REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA Crim. Case No. O-014
	For: Violation of Section 255 of R.A. No. 8424
	Members:
- versus -	UY, *Chairperson;* and FABON-VICTORINO, *JJ.*
JOEL C. MENDEZ Accused.	Promulgated: SEP 23 2016 ; 1:20 p.m.

x- x

RESOLUTION

FABON-VICTORINO, *J.*

This resolves the following:

1. Plaintiff's *Motion for Partial Reconsideration* filed on February 24, 2016, with Accused's *Comment/Opposition* thereto filed on July 18, 2016; and

2. Accused's *Motion for Reconsideration* filed on February 26, 2016, *sans* Plaintiff's *Comment/Opposition* despite notice.

Both *motions* assail the Decision promulgated on February 10, 2016, the dispositive portion of which reads:

> **WHEREFORE**, the Court finds accused Joel C. Mendez, **GUILTY** beyond reasonable doubt of violation of Section

> 255 of the National Internal Revenue Code of 1997, as amended, and he is hereby **SENTENCED** to suffer an indeterminate prison term of ONE (1) YEAR, as minimum, to THREE (3) YEARS, as maximum. In addition, accused is **ORDERED TO PAY** a fine in the amount of TEN THOUSAND PESOS (Php10,000.00), with subsidiary imprisonment in case accused has no property with which to meet such fine, pursuant to Section 280 of the NIRC of 1997, as amended.
>
> **SO ORDERED.**

Prosecution's Motion for Partial Reconsideration:

The prosecution claims that the Court erred in ruling that its computations to prove the civil liabilities of the accused may not be used as basis to impose civil liabilities against the accused. Allegedly, the general rule that an assessment is necessary before a case for collection of taxes is filed in court as provided in Section 203[1] of the NIRC, as amended, is not applicable given that the prosecution was able to establish that accused failed to file a return for taxable year 2001, an exemption clearly stated in Section 222[2] of the same Tax Code. Hence, the tax deficiency and

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[1] SEC. 203. *Period of Limitation Upon Assessment and Collection.* — **Except as provided in Section 222**, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and **no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period**: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (*Emphases supplied by plaintiff*)

[2] SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

(a) In the case of a false or fraudulent return with intent to evade tax or 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: Provided, that in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for collection thereof.

penalties surcharges, deficiency interest and delinquency interest may be collected in a court proceeding without an assessment.

In his *Comment/Opposition* to the foregoing motion, the accused believe that the Court's ruling that an assessment is necessary before the civil liability of the accused may be imposed is in accord with the law. But more importantly, according to the accused, is the fact that the prosecution's contentions in its *motion* are a mere rehash of the arguments in their previous pleadings which had been thoroughly considered and passed upon by the Court.

Accused' Motion for Reconsideration:

In his bid for reconsideration of the assailed Decision, accused limits his arguments on jurisdictional ground. Accused is of the opinion that the Court lacks jurisdiction to entertain the present case against him since the Joint Affidavit of the complaining Revenue Officers failed to aver the jurisdictional amount - which should not be less than P1,000,000.00 - for it to acquire competence to hear and determine the case. Accused is referring to the damage sustained by the State by reason of his alleged non-filing of his income tax return for taxable year 2001, "in the estimated amount of P1,089,439.08" According to accused a mere estimate is akin to unspecified amount falling under the jurisdiction of the proper lower court, and not of the CTA. Without jurisdiction, the assailed Decision of the CTA is *void ab initio.* Further, the doctrine laid down in *Ungab v. Cusi*[3] and *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation* [4], which both held that an assessment is not necessary before a criminal prosecution may be instituted, is no longer controlling in view of the expanded jurisdiction of the CTA.

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

THE COURT'S RULING

The Motion for Reconsideration filed by the People should be denied.

Under Section 222(a), in relation to Section 205 (b) [5] of the NIRC, as amended, an assessment is not necessary to impose civil liabilities; **however, a computation of the civil liabilities duly signed and approved by the Commissioner himself may be admitted as sufficient evidence for the imposition of civil liabilities**. In the present case, the prosecution did not present any assessment or any computation of the damage sustained by the state by virtue of accused non-filing of his ITR for taxable year 2001 duly signed and approved by the CIR which can be a proper basis for the grant of civil liabilities it sought. The record is very clear that the prosecution presented only the estimates prepared by the Revenue Officer. Without an assessment or any computation of an amount **finally determined by the CIR**, there can be no basis for ruling on the civil liability of accused.

On accused' Motion for Reconsideration.

Elementary is the rule that for the Court to determine its jurisdiction in a criminal case, it must examine the *Information* to ascertain whether the facts alleged therein and the penalty provided by law for such acts fall within its jurisdiction. If the alleged facts in the Information are

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[5] SECTION 205. *Remedies for the Collection of Delinquent Taxes.* — The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be:

xxx xxx xxx

(b) By civil or criminal action.

xxx xxx xxx

The 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**. (*Underscoring and boldfacing supplied*) sufficient to show that the court in which the *Information* is filed has jurisdiction, then the said court has the power and authority to hear and decide the said case.[6] Hence, on the basis of the amount stated in the amended *Information, i.e.,* Php1,089,439.08, the Court was correctly assumed jurisdiction over the subject matter of the instant case.

Moreover, while it is true that jurisdiction may be raised at any time, "this rule presupposes that estoppel has not supervened." [7] "Estoppel sets in when a party participates in all stages of a case before challenging the jurisdiction of the lower court. One cannot belatedly reject or repudiate its decision after voluntarily submitting to its jurisdiction, just to secure affirmative relief against one's opponent or after failing to obtain such relief." [8] In the instant case, accused voluntarily submitted himself to the jurisdiction of the Court as he actively participated in all stages of the proceedings without questioning its jurisdiction. It is only after an adverse decision has been rendered that accused assailed the jurisdiction of the Court. In fine, he is already estopped from assailing this Court's jurisdiction.

WHEREFORE, the prosecution's *Motion for Partial Reconsideration* and accused' *Motion for Reconsideration*, are hereby **DENIED,** both for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
Associate Justice

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[6] *The United States vs. Jose Montañez*, No. 16394, September 25, 1920, 41 Phil. 91, 93; and *The Unites States vs. Jose Mallari and Vicente Cueson*, No. 7108, February 20, 1913; 24 Phil. 366, 368.
[7] *Marie Antoinette R. Soliven vs. Fastforms Philippines, Inc.*, G.R. No. 139031, October 18, 2004, citing *Sesbreño vs. Court of Appeals*, G.R. No. 84096, January 26, 1995.
[8] *Jeseph Cua vs. Gloria A. Vargas, et al.*, G.R. No. 156536, October 31, 2006.