REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. NO. 029
(CTA Crim. Case Nos. O-049, O-050 & O-051

-versus-

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
and
Ringpis-Liban, *JJ.*

ITALCAR PILIPINAS, INC. (ITALCAR), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL,
Accused.

Promulgated:
MAY 28 2015
2:52 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.

Before the Court *En* Banc is a Petition for Review filed by petitioner People of the Philippines under Sec. 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking nullification of the Resolution[1] dated October 11, 2013, the dispositive portion of which reads:

[1] Rollo CTA EB Case No. 029, pp. 30-36.

WHEREFORE, premises considered, accused's *Demurrer to Evidence (Motion to Dismiss)* is hereby **GRANTED**. Accordingly, Criminal Case Nos. O-049, O-050 and O-051 are hereby **DISMISSED** for failure of the prosecution to present evidence to establish the guilt of the accused.

SO ORDERED."

and the Resolution on the Motion for Reconsideration[2] dated February 11, 2014, of the Second Division of the Court (Court in Division) denying petitioner's Motion for Partial Reconsideration (of the Civil Aspect of the Case).

THE FACTS

Filed before the Court in Division are three (3) separate Informations for violation of Sec. 255 of Republic Act No. 8424 otherwise known as the Tax Reform Act of 1997, as amended, in relation to Sec. 253 par. (D) of the same code, which read as follows:

CRIMINAL CASE NO. O-049

"AMENDED INFORMATION

The undersigned State Prosecutor of the Department of Justice, hereby accuses ITALCAR PILIPINAS, INC (ITALCAR), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL for violation of Sec. 255 of Republic Act 8424 otherwise known as the Tax Reform Act of 1997, as amended, in relation to Section 253 par (D) of the same code, committed as follows:

That on or about April 15, 2000 up to the present, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the Accused ITALCAR PILIPINAS, INC (ITALCAR, a domestic corporation), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL, being the Managing Director and/or President and the Fiscal Controller and/or Finance Officer, respectively, of ITALCAR Pilipinas, Inc. (ITALCAR) and that at the time required by law, rules and regulations to pay taxes for the said corporation, did then and there willfully, unlawfully and feloniously fail and refuse to pay the

[2] Rollo pp. 37-43.

Excise Tax Deficiency of ITALCAR for taxable year 1999 in the amount of Twenty One Million Six Hundred Forty Thousand Seven Hundred Seventeen Pesos and Fifty Two Centavos (P21,640,717.52), exclusive of penalties and charges in the amount of Fourteen Million Nine Hundred Fifty Seven Thousand Ninety Five Pesos and Nine Centavos (P14, 957,095.09) or a total of Excise Tax deficiency of Thirty Six Million Five Hundred Ninety Seven Thousand Eight Hundred Twelve Pesos and Sixty One Centavos (P36,597,812.61) despite due notice, final assessment and demand from the BIR Commissioner.

CONTRARY TO LAW."

CRIMINAL CASE NO. O-050

"**AMENDED INFORMATION**

The undersigned State Prosecutor of the Department of Justice, hereby accuses ITALCAR PILIPINAS INC. (ITALCAR), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL for violation of Sec. 255 of Republic Act 8424 otherwise known as the Tax Reform Act of 1997, as amended, in relation to Sec. 253 par. D of the same code, committed as follows:

That on or about April 15, 2000 up to present, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the Accused ITALCAR PILIPINAS, INC. (ITALCAR, a domestic corporation), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL, being the Managing Director and/or President and the Fiscal Controller and/or Finance Officer, respectively, of ITALCAR Pilipinas, Inc. (ITALCAR) and that at the time required by law, rules and regulations to pay taxes for the said corporation, did then and there willfully, unlawfully and feloniously fail and refuse to pay the Value-Added Tax deficiency of ITALCAR for taxable year 1999 in the amount of Twenty Four Million Six Hundred Twenty Thousand Seven Hundred Sixty Nine Pesos and Seventy One Centavos (P24,620,769.71), exclusive of penalties and charges in the amount of Sixteen Million Seven Hundred Sixty Seven Thousand One Hundred Twenty Three Pesos and Forty Centavos (P16,767,123.40) or a total Value-Added Tax Deficiency of Forty One Million Three Hundred Eighty Seven Thousand Eight Hundred Ninety Three Pesos and eleven Centavos

(P41,387,893.11) despite due notice, final assessment and demand from the BIR Commissioner.

CONTRARY TO LAW."

CRIMINAL CASE NO. O-051

"AMENDED INFORMATION

The undersigned State Prosecutor of the Department of Justice, hereby accuses ITALCAR PILIPINAS INC. (ITALCAR), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL for violation of Sec. 255 of Republic Act 8424 otherwise known as the Tax Reform Act of 1997, as amended, in relation to Sec. 253 par. (D) of the same code, committed as follows:

That on or about April 15, 2000 up to the present, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the Accused ITALCAR PILIPINAS, INC. (ITALCAR, a domestic corporation), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL, being the Managing Director and/or President and the Fiscal Controller and/or Finance Officer, respectively, of ITALCAR Pilipinas, Inc. (ITALCAR) and that at the time required by law, rules and regulations to pay taxes for the said corporation, did then and there willfully, unlawfully and feloniously fail and refuse to pay the Withholding Tax Deficiency of ITALCAR on compensation, expanded and final taxes for taxable year 1999 in the amount of One Million Five Hundred Thirty Seven Thousand Three Hundred Thirteen Pesos and Eighty Five Centavos (P1, 537,313.85), exclusive of penalties and charges in the amount of One Million Ninety Four Thousand Three Hundred Seventy Three Pesos and Forty Centavos (P1,094,373.40) or a total Withholding Tax deficiency of Two Million Six Hundred Thirty One Thousand Six Hundred Eighty Seven Pesos and twenty Seven Centavos (P2,631,687.27) despite due notice, final assessment and demand from the BIR Commissioner.

CONTRARY TO LAW."

When arraigned on January 21, 2008,[3] accused Fernando T. Francisco (Francisco) and Antonino B. Caringal (Caringal), assisted by their counsel,

[3] Resolution, CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 302.

pleaded not guilty to the crimes charged. After the arraignment, the Court ordered that Crim. Case Nos. O-050 and O-051 be consolidated with Crim. Case No. O-049.

After several postponements,[4] the pre-trial was conducted and terminated only on July 27, 2009.[5]

The Pre-Trial Order was issued on August 4, 2009[6] and the Amended Pre-Trial Order was issued on September 23, 2009.[7]

During the trial of the cases, the prosecution presented Revenue Officer (RO) Ramila Columna-Cruzado, RO Walter A. Batoon and Mr. Albino M. Galanza, then Group Supervisor (GS), who were all assigned to conduct the audit of the accused for taxable year 1999, and Ms. Reynalda C. Catabay, then Chief of the Collection Enforcement Section, as witnesses to establish its case against the accused.[8]

On June 29, 2011, the counsel of accused Caringal filed a Manifestation with Motion to Dismiss[9] stating that accused Caringal died on May 13, 2011 due to Cardio Pulmonary Arrest Acute Myocardial Infraction-Hypertensive Cardiovascular Disease.

On September 2, 2011, the Court issued a Resolution dismissing the cases against accused Caringal.[10]

On June 18, 2012, the prosecution filed its Formal Offer of Evidence.[11]

In the Resolutions dated January 31, 2013 and July 19, 2013, the Court admitted the prosecution's documentary evidence except for Exhibits "F-3", "F-4", "F-5", "R", "GG", and "KK" in CTA Crim. Case No. O-049, Exhibits "F-3", "F-4", "F-5", "R", "AA, and "EE" in CTA Crim. Case No. O-050, and Exhibits "F-3", "F-4", "F-5", "W" and "AA" in CTA Crim. Case No. O-051.[12]

On July 29, 2013, accused Francisco filed a *Motion for Leave of Court to File and Admit Demurrer to Evidence with attached Demurrer to Evidence (Motion to Dismiss).*

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[4] February 11, 2008, March 24, 2008, April 14, 2008, April 21, 2008, May 5, 2008, March 16, 2009,May 4, 2009, June 8, 2009 and July 22, 2009.
[5] Resolution, CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 813.
[6] CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 872.
[7] CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 911.
[8] Resolution dated October 11, 2013, Rollo p. 32.
[9] CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 1837.
[10] CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 1924-1927.
[11] CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 2001.
[12] Resolution, Rollo pp. 32-33.

In a Resolution dated August 1, 2013, the Court granted the same and accordingly, admitted accused's Demurrer to Evidence.[13]

On October 11, 2013, the Court in Division issued a Resolution[14] granting accused Francisco's Demurrer to Evidence. Thus, Criminal Case Nos. O-049, O-050 and O-051 were dismissed.

On October 31, 2013, the prosecution filed a Motion for Partial Reconsideration (of the Civil Aspect of the Case).

On December 6, 2013, accused through his counsel, filed a Comment/Opposition to the Motion for Partial Reconsideration (of the Civil Aspect of the Case) stating that the prosecution can no longer pursue the civil liability or civil aspect of the case which is deemed filed simultaneously with the criminal action and that the Informations were filed without the approval of the Commissioner of Internal Revenue.

On February 6, 2014, counsel for accused Francisco filed a pleading entitled an "Omnibus: I. Notice of Death of Accused Fernando T. Francisco and II. Withdrawal of Appearance as Counsel,"[15] stating that accused Francisco died on December 12, 2013 due to Cardio-Pulmonary Arrest and prayed that the cases should be considered closed and terminated.

On February 11, 2014, the Court in Division issued a Resolution denying for lack of merit, the prosecution's Motion for Partial Reconsideration (of the Civil Aspect of the Case).

On February 28, 2014, the petitioner filed before the Court *En Banc* a Motion for Extension of Time to File Petition for Review, stating that the petitioner received the February 11, 2014 Resolution on February 14, 2014; that due to voluminous workload, petitioner prayed that it be given an additional fifteen (15) days from March 1, 2014 or until March 16, 2014 within which to file a Petition for Review.[16]

On March 3, 2014, the Court in Division issued a Resolution holding that the civil liability ex delicto or arising from the delict of accused Francisco is extinguished but denied Atty. Peter T. Tabang's prayer to declare the cases closed and terminated since the determination of the civil aspect of the cases has not yet attained finality. Atty. Tabang was also ordered to secure the conformity of a duly authorized officer of ITALCAR for his withdrawal of appearance as counsel.

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[13] Ibid. p. 33.
[14] CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 2827-2833.
[15] CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 2870.
[16] Ibid. p. 1.

On March 4, 2014, the Court *En Banc* granted the petitioner's motion for extension of time to file Petition for Review.[17]

On March 17, 2014, the petitioner filed the instant Petition for Review.[18]

In the Resolution[19] dated April 22, 2014, accused ITALCAR was directed by the Court *En Banc* to file its Comment in this case. On March 28, 2014, accused ITALCAR filed its Comment[20], and sought for this Court *En Banc* to dismiss this Petition for Review for apparent lack of merit.

Thereafter, both parties were ordered to file their respective Memoranda[21]. The petitioner filed a "Manifestation"[22] stating that she is adopting her Petition for Review as her memorandum. The issues and arguments that are to be incorporated in the memorandum were already addressed and fully discussed in the Petition for Review. Accused ITALCAR failed to file its Memorandum.

This case was deemed submitted for decision on October 10, 2014.

ISSUE

The lone issue raised by the petitioner is whether or not the BIR's assessment for deficiency taxes is void.

PETITIONER'S ARGUMENTS

Petitioner argues that the BIR's right to assess accused for deficiency taxes has not prescribed, hence, the assessment is valid; that withholding tax assessment is imprescriptible; and that the tax deficiency in the instant case may be collected without need of an assessment in a court proceeding.

RESPONDENT'S ARGUMENTS

Accused counter-argues that the petitioner can no longer pursue the civil liability or the civil aspect of the cases which are deemed filed simultaneously with the criminal actions; and that the Informations filed against the accused were without the approval of the Commissioner of Internal Revenue, in violation of Sections 220 and 221 of the NIRC.

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17 Ibid. p. 5.
18 Ibid. pp. 6- 29. The last day to file the Petition for review was on March 16, 2014, a Sunday. Hence, the instant Petition for Review was filed on the next working day.
19 Ibid pp. 49-50.
20 Ibid pp. 62-69.
21 Ibid pp. 80-81.
22 Ibid pp.82-84.

RULINGS OF THE COURT EN BANC

The civil liability in these cases pertains only to the corporation

The records show that both accused Francisco and Caringal were already dead prior to the filing of the instant Petition for Review. Caringal died on May 13, 2011,[23] when these cases were still pending trial, while Francisco died on December 12, 2013,[24] after the Court in Division issued a Resolution granting his Demurrer to Evidence.

The criminal cases against Caringal including his civil liability were ordered dismissed in the Resolution[25] of the Court in Division dated September 2, 2011, which reads:

> Death extinguishes the criminal liability of an accused. This is clear in Section 1, Article 89 of the Revised Penal Code, to wit:
>
> xxx xxx xxx
>
> In relation to the civil liability *ex delicto*, Section 4, Rule 11 of the Revised Rules of Criminal procedure, also provides that the death of the accused after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from the *delict*.
>
> In the Informations filed by the State Prosecutor of the Department of Justice, accused Antonino B. Caringal, being the Fiscal Controller and/or finance Officer of ITALCAR Pilipinas, Inc. (ITALCAR) was criminally charged for violation of Sec. 255 of Republic Act 8424 otherwise known as the Tax Reform Act of 1997, as amended, in relation to Sec. 253 par. (D) of the same code. Clearly, the civil action instituted therein for recovery of civil liability arose directly from or was dependent upon the crime committed. Thus, considering that the '[d]eath of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. xxx
>
> In view of the foregoing and considering that the death of the accused is sufficiently shown in the attached Certificate of

[23] Certificated of Death, CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 1839.
[24] Certificated of Death, CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 2872.
[25] CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 1925-1926.

> death issued by the office of the City Civil Registrar of Santa Rosa City, Laguna, the instant motion is hereby **GRANTED. The criminal liability and civil liability ex delicto or arising from the *delict* are hereby extinguished.**" *(Emphasis supplied)*

On the other hand, the criminal cases against Francisco including his civil liability were dismissed by the Court in Division in its March 3, 2014 Resolution, viz:[26]

> "Considering that the subject criminal cases have already been dismissed for failure of the prosecution to present sufficient evidence to establish the guilt of the accused, the Court shall focus on the effect of accused Fernand (sic) T. Francisco's death to his civil liability *ex delicto.*
>
> In the Informations filed by the State Prosecutor of the Department of Justice, accused Fernando T. Francisco, being the responsible officer (Managing Director and/or President) of ITALCAR Pilipinas, Inc. (ITALCAR), was criminally charged for violation of Sec. 255 of Republic Act 8424 otherwise known as the Tax reform Act of 1997, as amended, in relation to Sec. 253 par. (D) of the same code. Clearly, the civil action instituted against accused herein is for recovery of civil liability that arose directly from or was dependent upon the crime committed. **Thus, a*s opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, i.e. civil liability ex delicto in senso strictiore,*" the civil liability ex delicto of accused Francisco in this case is ipso facto extinguished, grounded as it is on the criminal action.**
>
> In view of the foregoing and considering that the death of accused is sufficiently shown in the attached Certificate of death issued by the Office of the City Civil Registrar of Las Piñas City, the Court thereby declares that the civil liability *ex delicto* or arising from the *delict* of accused Fernando T. Francisco is extinguished." *(Emphasis supplied, citations omitted)*

Considering these pronouncements by the Court in Division as to the criminal and civil liabilities of Caringal and Francisco, Caringal and Francisco should not be included as respondents in the instant cases for the recovery of the civil liability of ITALCAR.

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26 CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, pp. 2875 – 2877.

The Court *En Banc* will treat the instant cases as an action to recover the civil liability of the corporation alone (ITALCAR) on the deficiency taxes for the year 1999.

The BIR's right to assess ITALCAR has prescribed

In its attempt to overturn the Court in Division's Resolution denying petitioner's Motion for Partial Reconsideration (on the Civil Aspect of the Case), petitioner argues that the BIR's right to assess ITALCAR has not prescribed since the cases involved fall under Section 222 (a) of the NIRC due to the element of fraud, *i.e.* under-declaration of reported income, failure to withhold taxes, underpayment of Value-Added Tax on certain transactions and underpayment of Excise Taxes.

Contrary to the position taken by the petitioner, the Court in Division did not err in holding that the assessment for deficiency taxes for taxable year 1999 as void since petitioner's right to assess respondent ITALCAR for deficiency taxes has prescribed. As correctly ruled by the Court in Division in its Resolution dated October 11, 2013:

> "Considering that theses consolidated criminal cases involve willful failure to pay excise tax deficiency (Crim. Case No O-049), willful failure to pay value-added tax (VAT) deficiency (Crim. Case No. O-050), and willful failure to pay withholding tax deficiency on compensation, expanded and final taxes (Crim. Case No. O-051) despite due notice, final assessment and demand, it is proper to resolve first whether the assessment has prescribed.
>
> In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, the Supreme Court emphasized that "a void assessment bears no fruit" citing *Commissioner of Internal Revenue vs. Azucena T. Reyes.*
>
> The validity of the assessment, therefore, is important. If the assessment per se is void, there can be no willful failure to pay because the government's right to assess the taxpayer has lapsed. Consequently, the government cannot collect the alleged deficiency taxes due from the taxpayer.
>
> Section 203 of the NIRC of 1997, as amended requires that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return or from the day the return was filed, whichever is later.

The date of payment of excise tax is before the release of the imported articles from the customs house [Section 131 (A) of the NIRC]; the date of filing of quarterly VAT return is twenty-five (25) days following the close of each taxable quarter [Section 114(A) of the NIRC]; and the date of filing of expanded and final withholding taxes and withholding tax on compensation for large taxpayers such as the accused is within twenty-five (25) days after the end of each month [Section 2.58 (A) (2)(b) and 2.81 of Revenue Regulations No. 2-98.]

Counting three (3) years from the date of filing or the last day prescribed for filing of the subject tax returns, the government had until the following dates to assess the accused:

Tax Type	Exhibit	Date of Filing/Last Day Prescribed	End of 3-year Period
Excise Tax (latest date of withdrawal)	"Y" & "Z" (Crim. Case No. O-029, Docket, pp. 2147-2148	December 8, 1999	December 8, 2002
VAT (4th Quarter of 1999)	"F-17" (Crim. Case No. O-050, Docket, pp. 2248-2250	January 25, 2000	January 25, 2003
WT-Compensation Expanded & Final (December 1999)	"F-17" (Crim. Case No. O-051), Docket, pp. 2472-2475	January 25, 2000	January 25, 2003

Upon review of the records, it was found that the formal letter of demand (FLD) dated May 7, 2003 was received by the accused on May 19, 2003, hence, **the BIR's right to assess accused ITALCAR for deficiency taxes has prescribed.**

It is noted that both the PAN and FLD did not impose a 50% penalty. Under the circumstances, there is no fraud assessment, thus, the presumption is that the 3-year prescriptive period applies.

For failure to comply with the 3-year period of assessment, the assessment, therefore, is void.

xxx xxx xxx

Considering that there is doubt as to the validity of the assessment, this Court finds that the prosecution has not sufficiently established its case. *(Emphasis supplied, citations omitted)*

This Court also agrees with the Court in Division regarding the issue on fraud in these cases. Thus, as stated by the Court in Division in its Resolution dated February 11, 2014:[27]

> The exception to the 3-year period of assessment provided under Section 222 relied upon by plaintiff finds no application in this case.
>
> Section 222 of the NIRC provides:
>
> "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 of 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, 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 the collection thereof."
>
> The foregoing provision provides that in cases where a false or fraudulent return is filed with the intent of evading the tax or when no return was filed at all, the BIR can assess or begin a court proceeding for the collection without an assessment within ten years. In these cases, the ten-year period for prescription begins, or is counted from the date of discovery of the falsity, fraud or omission.
>
> However, it must be emphasized that fraud is a question of fact which must be alleged and proved. Fraud cannot be presumed and must be proven by clear and convincing evidence. Mere preponderance of evidence is not adequate to prove fraud.
>
> xxx xxx xxx
>
> **In this case, other than the allegation of fraud in the Opposition (To Accused's Demurrer to Evidence) and in the instant Motion for Partial Reconsideration, no other compelling argument was asserted and evidence presented to fortify this allegation of fraud. Further, as can be observed**

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[27] CTA Crim. Case Nos. O-049, O-050 & O-051 Docket, p. 2863-2869.

> **in the records of this case, no allegation of fraud can be traced on the face of the above-captioned criminal informations.**
>
> To reiterate, fraud must be proven by clear and convincing evidence, and not by mere conjectures and speculations. Further, fraud is a serious charge and to be sustained, it must be supported by clear and convincing proof.
>
> Also, failure of accused to submit requested documents does not amount to fraud and does not justify plaintiff's failure to observe the 3-year prescriptive period. xxx
>
> xxx xxx xxx
>
> **It is now a settled rule in this jurisdiction that a void assessment bears no fruit. Thus, no civil liability arises in this case.** *(Emphasis supplied, citations omitted)*

Anent petitioner's argument that the tax deficiency in the instant cases may be collected without need of an assessment in a court proceeding, the Court *En Banc* likewise, finds the same to be unmeritorious.

While it is true that under Section 222 of the NIRC, a proceeding in Court for the collection of tax may be filed without an assessment, the same is applicable only in cases where there is false or fraudulent return with intent to evade tax or failure to file a return. In the instant cases, the petitioner was not able to prove the existence of falsity or fraud. As previously discussed, petitioner failed to prove its allegation of fraud.

Withholding tax assessment is imprescriptible

Petitioner avers that Section 203 of the NIRC does not include an assessment for withholding tax on the withholding agent because such is in the nature of a penalty.

Section 203 of the NIRC provides:

> *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-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. *(Emphasis supplied)*

Section 203 provides that the internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law. The internal revenue taxes are enumerated in Section 21 of the NIRC, viz:

> *Sources of Revenue.* – The following taxes, fees and charges are deemed to be national internal revenue taxes:
>
> (a) Income tax;
> (b) Estate and donor's taxes;
> (c) Value-added tax;
> (d) Other percentage taxes;
> (e) Excise taxes;
> (f) Documentary stamp taxes; and
> (g) Such other taxes as are hereafter may be imposed and collected by the Bureau of Internal Revenue.

The concept of a withholding tax on income obviously and necessarily implies that the amount of the tax withheld comes from the income earned by the taxpayer.[28] Considering that the subject of withholding tax is the income of a taxpayer, hence, it shall also be assessed within three (3) years after the last day prescribed by law. Therefore, the argument of the petitioner finds no basis in our tax laws.

In fine, finding the assessment against ITALCAR to be void, the petitioner's appeal on the civil aspect of the case must therefore, fail. The Court in Division did not commit a reversible error in denying petitioner's Motion for Partial Reconsideration (of the Civil Aspect of the Case).

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Resolutions dated October 11, 2013 and February 11, 2014 are hereby affirmed *in toto.*

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[28] China Banking Corporation vs. CA, CTA and CIR, G.R. No. 146749, June 10, 2003, citing Bank of America NT & SA v. Court of Appeals, G.R. No. 103092, 21 July 1994, 234 SCRA 302.

WE CONCUR:

(with Concurring & Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO – MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- *versus* -

ITALCAR PILIPINAS, INC. (ITALCAR), FERNANDO T. FRANCISCO and ANTONINO B. CARINGAL,
Accused.

CTA EB Crim. Case No. O-29
(CTA Crim. Case Nos. O-049, O-050, O-051)

Present:

Del Rosario, ***P.J.*,**
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, ***JJ.***

Promulgated:
MAY 28 2015
x-- 2:52 p.m. --x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, *PJ*:

I concur with the ponencia of my esteemed colleague, Associate Justice Ma. Belen M. Ringpis-Liban, which denies the Petition for Review filed by the People of the Philippines but *solely* on the ground that the BIR's right to assess ITALCAR for deficiency taxes has prescribed.

I am, however, of the opinion that the civil liability of the accused Fernando T. Francisco (Francisco) and Antonino B. Caringal (Caringal) was not extinguished by their death as such civil liability is predicated on a source of obligation other than the delict itself. To be sure, irrespective of the criminal culpability, the obligation to pay taxes is based on the provisions of the NIRC. In *People v. Bayotas,*[1] the Supreme Court clarified:

[1] G.R. No.102007, September 2, 1994.

> "1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based **solely** thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and *only* the civil liability *directly* arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."
>
> 2. **Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict.** Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:
>
> a) Law
> b) Contracts
> c) Quasi-contracts
> d) . . .
> e) Quasi-delicts
>
> 3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.
>
> 4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription." (*Emphasis supplied*)

Considering that the civil liability of Caringal and Francisco arises from another source of obligation other than the crime charged, the same is not extinguished by their death.

All told, I VOTE to DENY the Petition for Review filed by the People of the Philippines in CTA EB Crim. Case No. O-029 but *solely* on the ground that the BIR's right to assess ITALCAR for deficiency taxes has prescribed.

ROMAN G. DEL ROSARIO
Presiding Justice