx.

xxx

In *Protector's Services, Inc. v. Court of Appeals*, this Court ruled that **when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee**." (Emphasis supplied)

Thus, the petitioner was not able to establish that herein respondent was informed in writing of the law and the facts on which the assessments were made. The assessments in this case did not become final and executory.

Respondent's civil liability was extinguished by her acquittal

The assailed Resolutions of the Court in Division exonerated respondent from her criminal liability because the petitioner was not able to establish willfulness of respondent in refusing to pay the assessed deficiency taxes. There was a pronouncement in the assailed Resolution[24] that the fact from which the civil liability might arise did not exist. Therefore, respondent's civil liability was extinguished by her acquittal. Hence, the government cannot collect the alleged deficiency taxes due from respondent.

The Court agrees with the Court in Division when it ruled as follows:

> "It has been held time and again that an acquittal for failure of the prosecution to prove all the elements of the offense beyond reasonable doubt does not include the extinguishment of the civil liability. In case of acquittal, the accused may still be adjudged civilly liable. The extinction of the penal action does not carry with it the extinction of the civil action where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted.
>
> In this case, however, the Court finds no reason to ascribe any civil liability to accused Mirandilla. The court is of the view that accused Mirandilla's supposed civil liability had already been extinguished by her acquittal; this is because the said acquittal came with the Court's finding that no final, demandable and executory assessment, which the accused is required to pay, was validly sent to and received by accused Mirandilla. Verily, the fact from which the civil liability might arise did not exist.
>
> The crime of which the accused was acquitted involves willful failure to pay deficiency income and value added tax for taxable year 2005 arising from an assessment notice, i.e., Assessment Notice No. F08-040-11. The acquittal was due to the failure of the prosecution to prove the fact of mailing of the preliminary assessment notice, final assessments and formal letter of demand, and no evidence was presented to prove that accused received the assessments. Thus, Assessment Notice No. F08-040-11 cannot be considered as final, demandable and executory which would give rise to an obligation to pay the assessed deficiency taxers on the part of the accused."

In fine, petitioner has not sufficiently established its case. The petitioner's appeal on the civil aspect of the case must therefore, fail. The Court in Division did not commit a reversible error in denying petitioner's "Motion for Reconsideration (Resolution dated November 12, 2015)".

---

[24] Dated February 5, 2016.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolutions dated November 12, 2015 and February 5, 2016 are hereby affirmed *in toto.*

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice