REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES Plaintiff,	CTA CRIM. CASE NO. O-325
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
MEL V. VELARDE AND ATTY. ANGELINE L. MACASAET, Accused.	Promulgated: AUG 09 2017 4:20 p.m.

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RESOLUTION

Fabon-Victorino, J.:

For Court action is the Motion for Reconsideration (of the Resolution dated December 21, 2016) filed by the prosecution on January 6, 2017 and its Supplement filed on January 13, 2017, praying for the reconsideration of the Resolution dated December 21, 2016 dismissing the instant case for insufficiency of evidence, and for the Court to proceed with the trial for accused' presentation of evidence.

The prosecution states that the dismissal of the case against accused Velarde and Macasaet was grounded mainly on its inability to establish that the Deed of Absolute Sale (DAS) dated August 13, 2009 was falsified and forged. However, the prosecution is allegedly not tasked to establish the crime of falsification but rather violation of the Tax Code for the two (2) accused' failure to supply correct and accurate information in the tax return filed with the Bureau of Internal Revenue (BIR) that led to the payment of lower capital gains tax (CGT) and documentary stamp tax (DST) in violation of the Tax Code. Thus, the prosecution needs only to prove that the amount indicated in the DAS of August 13, 2009 was not the real and actual consideration for the purchase of the subject property, and that the two accused were criminally responsible therefor.

The prosecution further states that the Court mis-appreciated the testimony of Mrs. Knox that she requested from accused Velarde the original of the DAS dated August 13, 2009, but at the same time claimed not having executed any, which per Court's perception, gave her away. According to the prosecution, Mrs. Knox had been consistent in her testimony that she did not execute or sign any deed of sale and that she surrendered her property in Punta Fuego, in Batangas to accused Velarde *sans* any document evidencing the sale transaction.

Aside from the testimony of Mrs. Knox, the prosecution also banks on the documents it adduced during the trial which it considered sufficient to sustain conviction of the two accused.

The prosecution also claims that it was able to establish conspiracy between the two accused in the commission of the offense charged. It opines that the two accused acted in concert and without the aid of one another, the crime of tax evasion would not have been completed.

Finally, the wide discrepancy between the actual purchase price of $1,200,000.00 as testified to by Mrs. Knox or Php60,000,000.00 and the price as indicated in the DAS dated August 13, 2009 could not possibly be the result of negligence or mistake but rather of willful act of the two accused in order to evade payment of the correct CGT and DST.

In its Supplement to the subject Motion for Reconsideration, the prosecution complains that the assailed Resolution failed to clearly resolve the civil aspect of the case which is deemed instituted with the instant criminal case and may be proved by mere preponderance of evidence.

The prosecution believes that the meager sum of Php16,000,000.00 purchase price indicated in the DAS of August 13, 2009 could not possibly be correct considering the features of the property sold. Thus, the BIR computed the deficiency taxes[1] based on the testimony of Mrs. Knox that she sold the property to accused Velarde for $1,200,000.00, and the testimony of BIR Revenue Officer Eugenio M. Aurelio, who computed the deficiency taxes of the accused.

The prosecution also invokes the provision in the DAS of August 13, 2009 to the effect that the buyer of the property shall pay the CGT and DST arising from the sale transaction. Likewise, under Section 57(A)[2], in relation to Section 24(D)(1)[3], of the NIRC of 1997, as amended, it is the payor, as herein accused, who is obliged to withhold and pay the taxes due arising from the sale transaction.

With the foregoing, the civil liability of the two accused can be adjudged notwithstanding their acquittal.

In their Consolidated Opposition, the two accused raised the following counter-arguments:

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[1] Exhibit "P-36-b".

[2] SEC. 57. Withholding of Tax at Source. -

(A) Withholding of Final Tax on Certain Incomes. - Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1),24(B)(2),24(C),24(D)(1); 25(A)(2),25(A)(3),25(B),25(C),25(D),25(E);27(D)(1),27(D)(2),27(D)(3),27(D)(5);28(A)(4),28(A)(5),28(A)(7)(a),28(A)(7)(b),28(A)(7)(c),28(B)(1),28(B)(2),28(B)(3),28(B)(4),28(B)(5)(a),28(B)(5)(b),28(B)(5)(c);33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.

[3] SEC. 24. Income Tax Rates. -

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(D) Capital Gains from Sale of Real Property. -

(1) In General. - The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange or other disposition of real property located in the Philippines, classified as capital assets, including *pacto de retro* sales and other forms of conditional sales, by individuals, including estates and trusts; *Provided*, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or -controlled corporations shall be determined either under Section 24(A) or under this Subsection, at the option of the taxpayer;

I.
THE *PRO FORMA* MOTIONS MUST PERFORCE BE DENIED OUTRIGHT AS THEY VIOLATE THE RIGHT AGAINST DOUBLE JEOPARDY OF BOTH ACCUSED VELARDE AND MACASAET.

II.
THE *PRO FORMA* MOTIONS SHOULD BE DENIED INSTANTLY FOR FAILURE TO COMPLY WITH MANDATORY PROCEDURAL REQUIREMENTS UNDER BOTH THE RULES OF PROCEDURE OF THIS HONORABLE COURT AND THE RULES OF COURT.

III.
EVEN ASSUMING *ARGUENDO* THAT THE *PRO FORMA* MOTIONS ARE PROCEDURALLY SOUND, THE SAME SHOULD NEVERTHELESS BE DENIED FOR UTTER LACK OF MERIT, CONSIDERING THAT:

A. AS CORRECTLY HELD BY THIS HONORABLE COURT, THE PROSECUTION UTTERLY FAILED TO PROVE BEYOND REASONABLE DOUBT THAT THERE WAS A FAILURE TO PAY THE CORRECT TAXES ON THE SUBJECT TRANSACTION.

B. CONTRARY TO THE MISPLACED ARGUMENT OF THE PROSECUTION IN ITS SUPPLEMENT TO THE MOTION FOR RECONSIDERATION, CIVIL LIABILITY ARISING FROM A CRIME TERMINATES UPON THE DISMISSAL OF THE CRIMINAL ACTION WHEN, AS IN THE INSTANT CASE, THE FACT FROM WHICH SUCH CIVIL ACTION MIGHT PROCEED DOES NOT EXIST.

The two accused argue that the grant of their Demurrer to Evidence operates as an acquittal. Consequently, the prosecution's filing of the instant Motions, seeking the reconsideration of the Court's Resolution dated December 21, 2016, amounts to double jeopardy.

Further, the subject Motion for Reconsideration and its Supplement are *pro forma* for they merely reiterate previous arguments already resolved[4] by the Court in the assailed Resolution. That being the case, they should be treated as mere scraps of paper filed for purposes of delay. A motion for reconsideration which does not make out a new matter sufficiently persuasive to induce a modification of judgement should be denied.[5]

Also for failure to observe the mandatory requirements of notice and hearing on the incident in violation of the Rules of Court they must also be deemed mere scraps of paper with no legal significance.

In any event, the prosecution utterly failed to prove that the two accused failed to supply correct and accurate information in the tax return they filed with the BIR resulting in the payment of incorrect taxes due to the government.

For one, the testimony of Mrs. Knox is highly suspect as she has an ax to grind against accused Velarde and Macasaet who accused her of robbery before the Regional Trial Court in Batangas. Her uncorroborated and conflicting testimony about the circumstances surrounding the sale transaction is insufficient to induce moral certainty, thus, cannot prevail over the constitutional presumption of innocence in favor of the two accused.[6]

The prosecution as well failed to prove beyond reasonable doubt that the payment of the CGT and DST on the subject sale transaction were less than what is known to them to be legally due from the buyer Verdant Corporation as represented by accused Velarde. More importantly, the prosecution failed to establish all the elements of the crime charged.

On the civil liability of the two accused, suffice it to say that the Court has already ruled not only on the dismissal of the criminal action for tax evasion but also on the dismissal of the corresponding civil liability for the payment of the alleged deficiency taxes.

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[4] Cruz v. J.M. Tuason & Company, Inc. G.R. No. L-23749, April 29, 1977.
[5] *Supra*, at Note 5.
[6] People of the Philippines v. Dionisio y Meriquillo, G.R. No. 100354, May 26, 1995.

Since the prosecution failed to prove that the questioned DAS dated August 13, 2009 was falsified and forged, it should be deemed validly executed, hence, binding between the parties. Consequently, the payment of taxes based on said DAS is correct and proper.

THE COURT'S RULING

For lack of merit, the Motion for Reconsideration and its Supplement filed by the prosecution should be denied.

Evidently, all the arguments advanced by the prosecution in the present Motion for Reconsideration and its Supplement have been addressed thoroughly by the Court in the assailed Resolution of December 21, 2016. To discuss them anew is a waste of time and resources of the Court.

On the civil aspect of this case, Section 7(b)(1) of Republic Act (RA) No. 9282 provides that "criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

The prosecution claims that notwithstanding dismissal of the criminal case for failure of the prosecution to prove beyond reasonable doubt the guilt of the two accused, the two accused should still be held civilly liable for under-declaration of the true and actual purchase price of the purchased property in Punta Fuego previously owned by Mrs. Knox, since mere preponderance of evidence is required for that purpose.

While assessment of tax due before institution of criminal action is not necessary, the final determination of the Commissioner as to the tax liability of the person charged is necessary for the Court to rule on the civil aspect of the case.

In the instant case, there was no showing that an assessment was made by the BIR on tax liabilities of the two accused or of Verdant Treasures, Inc. the buyer of the subject property. Verily, the computation of BIR Revenue Officer Eugenio M. Aurelio, on accused' alleged deficiency DST and CGT, standing alone, may not be used as basis to impose the civil liabilities prayed for by the prosecution.

Note that while an assessment of the tax is not necessary before there can be a criminal prosecution, assessment procedures provided by the NIRC of 1997, as amended, should be complied with first in order to impose the civil liability in connection with the criminal action. In the present case, a BIR assessment against the two accused or Verdant Treasures, Inc. is certainly lacking. Therefore, the civil liabilities for the alleged deficiency CGT and DST due from the sale of the subject property on August 13, 2009 cannot be determined.

WHEREFORE, the Motion for Reconsideration (of the Resolution dated December 21, 2016) and Supplement to the Motion for Reconsideration (of the Resolution dated December 21, 2016) filed by the prosecution on January 6, 2017 and January 13, 2017, respectively, are hereby **DENIED** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice