REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, *Petitioner-Plaintiff,*	CTA EB CRIM. No. 060 (CTA Crim. Case No. O-271)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
LEONILA T. ARCEO, doing business under the name and style of L.T. Arceo Trading, *Respondent-Accused.*	Promulgated: JUL 01 2020 3:16 p.m.

x- x

DECISION

Fabon-Victorino, J.:

In this *Petition for Review,*[1] petitioner People of the Philippines prays to reverse the ruling pertinent only to the civil aspect of the Decision[2] and Resolution[3] respectively dated September 3, 2018 November 19, 2018, both rendered by the Court in Division in CTA Crim. Case No. O-271, entitled *People of the Philippines vs. Leonila Tolentino Arceo, doing business under the name and style L.T. Arceo Trading*, the dispositive portions of which read as follows:

Decision dated September 3, 2018:

1 *En Banc* docket, pp. 1-21.
2 *En Banc* docket, pp. 28-54.
3 *En Banc* docket, pp. 56-60.

> **WHEREFORE**, accused Leonila Tolentino Arceo is **ACQUITTED** in CTA Case (*sic*) No. O-271 for failure of the prosecution to establish her guilt beyond reasonable doubt.
>
> **SO ORDERED.**

<u>Resolution dated November 19, 2018</u>:

> **WHEREFORE**, premises considered, plaintiff's Motion for Reconsideration (Of the Decision dated September 3, 2018) is **DENIED** for lack of merit.
>
> **SO ORDERED.**

The following are the facts as established during the trial of the case.

Respondent Leonila Tolentino Arceo, doing business under the name and style of L.T. Arceo Trading, is the accused in CTA Crim. Case No. O-271 for violation of Sec. 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

> That on or about the year April 15, 2004 to April 15, 2005, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, accused LEONILA TOLENTINO ARCEO, doing business under the name and style L.T. Arceo Trading, did then and there willfully and unlawfully filed a *(sic)* false and fraudulent income tax returns and audited financial statements for the taxable year 2004 and 2005, by falsely stating therein that the purchases of L.T. Arceo Trading [for] the said years are in the amounts of Php4,226,779.45 and Php1,084,697.20, respectively; which is far less than the purchase amount for the 46 steel bridges of Panay Railways, Inc. in the total of Php20,250,000.00, a single transaction entered into by the accused with the Privatization Management Office (PMO) of the Department of Finance, which commenced in the year 2004 thru public bidding, award, and initial payment, and thereafter, the execution of the deed of sale and full payment in the year 2005, as evidenced by a Notice of Award dated December 7, 2004 and Deed of Absolute Sale dated

February 9, 2005. Applying the expenditure method of assessment of income, since the declared net worth of the accused in her audited balance sheet on December 2004 amounted only to Php543,029.73, the said amount of Php20,250,000.00 accounts for unreported income; thus, a substantial underdeclaration of income which resulted in the deprivation of revenues for the Government and deficiency income tax for said taxable years in the total amount of Php6,806,418.22, exclusive of interest, surcharge, and/or penalty charges, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW.[4]

When arraigned, respondent, duly assisted by her counsel, pleaded "Not Guilty" of the crime charged.[5]

After the Pre-Trial Conference, a Pre-Trial Order[6] was issued incorporating the stipulations entered into by the parties, to wit:

1. That Republic Act No. 1125, as amended, otherwise known as "An Act Creating the Court of Tax Appeals" grants exclusive original jurisdiction to the Honorable Court over all criminal offenses arising from violation of the provisions of the 1997 National Internal Revenue Code.

2. That the accused Leonila T. Arceo is being charged for violation of the provisions of the NIRC.

3. That the accused is the same person named and charged in the Information, for violation of Sec. 255 of the NIRC, subject of this case.

4. That accused is a registered taxpayer of Revenue District Office (RDO) No. 51, Pasay City with Tax Identification Number (TIN) 103-774-976-000.

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4 Division docket, pp. 4-5.

5 Division docket, Certificate of Arraignment dated May 22, 2017, together with Identity Admission of the Accused, pp. 164-165.

6 Division docket, pp. 296-307.

5. That accused operated a junk shop under the name and style "L.T. Arceo Trading" with address at J-IB Page Condominium, Pasay City.

6. That on February 9, 2005, the Attorney-in-Fact of the accused, Antonio E. Arceo, purchased railroad bridges, angular bars, wooden ties, and terminal building/station comprising as one lot from the Privatization and Management Office (PMO) wherein PMO acted for and on behalf of Panay Railways, Inc. for a consideration of Php20,250,000.00.

7. That on January 12, 2007, the Commissioner of Internal Revenue issued a Letter of Authority No. (LOA) 200100045285 authorizing Revenue Officers Aurora V. Flor and Angela Marie T. Simpit under the supervision of Elmer F. Carolino to examine the books of accounts and accounting records of the accused for taxable years 2004 and 2005.

8. That LOA 200100045285 was duly served and received by Antonio E. Arceo.

9. That the accused, in her income tax returns as well as her attached audited financial statements, declared purchases for the years 2004 and 2005 in the amounts of Php4,226,779.45 and Php1,084,697.20 respectively.

10. The accused, in her audited financial statements for the years 2004 and 2005, declared her cash accounts to be Php296,475.13 and Php261,250.18, respectively.

11. That the accused, in her audited financial statements for the years 2004 and 2005, declared her net worth to be Php543,029.73 and Php476,259.78, respectively.

12. That the accused, in her 2004 Annual Income Tax Return filed with the BIR, declared her Gross Sales/Receipt/Revenues/Fees in the amount of Php4,865,450.00, her Gross Taxable Income in the amount of Php649,640.55, her Net Income in the amount of Php93,960.65 and her Taxable Business Income in the amount of Php61,960.65.

13. That the accused, in her 2005 Annual Income Tax Return filed with the BIR, declared her Gross Sales/Receipt/Revenues/Fees in the amount of Php1,632,521.50, her Gross Taxable Income in the amount of Php577,519.30, her Net Income in the amount of Php53,520.05 and her Taxable Business Income in the amount of Php21,230.65.

14. That accused's business is registered as a sole proprietor with the Office of the City Mayor of Pasay City.

15. That accused filed her Income Tax Returns for taxable period 2004 and 2005.

To prove the indictment, petitioner presented as its lone witness, Revenue Officer (RO) Angela Marie Simpit De Leon after which filed its Formal Offer of Evidence[7]. In the Resolution[8] dated August 3, 2017, the Court in Division partially admitted petitioner's formally offered exhibits.

For her part, respondent presented herself, her husband Antonio E. Arceo, Carlos San Pascual, Engelbert G. Pangilinan, and Evelyn N. Yriarte. The presentation of the proposed witness from the Privatization Management Office, Eva B. Pascual, was dispensed with in view of the parties' stipulation that documents she brought to Court were the same as the Certified True Copies (CTC) marked as *Exhibits* A-13, A-14, and A-14-a.[9]

In the Resolution[10] dated May 3, 2018, the Court in Division partially admitted the documents formally offered by respondent on February 15, 2018.[11]

After the parties filed their respective memoranda, the case was submitted for decision on June 14, 2018.

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7 Division docket, pp. 311-318.
8 Division docket, pp. 388-389.
9 *Minutes of Hearing* on February 5, 2018, Division docket, p. 901.
10 Division docket, pp. 1655-1656.
11 Division docket, pp. 1151-1176.

On September 3, 2018, the Court in Division promulgated the assailed Decision acquitting respondent of the crime charged on the ground that the element of "willful and deliberate" failure of respondent to supply correct and accurate information was not established. The Court in Division ruled that while respondent might have been negligent in signing documents presented to her by her husband without going over it, the same could not be equated with willful and deliberate intent to violate Section 255 of the NIRC of 1997, as amended. In fact, it should have been her husband Antonio E. Arceo, who admitted to have orchestrated the entire transaction, that should have been prosecuted.

In the same Decision, the Court in Division also ruled that while the civil aspect of the case was deemed simultaneously instituted with the criminal action, there was no basis for it to rule upon the civil liability of respondent as no assessment notices were presented by petitioner to prove that assessment for deficiency income tax was issued against her.

On September 18, 2018, petitioner filed a *Motion for Reconsideration (Of the Decision dated September 3, 2018)*[12], to partially reverse the Decision pertaining to the dismissal of the civil action for the collection of the deficiency income tax allegedly amounting to Php6,806,418.22, exclusive of interest, surcharge, and/or penalty charges.

On November 19, 2018, the Court in Division promulgated the equally assailed Resolution denying petitioner's plea for r*econsideration*.

Hence, the instant *Petition for Review* anchored on the following errors allegedly committed by the Court in Division, to wit:

I. THE HONORABLE CTA SECOND DIVISION ERRED WHEN IT RULED THAT AN ASSESSMENT IS NECESSARY IN ORDFR FOR THE HONORABLE

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[12] Division docket, pp. 1751-1762.

COURT TO RULE ON THE CIVIL LIABILITY OF RESPONDENT-ACCUSED IN A CIVIL ACTION DEEMED SIMULTANEOUSLY INSTITUTED WITH A CRIMINAL ACTION; and

II. THE HONORABLE CTA SECOND DIVISION ERRED WHEN IT RULED THAT THERE IS NO BASIS FOR THE COURT TO RULE ON THE CIVIL LIABILITY OF RESPONDENT-ACCUSED.

Invoking Section 222 of the NIRC of 1997, as amended, petitioner contends that an assessment is not necessary in a civil action for collection of delinquent tax that is deemed simultaneously instituted with the criminal case. Petitioner explains that when the Commissioner of Internal Revenue (CIR) opted to file a criminal action against an erring taxpayer under Section 205 of the NIRC of 1997, as amended, he necessarily initiated the corresponding civil action and adopted or, at the very least, approved the computations made by his duly authorized ROs.

Thus, when the CIR ordered the filing of the criminal case against respondent, he was cognizant that the civil action for collection of taxes and penalties thereon would as well be instituted and that the amount of tax liability was that reflected in the Joint Complaint-Affidavit executed by his duly authorized ROs and submitted to the Department of Justice. In other words, by endorsing the criminal prosecution of the case, the CIR had effectively approved respondent's tax liability in the amount of Php6,806,418.22, exclusive of interest and surcharges, as computed by his duly authorized ROs which the government endeavored to recover.

Contrary to the finding of the Court in Division, petitioner is convinced that it was able to prove that respondent filed a false and fraudulent return with intent to evade tax for taxable year 2005. And by virtue of Section 222 (a) of the NIRC of 1997, as amended, the taxing authority is allowed to seek collection of deficiency tax through a civil action before the courts, even without assessment notices.

By way of *Comment/Opposition*,[13] respondent sides with the Court in Division saying that it did not commit any reversible error when it ruled that no evidence exists, documentary or testimonial, showing that assessment notices were sent to her to prove her alleged deficiency income tax assessment.

Adopting the ruling of the Court in Division, respondent posits that in the absence of any assessment notice duly signed by the CIR as required under Section 205 of the NIRC of 1997, as amended, to prove that assessment had been validly issued, there could be no basis for the Court in Division to award civil liability in favor of petitioner.

The Court *En Banc's* Ruling

The instant *Petition for Review* must fail.

In the eyes of petitioner, the Court in Division erred when it dismissed the civil aspect of the case and consequently denied recovery of respondent's deficiency tax liability in the amount of Php6,806,418.22. According to petitioner, the computation prepared by the ROs, as reflected in their Joint Complaint-Affidavit had the final determination and carried the *imprimatur* of the CIR[14] when the case was endorsed for preliminary investigation with the DOJ, drawing strength from the referral of then Commissioner Jose Mario C. Buñag to the Secretary of Justice.

The Court *En Banc* is not convinced.

There is no denying that there is no requirement for the precise computation and assessment of the tax liability before there can be a criminal prosecution under the NIRC.[15] However, Section 205[16] of the NIRC of 1997, as amended,

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[13] *En Banc* docket, pp. 75-105.

[14] Division docket, pp. 1151-1176.

[15] *Quirico P. Ungab vs. Hon. Vicente N. Cusi, Jr., et al.*, G.R. No. L-41919, May 30, 1980.

[16] SEC. 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:

provides that *"[t]he 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****."* This simply means that in order for a civil liability to be included in the judgment, it must be the final decision of the CIR — referring to a formal assessment.

A review of the record shows that apart from the Letter of Authority (LOA) No. 00045285 dated January 12, 2007, no other evidence, either testimonial or documentary, was ever presented to show that assessment notices were duly served and received by respondent informing it about the subject deficiency income assessment, or at the very least, the result of the tax audit conducted against her on the basis of the LOA dated January 12, 2007. This fact was clearly indicated as part of the stipulation entered into by the parties and incorporated in the Pre-Trial Order dated June 30, 2017 (pp. 296 to 307, Docket), which was not left unnoticed by the Court in Division, thus:

> *xxx* **no assessment notices were presented to prove the assessment of deficiency income tax against accused Arceo**, therefore, there is no basis for the Court to rule upon the civil liability of the accused.

There being no assessment issued against respondent, there could be no demand against her to pay an exact amount of tax liability on a date certain.

(a) x x x

(b) By civil or criminal action.

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: Provided, however, That the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).

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.

The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon.

It cannot be overemphasized that the final determination of the CIR as to the tax liability is necessary in order for the Court to rule on the civil aspect of the criminal case. The Court cannot merely rely on the computation of deficiency income tax found in the Joint Complaint Affidavit,[17] which in this case, does not even bear the signature of the CIR contrary to petitioner's representation. Given that the Joint Complaint-Affidavit of ROs cannot be deemed as a formal assessment as defined and contemplated under the Tax Code, it cannot be considered as competent and sufficient evidence in determining the civil liability of respondent for purposes of Section 205 of the NIRC of 1997, as amended. In fine, the Court cannot include in its judgment a directive to pay the alleged deficiency income tax subject of the instant criminal case.

As to the assertion that the endorsement of the findings of the ROs to the Secretary of Justice can be treated as the final determination and approval of the said "computation" by the CIR, suffice it to say that the said endorsement is **only** for *"preliminary investigation and the filing of an Information in court"* against respondent Leonila Tolentino Arceo. This is evident in what appears to be hastily prepared undated letter-referral[18] to the Secretary of Justice by then Commissioner Jose Mario C. Buñag, to wit:

> "I have the honor **to refer for preliminary investigation and the filing of an information in court** if evidence so warrants, the herein attached Joint Affidavit of AURORA V. FLOR, ANGELA MARIE T. SIMPIT, MARITA P. PANTERIORI, LOIDA R. MEDINA and ELMER F. CAROLINO of the National Investigation Division, this Bureau, recommending the criminal prosecution of Ms. Leonila Tolentino Arceo for willfully attempting to evade or defeat payment of tax and/or failure to supply correct and accurate information." (*Emphases supplied*)

WHEREFORE, finding no reversible error committed by the Court in Division, the instant *Petition for Review* is hereby **DENIED**, for lack of merit. Accordingly, the assailed

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[17] Exhibit P-2, Division docket, pp. 321-326.
[18] Division docket, pp. 22-23.

Decision and Resolution dated September 3, 2018 and November 19, 2018, respectively, are **AFFIRMED.**

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice