REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ROMMEL YNION y SALVA,
Accused.

CTA CRIM. CASE NOS. O-313 & O-314

For: Violation of Section 255 (Failure to File Return) of the NIRC of 1997, as amended.

x - x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ROMMEL YNION y SALVA,
Accused.

CTA CRIM. CASE NOS. O-315, O-316 & O-317

For: Violation of Section 254 (Attempt to Evade/Defeat Tax) of the NIRC of 1997, as amended.

x - x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ROMMEL YNION y SALVA,
Accused.

CTA CRIM. CASE NOS. 318, O-319 & O-320

For: Violation of Section 255 (Failure to Supply Correct/Accurate Information) of the NIRC of 1997, as amended

Members:

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

Promulgated: FEB 27 2020
9:10 a.m.

x - x

AMENDED DECISION

BACORRO-VILLENA, J.:

For the Court's resolution is accused Rommel S. Ynion's **(accused's) Omnibus Motion to Set Aside [Judgment] and for Reconsideration *Ad Cautelam* [Re: Decision dated 4 December 2019],** filed on 16 December 2019, with plaintiff's **Comment (To Accused's Omnibus Motion to Set Aside Judgment and for Reconsideration *Ad Cautelam* dated December 16, 2019),** filed on 20 December 2019.

The relevant antecedents are laid down below.

On 02 December 2019, accused filed an Urgent Motion to Suspend Promulgation of Judgment (set on 04 December 2019) alleging that he already availed of the tax amnesty, pursuant to Republic Act (**RA**) 11213[1] or the Tax Amnesty Act. For his failure to submit complete supporting documents to prove his availment, the Court denied the motion and proceeded with the promulgation of judgment.

On 04 December 2019, in open court, the Court promulgated the Decision finding accused guilty beyond reasonable doubt of the crimes charged. The dispositive portion of the said Decision reads:

> ...
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> **WHEREFORE,** with the foregoing, the Court finds accused Rommel Ynion *y* Salva:
>
> 1. **GUILTY** beyond reasonable doubt of violating Section 255 of the NIRC, as amended, in **CTA Crim. Case Nos. O-313, O-314, O-318, O-319 and O-320**. He is hereby **SENTENCED** to an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum term of imprisonment for *each* charge. He is also **ORDERED** to pay a fine of ₱10,000.00, with subsidiary imprisonment pursuant to Section 280 of the NIRC, as amended, in the event that accused Ynion has no property with which to meet the fines imposed upon him, or is unable to pay such fines; and,

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[1] An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2017 and Prior Years with Respect to Estate Tax, Other Internal Revenue Taxes, and Tax on Delinquencies
...
Section 1. *Short Title.* – This Act shall be known as the "Tax Amnesty Act".

2. **GUILTY** beyond reasonable doubt of violating Section 254 of the NIRC, as amended, in **<u>CTA Crim. Case Nos. O-315, O-316 and O-317</u>**. He is hereby **SENTENCED** to an indeterminate penalty of two (2) years, as minimum, to three (3) years as maximum term of imprisonment for *each* charge. He is also **ORDERED** to pay a fine in the amount of ₱30,000.00, with subsidiary imprisonment pursuant to Section 280 of the NIRC, as amended, in the event that accused Ynion has no property with which to meet the fines imposed upon him, or is unable to pay such fines.

On the civil aspect *ex delicto*, accused Rommel Ynion y Salva, is hereby **ORDERED** to pay the total amount of **₱95,710,461.48** for income tax covering the taxable years 2006, 2008 and 2010 and **₱36,008,402.82** for VAT covering the taxable years 2006 and 2010, inclusive of the 50% penalty imposed under Section 248(B) of the NIRC, as amended, and twenty percent (20%) deficiency interest and delinquency interest imposed under Section 249(B) and (C) of the NIRC, as amended, respectively, computed until 31 December 2017.

In addition, accused Rommel S. Ynion is **ORDERED** to pay the delinquency interest at the rate of twelve percent (12%), on the total unpaid amount of **INCOME TAX and VAT** as of 15 June 2015 in the amount of **₱55,881,584.76 and ₱21,094,682.26**, respectively, as determined above, computed from 01 January 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by RR No. 21-2018.

SO ORDERED.

. . .

On 16 December 2019, accused filed the instant Omnibus Motion to Set Aside Judgment and for Reconsideration *Ad Cautelam* [Re: Decision dated 4 December 2019].

In support of his Omnibus Motion, accused avers that, on 18 November 2019 and 28 November 2019, he availed of the tax amnesty under Sections 17(b) and 18(c) of RA 11213, which states:

. . .

Section 17. *Coverage*. - There is hereby authorized and granted a tax amnesty herein called the Tax Amnesty on Delinquencies, which shall cover all national internal revenue taxes such as, but not limited to, income tax, withholding tax, capital gains tax, donor's tax, value-added tax, other percentage taxes, excise tax and documentary stamp tax collected by the Bureau of Internal Revenue, including value-added tax and excise taxes collected by the Bureau of Customs for taxable year 2017 and prior years.

> For purposes of this Act, the Tax Amnesty on Delinquencies may be availed of in the following instances:
>
> ...
>
> (b) Pending criminal cases with the Department of Justice or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the National Internal Revenue Code of 1997, as amended, with or without assessments duly issued[.]
>
> ...
>
> **Section 18**. *Entitlement of Tax Amnesty on Delinquencies.* - Any person may enjoy the immunities and privileges of the Tax Amnesty on Delinquencies and pay the following tax amnesty rates:
>
> ...
>
> (c) Pending criminal cases with criminal information filed with the Department of [J]ustice or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the National Internal Revenue Code of 1997, as amended, with assessments duly issued and otherwise excluded in Titles II and III hereof...........60% of the basic tax assessed[.]
>
> ...

As proof that accused availed tax amnesty, he attached photocopies of the following documents:

1. BIR Acceptance Payment Form – Tax Amnesty on Delinquencies (BIR Form No. 0621-DA) for VAT, Income Tax and Expanded Withholding Tax;
2. Philippine National Bank (PNB) Transfer Payment Slips; and,
3. Certification issued by Ms. Linda L. Maggay, Chief-Collection Section of Revenue District Office (**RDO**) 52-Parañaque City, dated 12 December 2019, stating that Mr. Rommel Ynion y Salva has paid 60% of the basic tax assessed for income tax and VAT, and 100% of the basic tax assessed for expanded withholding tax pursuant to the provisions of the Tax Amnesty Act.

Alternatively, accused seeks reconsideration of the Decision promulgated on 04 December 2019 essentially on the ground that the prosecution failed to prove all the elements required for the commission of the crimes mentioned in Sections 254 and 255 of the Tax Code.

In its Comment, plaintiff manifests that it has not yet received a reply from RDO No. 52 confirming the payment and availment of the tax amnesty in accordance with RA 11213 and Revenue Regulations (**RR**) 4-2019.[2] Nonetheless, plaintiff avers that the Court was correct in ruling that the guilt of accused was proven beyond reasonable doubt.

In a Resolution dated 16 January 2020, the Court held in abeyance the resolution of accused's Omnibus Motion and ordered him to submit within ten (10) days the originals or certified true copies of the documents enumerated in Section 5 of RR 4-2019, as follows:

1. Tax Amnesty Return (**TAR**) (BIR Form No. 2118-DA), completely and accurately accomplished and made under oath;

2. Acceptance Payment Form (**APF**) (BIR Form No. 0621-DA) duly validated by the Authorized Agent Banks (AABs) or APF duly stamped "received" with accompanying bank deposit slip duly validated by the concerned AABs or Revenue Official Receipt (ROR) issued by the Revenue Collection Officers (RCOs);

3. Certificate of Tax Delinquencies/Tax Liabilities issued by the concerned BIR offices; and,

4. In case of applications under Section 3(A)(2)[3] of these Regulations, a copy of the assessment found in the FAN/FDDA: *Provided that*, in cases of applications under Section 3(D)[4], either delinquent account or not, with or without FAN/FDDA, the Preliminary Assessment Notice for Informal Conference or equivalent document is sufficient.[5]

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2 Implementing Rules and Regulations of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act", Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies.

3 **SECTION 3. COVERAGE.**

...

A. Delinquent Accounts as of the effectivity of these Regulations, including the following:

...

2. Delinquent Withholding Tax liabilities arising from non-withholding tax[.]

...

4 D. Withholding tax liabilities of withholding agents arising from their failure to remit withheld taxes.

5 This requirement is not applicable as the instant consolidated cases pertain only to income tax and VAT.

On 31 January 2020, accused filed his Compliance [Re: Resolution promulgated on 16 January 2020 (Re: Accused's Omnibus Motion to Set Aside Judgment and for Reconsideration *Ad Cautelam* dated 16 December 2019)], attaching the following documents:

1. Certified true copy of accused's TAR;
2. Certified true copies of the APFs for Value-Added Tax, Withholding Tax, and Income Tax stamped "received" with accompanying bank deposit slips, duly validated by the concerned AABs;
3. Certified true copy of accused's Certificate of Tax Delinquencies; and,
4. Photocopy of accused's Formal Letter of Demand dated 06 April 2015 (original copy marked as Exhibit "P-84" and forming part of the records of this case).

On 12 February 2020, the Court received plaintiff's Manifestation, stating that it undertook in its Comment to submit a manifestation upon the receipt of the official reply of RDO No. 52, Parañaque City, upon confirming that the accused settled his tax liabilities subject of these cases under the Tax Amnesty Law. In its Manifestation, plaintiff attached copies of the memorandum request and the certification from RDO No. 52 stating that accused paid 60% of the basic income tax and VAT due and 100% of the basic EWT due required under the Tax Amnesty Act and RR 4-2019. In addition, a Certification to the effect that accused's payments were verified and included in the collection report was also attached.

We now resolve.

The Tax Amnesty on Delinquencies (Title IV) of the Tax Amnesty Act covers all national internal revenue taxes for taxable year 2017 and prior years.

Considering that the judgment of conviction against accused has yet to become final and executory with the timely filing of the instant Omnibus Motion, he can still be entitled to the benefits of the tax amnesty on delinquencies (pursuant to the Tax Amnesty Act). The relevant sections of which are quoted hereunder:

> . . .
> **Section 17**. *Coverage*. – There is hereby authorized and granted a tax amnesty herein called the Tax Amnesty on Delinquencies,

which shall cover all national internal revenue taxes[,] such as, but not limited to, income tax, withholding tax, capital gains tax, donor's tax, value-added tax, other percentage taxes, excise tax and documentary stamp tax collected by the Bureau of Internal Revenue, including value-added tax and excise taxes collected by the Bureau of Customs for taxable year 2017 and prior years.

For purposes of this Act, the Tax Amnesty on Delinquencies may be availed of in the following instances:

...

(b) **Pending criminal cases with the Department of Justice or the courts for tax evasion** and **other criminal offenses under Chapter II of Title X and Section 275 of the National Internal Revenue Code of 1997, as amended, with or without assessments duly issued**[.]

...

Section 18. *Entitlement of Tax Amnesty on Delinquencies.* – Any person may enjoy the immunities and privileges of the Tax Amnesty on Delinquencies and pay the following tax amnesty rates:

...

(c) **Pending criminal cases with criminal information filed with the Department of Justice or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the National Internal Revenue Code of 1997, as amended, with assessments duly issued and otherwise excluded in Titles II and III hereof............60% of the basic tax assessed**[.][6]

...

Section 19. *Availment of the Tax Amnesty on Delinquencies; When and Where to File and Pay.* – Any person, natural or juridical, who wishes to avail of the Tax Amnesty on Delinquencies shall, within one (1) year from the effectivity of the Implementing Rules and Regulations of this Act, file with the appropriate office of the Bureau of Internal Revenue, which has jurisdiction over the residence or principal place of business of the taxpayer, a sworn Tax Amnesty on Delinquencies Return accompanied by a Certification of Delinquency. The payment of the amnesty tax shall be made at the time the Return is filed:

Provided, That the Revenue District Officer shall issue and endorse an Acceptance Payment Form, in such form as may be prescribed in the Implementing Rules and Regulations of this Act authorizing the authorized agent bank, or in the absence thereof, the revenue collection agent or municipal treasurer concerned, to accept the amnesty tax payment:

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6 Emphasis supplied.

> *Provided, further,* That the availment of the Tax Amnesty on Delinquencies and the issuance of the corresponding Acceptance Payment Form do not imply any admission of criminal, civil or administrative liability on the part of the availing taxpayer.
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> ...

In relation to the above, RR 4-2019 became effective on 24 April 2019. Hence, taxpayers who wish to avail of the tax amnesty may do so within one (1) year from the said effectivity date. As alleged on his Omnibus Motion, accused availed of the tax amnesty on delinquencies pursuant to the provisions above on 18 November 2019 and 28 November 2019, well within the one year period.

Upon availment of the tax amnesty and full compliance with the conditions set forth in the law and its implementing rules and regulations, the pending criminal cases shall be *terminated*. Section 20 of the Tax Amnesty Act provides:

> ...
>
> **Sec. 20**. *Immunities and Privileges.* – **The tax delinquency of those who avail of the Tax Amnesty on Delinquencies and have fully complied with all the conditions set forth in this Act and upon payment of the amnesty tax shall be considered settled and the criminal case under Section 18(c) and its corresponding civil or administrative case, if applicable, <u>be terminated</u>, <u>and the taxpayer shall be immune from all suits and actions, including the payment of said delinquency or assessment</u>, as well as additions thereto, <u>and from all appurtenant civil, criminal, and administrative cases</u>, and penalties under the National Internal Revenue Code of 1997, as amended, as such relate to the taxpayer's assets, liabilities, networth, and internal revenue taxes that are subject of the tax amnesty, and from such other investigations or suits insofar as they relate to the assets, liabilities, networth and internal revenue taxes that are subject of the tax amnesty**: *Provided,* That any notices of levy, attachments and/or warrants of garnishment issued against the taxpayer shall be set aside pursuant to a lifting of notice of levy/garnishment duly issued by the Bureau of Internal Revenue or its authorized representative: *Provided, further,* That the Authority to Cancel Assessment shall be issued by the Bureau of Internal Revenue in favor of the taxpayer availing of the Tax Amnesty on Delinquencies within fifteen (15) calendar days from submission to the Bureau of Internal Revenue of the Acceptance Payment Form and the Tax Amnesty on Delinquencies Return. Otherwise, the duplicate copies, stamped as received, of the Acceptance Payment Form, and the Tax Amnesty on Delinquencies Return shall be deemed as sufficient proof of availment: *Provided,* furthermore, That the Tax Amnesty on Delinquencies Return and the Acceptance Payment Form shall be submitted to the Revenue District Office after complete payment.

> The completion of these requirements shall be deemed full compliance with the provisions of this Act.
>
> Upon full compliance with all the conditions set forth in this Title and payment of the corresponding tax on delinquency, the tax amnesty granted under this Title shall become final and irrevocable.[7]
>
> . . .

One of the requirements of RA 11213, particularly Section 18, is the settlement by the taxpayer of 60% of the basic tax assessed. Herein, the Certificate of Tax Delinquencies/Tax Liabilities covered accused's tax liabilities for income tax, value-added tax (**VAT**) and Expanded Withholding Tax (**EWT**) for the years 2006 to 2010. Likewise, the computation of the amnesty tax in Part V of the TAR covered the same taxable years (**TY**) 2006 to 2010 summarized below:

Tax Type	**Basic Tax[8] (in Php)**	**Required Percentage**	**Base Amount (in Php)**	**Partial payment (in Php)**	**Amnesty Tax (in Php)**
Income Tax	42,722,312.70	60%	25,633,387.62	24,800,000.00[9]	833,387.60
VAT	17,259,635.44	60%	10,355,781.26		10,355,781.26
EWT	359,266.01	100%	359,266.01		359,266.01

The instant consolidated criminal cases against accused are for income tax (TY 2006, 2008 and 2010), and VAT (TY 2006 and 2010). It is, therefore, clear that accused's payment for amnesty tax covered the subject taxable years for income tax and VAT pending before this Court.

With accused's compliance with the conditions laid down by the law and its implementing rules and regulations, in availing of the tax amnesty on delinquencies, the Court is constrained to terminate the pending cases. It noted that the judgment of conviction against accused has yet to attain finality due to his timely filing of his Omnibus Motion. Since the wordings of Section 20 of RA 11213 is mandatory, the Court has no other option but to terminate and deem as closed his criminal cases.

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7 Emphasis and underscoring supplied.

8 The total Basic Tax for each tax type in the TAR equals the corresponding total amount of basic tax per tax type in the Certificate of Tax Delinquencies/Tax Liabilities.

9 Paid in 09 February 2018, and indicated in the Certificate of Tax Delinquencies/Tax Liabilities. BIR Form No. 0605 (Payment Form) and Deposit Slip are attached as Annex F and G, respectively, in the Urgent Motion to Suspend Promulgation of Judgment.

Moreover, as a result of his successful availment of the tax amnesty, accused shall be immune from all suits and actions, and from all appurtenant civil, criminal and administrative cases.[10]

With the declaration above, the Court shall no longer belabor to discuss the other issues raised in his Motion for Reconsideration *Ad Cautelam*.

WHEREFORE, premises considered, accused's **Omnibus Motion to Set Aside [Judgment] and For Reconsideration *Ad Cautelam*** is **PARTIALLY GRANTED**. Accordingly, the Decision promulgated on 04 December 2019 is hereby amended to read as follows:

> ...
>
> **WHEREFORE**, with the foregoing but with accused's availment of the tax amnesty on delinquencies pursuant to Republic Act No. 11213, otherwise known as the Tax Amnesty Act, the consolidated cases herein, similarly titled *People of the Philippines v. Rommel Ynion y Salva* and docketed as CTA Crim. Case Nos. O-313, O-314, O-315, O-316, O-317, O-318, O-319 and O-320, are hereby **TERMINATED** and **DEEMED AS CLOSED**.
>
> **SO ORDERED.**
>
> ...

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[10] See Section 20, RA 11213, supra.

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice