REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. O-690
For: Violation of Section 255 of the NIRC of 1997, as amended

-versus-

RONNEL LAMPA DE GUZMAN (LUCKY SEA TRADING),
Accused.

x---x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA Crim. Case No. O-691
For: Violation of Section 255 of the NIRC of 1997, as amended

-versus-

RONNEL LAMPA DE GUZMAN (LUCKY SEA TRADING),
Accused.

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

FEB 2 1 2022 1:55 pm

x- -x

RESOLUTION

MANAHAN, *J.:*

To be resolved are the following:

1. Plaintiff's **Motion for Partial Reconsideration (of the Decision Promulgated on June 9, 2021)** filed on July 8, 2021 with accused's **Comment/Opposition** filed on November 10, 2021; and

2. Accused's **Motion for Reconsideration** filed on July 6, 2021 with plaintiff's **Comment (to the Motion for Reconsideration of Accused Ronnel Lampa De Guzman dated June 27, 2021)** filed through electronic mail on October 11, 2021 which was personally served on this Court on October 20, 2021.

Plaintiff prays that the *Decision* promulgated on June 9, 2021 (Assailed *Decision*) as to accused's civil liability be set aside. Accused, on the other hand, prays that such Decision be reversed, rescinded, annulled and set aside. The dispositive portion of the assailed decision reads as follows:

> "**WHEREFORE,** premises considered, the Court rules as follows:
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> 1. In CTA Crim. Case No. O-690, accused **RONNEL LAMPA DE GUZMAN** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the NIRC of 1997, as amended, for taxable year 2012 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to ten (10) years as maximum, and **ORDERED** to pay a fine in the amount of Php10,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the 1997 NIRC, as amended.
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> 2. In CTA Crim. Case No. O-691, accused **RONNEL LAMPA DE GUZMAN** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 255 of the 1997 NIRC, as amended, for taxable year 2013 and is hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of one (1) year as minimum, to ten (10) years as maximum, and **ORDERED** to pay a fine in the amount of Php10,000.00, with subsidiary imprisonment, in case accused has no property with which to meet such fine, pursuant to Section 280 of the 1997 NIRC, as amended.
>
> **SO ORDERED**."

Plaintiff, in its *Motion for Partial Reconsideration*, argues that the requirement of final action from the Commissioner of Internal Revenue (CIR) in the form of a Final Assessment Notice (FAN), Formal Letter of Demand (FLD), or Final Decision on Disputed Assessment (FDDA) is not applicable to the imposition of civil liability considering that in the absence of the accounting records of a taxpayer, the tax liability may be determined by estimation. Further, Section 222 of the 1997 National Internal Revenue Code (NIRC), as amended, requires that in a court proceeding for the collection of taxes, the same may be filed without assessment, and that the absence of a Letter of Authority (LOA) does not mean absence of authorization.

Accused, in his *Comment/Opposition*, argues that the doctrine that "every man criminally liable is also civilly liable" applies in ordinary criminal cases and not on tax cases citing the cases of *Macario Lin Gaw, Jr. v. Commissioner of Internal Revenue*[1] and *Proton Pilipinas Corporation v. Republic of the Philippines, represented by the Bureau of Customs*[2] (*Proton* case), which were cited in the Concurring Opinion of the Presiding Justice of this Court.

Accused, in his *Motion for Reconsideration*, argues that he is not required to make and file an income tax return and that he did not willfully fail to file a return.

Plaintiff, in its *Comment*, on the other hand, argues that the accused's denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.

We deny both motions.

It is true that under Section 222(a) of the 1997 NIRC, as amended, it provides among others that "a proceeding in court for the collection of such tax may be filed without assessment" and such was sustained by the Supreme Court in the case of *Commissioner of Internal Revenue v. PASCOR Realty and Development Corporation, et al.*,[3] and *Lucas G. Adamson, et al., v. Court of Appeals, et al.*[4]

However, that provision applies only for the initiation or filing of a criminal case in court against those taxpayers who filed false or fraudulent tax return or failed to file one. Parenthetically, Section 205 of the 1997 NIRC, as amended, requires that in order for the judgment of the payment of the taxes constitutive of the civil liability aspects of said criminal case to be included in the judgment of said criminal case, the assessment alluded under the law must be the one "finally

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[1] G.R. No. 222837, July 23, 2018.
[2] G.R. No. 165027, October 16, 2006 (535 Phil. 521).
[3] G.R. No. 128315, June 29, 1999.
[4] G.R. Nos. 120935 and 124557, May 21, 2009.

decided by the Commissioner". Such provision of the 1997 NIRC, as amended, is very clear.

In *James Arthur T. Dubongco, et al., v. Commission on Audit*[5], the Supreme Court rules that when the provision of law is clear and free from ambiguity, there is only room for application, to wit:

> "... A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the provisions are clear, plain, and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation. This is what is known as the plain meaning rule, as expressed in the maxim, *verba legis non est recedendum,* or from the words of a statute there should be no departure."

The factual antecedents of this case reveal that the evidence presented by the plaintiff is only a Preliminary Assessment Notice (PAN) without any FAN, FLD, or FDDA if the assessment was being disputed. The said final notices are the penultimate action of the Commissioner alluded to under Section 205 of the 1997 NIRC, as amended.

The rationale for the requirement of a separate civil action of the Commissioner for such assessment allegedly impliedly instituted in the criminal case is that the collection of unpaid taxes cannot be determined in the same criminal proceedings, as held in *Proton* case[6], to wit:

> "While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it. It should be borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. <u>The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal</u>

[5] G.R. No. 237813, March 05, 2019.
[6] *Supra*, Note 2.

> acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him." (*Underscoring supplied*)

As to the plaintiff's allegation that the absence of an LOA does not mean absence of authorization, the Supreme Court has ruled with resolute clarity that such requirement is indispensable in authorizing the revenue officers who will conduct the tax examination as held in the recent case of *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.*[7], to wit:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.
>
> xxx xxx xxx
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> **Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken**. Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. **There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment**. The revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**." (*Emphasis supplied*)

In this case, the revenue officers failed to serve the LOA to the accused, hence, it is as if no LOA was issued to the latter. The PAN therefor was declared null and void. Such jurispredential doctrine has been later affirmed in the case of *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue.*[8]

As to the arguments of the accused which were thoroughly and exhaustively discussed in the Assailed

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[7] G.R. No. 242670, May 10, 2021.
[8] G.R. No. 241848, May 14, 2021.

Decision, there is no more need for the Court to make another extended discussion on the said arguments as held in *H. Harry Roque Jr., et al., v. Commission on Elections, et al.*[9], to wit:

> "Petitioners' above contention, as well as the arguments, citations, and premises holding it together, is a rehash of their previous position articulated in their memorandum in support of their petition. They have been considered, squarely addressed, and found to be without merit in the Decision subject hereof. The Court is not inclined to embark on another extended discussion of the same issue again..."

There being no other new issues or matters raised by the parties in the instant motions, this Court finds no compelling reason to reverse the ruling in the Assailed Decision.

WHEREFORE, premises considered, plaintiff's *Motion for Partial Reconsideration (of the Decision Promulgated on June 9, 2021)* and accused's *Motion for Reconsideration* are hereby **DENIED**. Accordingly, the **Assailed *Decision*** dated June 9, 2021 is hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

[9] G.R. No. 188456, February 10, 2010

Decision, there is no more need for the Court to make another extended discussion on the said arguments as held in *H. Harry Roque Jr., et al., v. Commission on Elections, et al.*[9], to wit:

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WHEREFORE, premises considered, plaintiff's *Motion for Partial Reconsideration (of the Decision Promulgated on June 9, 2021)* and accused's *Motion for Reconsideration* are hereby **DENIED**. Accordingly, the **Assailed *Decision*** dated June 9, 2021 is hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
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WHEREFORE, premises considered, plaintiff's *Motion for Partial Reconsideration (of the Decision Promulgated on June 9, 2021)* and accused's *Motion for Reconsideration* are hereby **DENIED**. Accordingly, the **Assailed *Decision*** dated June 9, 2021 is hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
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[9] G.R. No. 188456, February 10, 2010