REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special First Division

PEOPLE OF THE PHILIPPINES, Plaintiff, **- versus -** **HERNANE A. AYON,** (Purok 4, Lumbo, Valencia City, Bukidnon and/or P-12 Malingon, Bagontaas,Valencia City, Bukidnon) Accused.	**CTA CRIM. CASE Nos. O-589 & O-590** For: Violation of Section 254 of the National Internal Revenue Code (NIRC) of 1997, as amended (Attempt to Evade or Defeat Tax) ***Members:*** **DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ. ***Promulgated:*** DEC 12 2018 : 8:55 am

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RESOLUTION

UY, J.:

For resolution is plaintiff's **"MOTION FOR RECONSIDERATION (Of the Resolution dated September 18, 2018)"**[1] filed on October 15, 2018, with accused's **"COMMENT/OPPOSITION (To the Prosecution's Motion for Reconsideration)"**[2] filed on November 5, 2018. In the said Motion, plaintiff prays for the partial reconsideration of the Court's Resolution dated September 18, 2018, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, accused's Demurrer to Evidence is **GRANTED.** Accordingly, CTA Criminal Case Nos. O-589 and O-590 are **DISMISSED** due to insufficiency of evidence.

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[1] Docket (Vol. II), pp. 847 to 863.
[2] Docket (Vol. II), pp. 866 to 870.

SO ORDERED."

In its Motion, plaintiff raises the following arguments, to wit:

1. The absence of evidence to prove that the PAN and FLD were sent and actually received by the taxpayer should not render the assessments void on the ground that the taxpayer was not duly informed of the assessments in violation of the due process requirement. The PAN and FLD for 2010 and 2011 were received by the Mailing Section of the Administrative Division of Revenue Region No. 16, Cagayan De Oro City, for registered mailing and it is the official duty of that Section to send by registered mail the said PAN and FLD. The failure of the plaintiff to present in evidence proof of registered mail and receipt of the PAN and FLD by the accused is not fatal that should render the assessments void. If this is the case, every dishonest taxpayer can easily deny the receipt of the assessment notice, and easily evade payment of taxes.

2. The inconsistencies or differences in the amount of sales to AG Global Pharma in 2010 and 2011 vis-à-vis the undeclared sales stated in the Details of Computation attached to the PAN and FLD for 2010 and 2011 does not affect the substance of the factual bases on which the assessments were based.

3. Granting without admitting that the assessments were not received by the accused, the filing of a criminal case against a taxpayer for failure to supply correct and accurate information before the CTA is a mode of collecting deficiency taxes, even in the absence of an assessment notice.

4. It was clearly established during trial that accused received income in 2010 and 2011, amounting to ₱8,129,350.00 and ₱11,549,384.85, respectively, and wilfully failed to pay the tax relative thereto, amounting to ₱2,628,833.94 for 2010 and ₱3,264,824.24 for 2011, exclusive of interest, surcharge, and/or penalty charges.

5. The Joint Complaint-Affidavit dated May 22, 2014 and the testimonies by way of Judicial Affidavits of the witnesses and the evidence presented, offered, and admitted by the Court has proven the amounts of ₱8,129,350.00 and ₱11,549,384.85, constituting concealed and undeclared income by the accused for the years 2010 and 2011, for which he is liable for deficiency income tax, amounting to ₱2,628,833.94 for 2010 and ₱3,264,824.24 for 2011, exclusive of

interest, surcharge, and/or penalty charges. Moreover, accused may be held liable for deficiency taxes despite failure of the plaintiff to present evidence on the actual receipt of the assessments by the accused.

In his Comment, accused counters that:

1. The subject Motion for Reconsideration only deals with the civil aspect of the case. The finding of acquittal should be left untouched and considered final since as a rule, a judgment of acquittal cannot be reconsidered because it places the accused under double jeopardy.

2. Due process requires that the receipt of the PAN be proven by the prosecution, when accused denies having received the PAN. However, the prosecution failed to show the registry receipt and relied mainly on Mr. Laingan's testimony for support. On cross-examination, Mr. Laingan admitted that there was no proof that the PAN and FLD were actually received by the accused. Rather, it was just presumed by the prosecution to have been received by the accused.

THE COURT'S RULING

Plaintiff's Motion lacks merit.

After a careful examination and consideration of the plaintiff's Motion for Reconsideration, it is noted that the arguments raised in the said Motion are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Resolution. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **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