REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NOS. O-485, O-486, O-487, O-488, O-490, O-491, O-492, O-493, O-494, O-495, O-496 & O-498**
- versus -	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** and **FERRER-FLORES,** *JJ.*
JANET LIM NAPOLES, Accused.	Promulgated: AUG 30 2024 4:00 p.m.

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RESOLUTION

FERRER-FLORES, J.:

Before the Court is plaintiff's **Motion for Reconsideration (of the Decision dated March 21, 2024)** (*Motion for Reconsideration*) filed through registered mail on April 8, 2024, and received by the Court on April 16, 2024, with accused's **Comment/Opposition (To plaintiff's Motion for Reconsideration)** filed on May 10, 2024.

On March 21, 2023, the Court promulgated the Decision (assailed Decision) acquitting accused Janet L. Napoles for failure of plaintiff to prove her guilt beyond reasonable doubt, the dispositive portion of which is quoted as follows:

> **WHEREFORE**, premises considered, CTA Crim. Case Nos. O-485, O-486, O-487, O-488, O-490, O-491, O-492, O-493, O-494, O-495, O-496 & O-498 are **DISMISSED** for failure of plaintiff to prove the guilt of accused beyond reasonable doubt. Accordingly, accused, **JANET L. NAPOLES** is **ACQUITTED** of the crimes charged.
>
> **SO ORDERED.**

The judgment of acquittal was reached by majority votes of the Court, with separate concurring opinion from Associate Justice Ma. Belen M. Ringpis-Liban, and despite the dissenting opinion of Associate Justice Maria Rowena Modesto-San Pedro, finding for conviction of the accused.

In its *Motion for Reconsideration*, plaintiff prays that the assailed Decision be set aside and that the instant motion for reconsideration be reconsidered based on the following grounds, viz.:

1. For Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, in CTA Crim. Case Nos. O-485, O-486, O-487 and O-488:

    a. Accused Napoles failed to supply correct and accurate information in her Annual Income Tax Returns (ITRs) at the time or times required by law or rules and regulations; and,

    b. Proof of likely source of income of the accused is not required when expenditure method is used.

2. For Section 254 of the NIRC of 1997, as amended, in CTA Crim. Case Nos. O-493, O-494, O-495 and O-496:

    a. Accused Napoles attempted in any manner to evade or defeat any tax imposed under the NIRC of 1997, as amended, or the payment thereof; and,

    b. Accused Napoles' attempt to evade or defeat tax or the payment thereof is willful.

3. For Section 255 of the NIRC of 1997, as amended, in CTA Crim. Case No. O-498:

    a. Accused Napoles is required to file her ITR for the year 2011; and,

    b. Accused Napoles failed to file such return and the failure to file is willful.

4. For Section 254 of the NIRC of 1997, as amended, in CTA Crim. Case Nos. O-490, O-491 and O-492:

    a. Accused Napoles attempted in any manner to evade or defeat any tax imposed under the NIRC of 1997, as amended, or the payment thereof; and,

b. Accused Napoles' attempt to evade or defeat tax or the payment thereof is willful.

5. As to the civil aspect: the Letter of Authority (LOA) was properly served.

On the other hand, in her *Comment*, accused primarily asserts that plaintiff's *Motion for Reconsideration* violates her constitutional right against double jeopardy and that the Court did not commit a reversible error as the assailed Decision has factual and legal mooring.

The instant *Motion for Reconsideration* must be denied.

The Motion for Reconsideration is violative of accused's right against double jeopardy.

Save for the last ground, a cursory reading of the arguments raised by plaintiff in its motion reveals that plaintiff is constantly praying for the Court to reverse its Decision and find the accused guilty beyond reasonable doubt claiming that it sufficiently established the elements of the crimes charged. Moreover, the Court notes that plaintiff's arguments are a mere rehash of its arguments in the *Memorandum (For the Plaintiff)* filed on September 15, 2022,[1] which were already exhaustively passed upon, duly considered, and resolved by the Court in the assailed Decision.[2]

Perforce, as the grounds relied upon by plaintiff were mere reiterations of the issues already passed upon, the Court need not deal individually and specifically with the arguments, in much the same way that the Court did in its judgment as regards the issues raised and submitted for decision. In the case of *Social Justice Society (SJS) Officers vs. Lim,*[3] the Supreme Court held that:

> The grounds relied on being mere reiterations of the issues already passed upon by the Court, there is no need to 'cut and paste' pertinent portions of the Decision or re-write the *ponencia* in accordance with the outline of the instant motion.

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[1] Docket – Vol. IV (CTA Crim. Case No. O-485), pp. 1876 to 1903.
[2] Docket – Vol. V (CTA Crim. Case No. O-485), pp. 2036 to 2119.
[3] G.R. Nos. 187836 and 187916, March 10, 2015.

> As succinctly put by then Chief Justice Andres R. Narvasa in *Ortigas and Co. Ltd. Partnership v. Judge Velasco* on the effect and disposition of a motion for reconsideration:
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> > "The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc."

Be that as it may, it bears highlighting that plaintiff's *Motion for Reconsideration* is violative of accused's right against double jeopardy.

Section 21, Article III of the 1987 Constitution provides that "no person shall be twice put in jeopardy of punishment for the same offense." Jurisprudence is replete with cases holding that a judgment of acquittal is final, unappealable and immediately executory upon its promulgation.[4]

Double jeopardy exists when the following are present: (1) a valid complaint or information; (2) a court of competent jurisdiction; (3) the defendant had pleaded to the charge; and, (4) the defendant was acquitted or convicted, or the case against him was dismissed or otherwise terminated without his express consent.[5]

[4] *People vs. Arcega y Siguenza*, G.R. No. 237489, August 27, 2020, *Villareal vs. Aliga*, G.R. No. 166995, January 13, 2014; *People vs. Alejandro*, G.R. No. 223099, January 11, 2018, citing *People vs. Hon. Asis, et al.*, G.R. No. 173089, August 25, 2010.

[5] *People vs. Court of Tax Appeals-Third Division*, G.R. Nos. 250736 & 250801-03, December 5, 2022, citing *People vs. Ting*, G.R. No. 221505, December 5, 2018.

Clearly, all of the foregoing elements are present in this case. A valid Information was filed before the Court, which led to the finding of probable cause and issuance of a subpoena against accused Napoles for her arraignment. The Court has jurisdiction over the instant case as the principal amount involved per Information exceeds 1 million pesos and the Court already took cognizance of the Information filed. As regards the third element, accused pleaded "NOT GUILTY" to the offenses charged on June 15, 2016.[6] Finally, accused was acquitted in the assailed Decision for failure of plaintiff to prove her guilt beyond reasonable doubt.

In *Antonio Lejano vs. People of the Philippines and People of the Philippines vs. Webb et. al*,[7] the Supreme Court held that, as a rule, a judgment of acquittal cannot be reconsidered because it places the accused under double jeopardy, to wit:

> **To reconsider a judgment of acquittal places the accused twice in jeopardy of being punished for the crime of which he has already been absolved.** There is reason for this provision of the Constitution. In criminal cases, the full power of the State is ranged against the accused. If there is no limit to attempts to prosecute the accused for the same offense after he has been acquitted, the infinite power and capacity of the State for a sustained and repeated litigation would eventually overwhelm the accused in terms of resources, stamina, and the will to fight. (*Boldfacing ours*)

Undoubtedly, the instant *Motion for Reconsideration*, which prays that the assailed Decision be set aside, must be denied for violating the right of the accused against double jeopardy.

Accused has no civil liability.

The instant motion also prays that there can be civil liability imposed arising from the acts of the accused. According to plaintiff, Revenue Officer (RO) Josephine Madera served the LOA first in Biñan, Laguna; however, since accused was not present there, RO Madera and the other ROs proceeded to Ayala Alabang, and the accused was also not present there. Finally, the ROs proceeded to Discovery Centre, and when accused was still not present there, the LOA was then constructively served by slipping the LOA inside the office premises as witnessed by the Building Administrator and the Barangay Chairman.

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[6] Minutes of the hearing held on, and Order dated, June 15, 2016, Docket – Vol. 2 (CTA Crim. Case No. O-485), pp. 432 to 434; Certificate of Arraignment dated June 15, 2016, Docekt – Vol. 2 (CTA Crim. Case No. O-485) p. 435.

[7] G.R. Nos. 176389 & 176864, January 18, 2011.

Plaintiff asserts that, due to the impracticability of personal service, the ROs resorted to other modes of services as allowed by existing laws and rules at that time. Moreover, plaintiff claims that, contrary to the ruling in the assailed Decision, testimonies of its witnesses reveal that ROs Se and Arias were present at Discovery Centre on August 28, 2013; hence, there are other ROs present during the service of the LOA. Despite the fact that no report was submitted, plaintiff argues that such was cured by the testimonies of its witnesses.

This Court is not convinced.

In the assailed Decision, the Court already held that the constructive service of the LOA to accused was improper as it was not signed by two (2) ROs other than the RO serving the LOA and because there is no written report on the constructive service, pursuant to Revenue Regulations No. 12-99, which is the applicable rule at that time. Hence, as the LOA was improperly served, accused was not apprised of her tax liability, and any investigation conducted was without authority.

Considering that there was improper constructive service of the LOA, it is as if no LOA was issued, and therefore, no assessment could be considered valid thereafter. In *Medicard Philippines vs. Commissioner of Internal Revenue*,[8] the Supreme Court held that any tax assessment issued without LOA is a violation of the taxpayer's right to due process and is therefore inescapably void.

While it is true that a formal assessment is not required for the imposition of civil liability,[9] the Court still finds that the evidence on record is not sufficient for it to compute the civil liability of the accused. Plaintiff's witnesses did not directly testify as to the possible source of cash/income used to buy the specific properties for the particular taxable years in question.

In *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*,[10] the Supreme Court ruled that the assessment must be based on credible evidence, otherwise such assessment becomes arbitrary and capricious, to wit:

> The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an

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[8] G.R. No. 222743, April 5, 2017.
[9] *People vs. Mendez*, G.R. Nos. 208310-11 & 208662, March 28, 2023.
[10] G.R. No. 136975, March 31, 2005.

> invincible barrier to proof. However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously.
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> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
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> **However, the prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious.** Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. **Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.** (*Emphasis ours*)

Further, the Supreme Court had already settled in the case of *People vs. Mendez*,[11] that the government must prove by competent evidence, other than assessment, the amount to which the civil liability for unpaid taxes may be based, viz.:

> The foregoing provision has long existed in the 1939, 1973, and 1977 Tax Codes. Indeed, the tax laws expressly allowed the institution of court proceedings, whether by civil or criminal action, for the collection of tax without assessment in three cases: (1) the taxpayer filed a false return; (2) the taxpayer filed a fraudulent return with the intent to evade taxes; and (3) in case of willful neglect to file a return. Nevertheless, **the government must prove by competent evidence (other than an assessment) the amount on which the civil liability for unpaid taxes may be based.** (*Boldfacing ours*)

Clearly, plaintiff must present competent and sufficient proof the tax liability of accused.

Finally, citing the case of *People vs. Mendez*, the Supreme Court

[11] G.R. Nos. 208310-11 & 208662, March 28, 2023.

likewise clarified in the case of *People vs. Tiotangco*,[12] the necessity of presenting competent evidence to prove the civil liability of the accused, to wit:

> At this juncture, we clarify that the order for payment of taxes in the criminal case despite the absence of a valid assessment is not a violation of the taxpayer-accused's right to due process. The essence of due process is that taxpayers are able to present their case and adduce supporting evidence. Since both the civil and criminal liabilities will be tried jointly, the taxpayer-accused can dispute the alleged deficiency taxes in the same criminal action by presenting competent evidence. **Unlike in a civil case for collection, where notices of the assessment are part of the due process requirement, a precise computation and final determination of a deficiency tax is not required in a criminal case for tax violations.** As decreed in Mendez, **in a criminal action for tax violation, the government must prove not only the guilt of the accused by proof beyond reasonable doubt, but also the civil liability for taxes by competent evidence (other than an assessment).** (*Emphasis ours*)

In the instant case, the plaintiff only presented evidence showing the purchases of accused in computing her alleged undeclared income. However, its veracity and correctness are doubtful considering that the source of income used to spend on the properties purchased are indeterminable. Thus, applying the cases of *People vs. Mendez* and *People vs. Tiotangco*, the evidence on record is not sufficient for the Court to determine the civil liability of the accused.

In view of the foregoing disquisitions, the Court finds no compelling reason to reverse, amend, or modify the Decision dated March 21, 2024.

WHEREFORE, premises considered, plaintiff's **Motion for Reconsideration (of the Decision dated March 21, 2024)** is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

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[12] G.R. No. 264192, November 13, 2023.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Please see concurring and dissenting opinion.
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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-versus-	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES** *JJ.*
JANET LIM NAPOLES, Accused.	Promulgated: AUG 30 2024

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4:10 p.m.

CONCURRING AND DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

I concur with the finding in the Resolution insofar as it denies plaintiff's Motion for Reconsideration on the ground of double jeopardy.

I respectfully disagree, however, in the finding that accused has no civil liability. In so ruling, the *ponencia* found that the evidence on record is not sufficient for the Court to compute the civil liability of the accused. Consistent with my Dissenting Opinion on the Decision rendered in this case, however, I find the evidence sufficient, albeit warranting an actual computation.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice