REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES, *Petitioner*, - versus - **RONNEL LAMPA DE GUZMAN (LUCKY SEA TRADING),** *Respondent.*	**CTA *EB* CRIM. NO. 089** (CTA Crim Case Nos. O-690 & O-691)

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RONNEL LAMPA DE GUZMAN (LUCKY SEA TRADING), *Petitioner*, - versus - **PEOPLE OF THE PHILIPPINES,** *Respondent.*	**CTA *EB* CRIM. NO. 092** (CTA Crim Case Nos. O-690 & O-691) *Present*: **DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.* Promulgated: MAY 03 2024 3:46 p.m.

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RESOLUTION

CUI-DAVID, J.:

This resolves the following:

1. *Motion for Reconsideration (of the Decision promulgated on October 3, 2023)*[1] posted by the People of the Philippines (the People) on October 19, 2023, with Ronnel Lampa De Guzman (De Guzman)'s *Comment* filed on December 6, 2023; and

2. *Motion for Reconsideration*[2] filed by De Guzman on October 26, 2023, with the People's *Comment (to the Motion for Reconsideration of Petitioner Ronnel Lampa De Guzman dated October 23, 2023)*, filed through accredited courier on December 11, 2023 and received by the Court on December 12, 2023.

Both parties pray that the Decision dated October 3, 2023 (assailed Decision) denying their respective Petitions for Review be set aside. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, the *Petition for Review* filed by the Bureau of Internal Revenue in CTA *EB* Crim. No. 089, and the *Petition for Review* filed by Ronnel Lampa De Guzman in CTA *EB* Crim. No. 092, are **DENIED** for lack of merit.
>
> Accordingly, the Decision dated June 9, 2021, and the Resolution dated February 21, 2022, rendered by this Court's First Division in CTA Crim. Case Nos. O-690 and O-691 are **AFFIRMED.**
>
> **SO ORDERED.**

The People's Motion:

In its Motion, the People argues that the civil liability of De Guzman based on the tax investigation and computation of revenue officers (ROs) as approved by the Commissioner of Internal Revenue (CIR) should be reconsidered as a consequence of De Guzman's conviction for willful failure to file tax returns.

The People posits that Section 205 of the 1997 National Internal Revenue Code, as amended (Tax Code), which requires an assessment in criminal cases, applies only to the collection of delinquent taxes and not in cases of failure to file a return.

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[1] Docket, CTA *En Banc (EB)* Crim No. 089, pp. 1-21.
[2] Docket, CTA *EB* Crim No. 089, pp. 1-21.

Instead, Section 222 of the Tax Code must be applied as it provides that failure to file a return may be filed without assessment. This is consistent with Section 7(b)(1) of Republic Act (RA) No. 9282 and Section 11, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) that the filing of the criminal action necessarily carries with it the corresponding civil action for the recovery of civil liability for taxes and penalties.

The People further argues that the documents used by the ROs in their tax investigation have greater weight in order that civil liability may be imposed against De Guzman.

In his *Comment*, De Guzman contends that the People has not provided any substantial basis warranting the amendment or overturning the assailed Decision.

De Guzman's Motion:

For his part, De Guzman moves that the Court reconsider the assailed Decision because a certification that a taxpayer did not file an income tax return (ITR) is not enough to prove that the offense is willful. De Guzman insists that he had no intent to violate Section 255 of the Tax Code and that there is no proof beyond reasonable doubt of the circumstances of willfulness.

By way of *Comment*, the People counter-argues that it was able to prove De Guzman's guilt beyond reasonable doubt. As correctly pronounced by the Court, all the elements of willful failure to file were proven by the prosecution. When the prosecution has succeeded in discharging the burden of proof, the burden shifts to De Guzman to adduce evidence to overthrow the case against him. However, De Guzman's defense is mere denial, which is intrinsically weak and must be buttressed with strong evidence of non-culpability to merit credibility.

We resolve.

De Guzman's Motion is denied for lack of merit. His arguments merely rehash those raised and already considered by the Court in Division and, subsequently, by the Court *En Banc.* The prosecution has established, beyond reasonable doubt, all the elements of the offenses charged against De Guzman. Thus, De Guzman's conviction for violating Section

255 of the Tax Code for his failure to file ITR for 2002 is sustained. We find, however, the People's Motion partly meritorious.

Respondent correctly argued that the filing of the criminal action shall carry with it the corresponding civil action for taxes and penalties, pursuant to Section 7(b)(1) of RA No. 9282.

In *People v. Mendez* (*Mendez*),[3] the Supreme Court affirmed that a criminal case for violation of tax laws shall carry with it the corresponding civil action for taxes and penalties under Section 7(b)(1) of RA No. 9282:

> ***d. Institution of civil action to collect taxes in the same criminal action for violation of the tax laws***
>
> As previously intimated, before the law expanded the jurisdiction of the CTA in RA No. 9282, the government was not required to collect taxes in the same criminal action for violation of the tax laws. In 2004, Congress enacted RA No. 9282, expanding the jurisdiction of the CTA. Section 7 (b) (1) of RA No. 9282, in relation to Section 11, Rule 9 of the Revised Rules of the Court of Tax Appeals, reads:
>
> [Section 7 (b) (1), RA No. 9282]
>
> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> xxx xxx xxx
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:
>
> (1) Exclusive original jurisdiction over **all criminal offenses arising from violations of the National Internal Revenue Code** or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed** is less than One million pesos ([P]1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, **the 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**

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

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> **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.** [*Emphasis on the original*]
>
> > [Section 11, Rule 9, Revised Rules of the Court of Tax Appeals]
> >
> > SEC. 11. *Inclusion of civil action in criminal action.* — In cases within the jurisdiction of the Court, **the criminal action and the corresponding civil action for the recovery of civil liability and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized**. [*Emphasis on the original*]
>
> Indeed, the institution of the criminal action **shall** carry with it the corresponding civil action for taxes and penalties. We have repeatedly held that the use of "shall" in a statute connotes the mandatory nature of the requirements and denotes an imperative obligation. Its use rendered the provision mandatory. Therefore, **the government cannot file a civil suit for tax collection independently from the related criminal case**. Simply, the filing of a complaint for an offense that involves liability for unpaid taxes, such as willful neglect to file a return and pay the tax, willful failure to supply correct information in the return, and willful failure to withhold, account for or remit withholding taxes, automatically carries with it the filing of a collection case for deficiency taxes. [*Emphasis on the original*]

Thus, the Court can adjudge the accused's civil liability in a criminal case pursuant to the foregoing provisions. Now, the question that confronts the Court is whether it can determine accused's civil liability despite the lack of a formal assessment duly issued by the CIR.

The Supreme Court definitively settled in *Mendez* that when a criminal action for violation of the tax laws is filed, a prior assessment is not required:

> Here, the CTA refused to impose civil liability for deficiency taxes on Joel despite the finding of guilt in the criminal case because the CIR did not issue a final assessment for deficiency taxes. It ruled that the computation of the revenue officers using the net worth and expenditures method

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could not be the basis for Joel's liability. The CTA held that there must be a final determination of deficiency issued by the CIR pursuant to Section 205 of the Tax Code.

We do not agree.

The Court takes notice that in various tax-related criminal actions filed before the CTA, the CTA ruled on the innocence or guilt of the accused, but without a finding for the taxpayer-accused's civil liability for taxes in the criminal case because of the absence of a formal assessment issued by the CIR. Given the rule that a criminal prosecution for tax violation need not be preceded by a valid assessment, the question to be resolved now is **whether a final assessment is a prerequisite to a judgment for civil liability for unpaid taxes in the same criminal action**. The Court definitively settles this question once and for all. [*Emphasis on the original*]

... ...

c. The concept of delinquency in Section 205 does not apply in case of (1) false return, (2) fraudulent return with the intent to evade the tax, and (3) willful neglect to file the return

The rule requiring a decision on the disputed assessment under Section 205 should not be confused with the government's remedy to *collect without assessment* under Section 222 (a) of the Tax Code, which reads:

> SECTION 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, 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. [*Emphasis on the original*]

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 <u>without assessment</u>*** 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 <u>willful neglect to file a return</u>. 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**. [*Emphasis on the original*]

Indeed, in willful failure to file a return, a final assessment is not a precondition to the collection of taxes in the criminal tax case. The government must thus prove two things: (a) the guilt of the accused by proof beyond reasonable doubt, and (b) the accused's civil liability for taxes by competent evidence (other than an assessment).

Having established De Guzman's guilt by proof beyond reasonable doubt, the prosecution must prove De Guzman's civil liability to collect taxes by competent evidence (other than an assessment).

To prove De Guzman's civil liability, the prosecution offered in evidence the Summary List of Importations for the periods 2012 to 2014 of Lucky Sea Trading[4] issued by the Bureau of Customs (BOC).

Regarding the amount of De Guzman's civil liability, the ROs used the Expenditure Method, an indirect way to reconstruct a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income.[5] It is based on the theory that if the taxpayers' expenditures during a given year exceed their reported income and the source of such expenditures is unexplained, it can be inferred that such expenditures represent unreported income.[6] To rebut the finding, the taxpayer may show that this excess resulted from non-taxable items, such as loans, gifts, inheritance, or assets at the beginning of the period.[7]

Upon perusing the BOC's Summary List of Importations, the ROs found that De Guzman's expenses in 2012 and 2013, consisting of his importation of vehicles, were worth

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[4] Division Docket, CTA Case No. O-690, pp. 70-79.
[5] *Bureau of Internal Revenue v. Court of Appeals*, G.R. No. 197590, November 24, 2014, citing *Collector of Internal Revenue v. Jamir*, G.R. No. L-16552, March 30, 1962.
[6] *Bureau of Internal Revenue v. Court of Appeals*, G.R. No. 197590, November 24, 2014.
[7] *Kingsam Express, Inc. v. People*, G.R. No. 254086 (Notice), September 7, 2022.

₱33,215,860.00 [8] and ₱669,404,946.00 [9] (both inclusive of duties and VAT), respectively. The BIR then considered De Guzman's expenses to be the amount of his undeclared income.

For De Guzman's failure to file his ITRs for 2012 and 2013, despite said alleged income, he was assessed income tax liability for years 2012 and 2013 amounting to ₱21,937,764.38[10] and ₱401,309,626.57,[11] respectively, inclusive of interests and surcharges.

Apart from the BOC's Summary List of Importations, it was found out during the trial that the prosecution did not present any other documents to arrive at De Guzman's deficiency income tax assessment:

> JUSTICE MANAHAN:
> ...[O]ther than the Summary List of Importations, were there other documents that your referred to, to be able to impute alleged underdeclaration or non-declaration of income on the part of the taxpayer, in addition to the Bureau of Custom's list of importations?
>
> MR. MATANOG:
> A: No, Your Honors.
>
> JUSTICE MANAHAN:
> Further on, did you just merely rely on the summary? Did you exert efforts to get the source documents from where these summary figures have been derived, such as what the previous counsel asked about the import entry declaration?
>
> MR. MATANOG:
> A: Your Honors, as far as I can remember, we secured the ATRIG, The Authority to (Interrupted)
>
> JUSTICE MANAHAN:
> The Authority to Release Imported Goods?
>
> MR. MATANOG:
> A: Yes, in our Division in the National Office. In the said ATRIG, it appears the name of the accused, your Honors.

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[8] Exhibits "P-14" and "P-15", Division Docket, CTA Case No. O-690, pp. 331-332.
[9] Exhibits "P-16" and "P-17", Division Docket, CTA Case No. O-690, pp. 333-340.
[10] Exhibits "P-14", Division Docket, CTA Case No. O-690, p. 331.
[11] Exhibits "P-16", Division Docket, CTA Case No. O-690, p. 333.

JUSTICE MANAHAN:
So, those ATRIGs, did you try to match these ATRIGs with the different importations that have been included in the summary list? Because every importation requires an ATRIG. So, you have a list of importations from the Bureau of Customs. Did you match, did you try to compare the ATRIGs with the data provided by the Bureau of Customs regarding these importations?

MR. MATANOG:
A: No, your Honors.

JUSTICE MANAHAN:
So, how many ATRIGs did you examine?

MR. MATANOG:
A: There are so many, your Honors. It is three boxes.

JUSTICE MANAHAN:
So, you attempted to match or compare these ATRIGs with the Bureau of Customs list of importations before you arrived at the total figure of the alleged underdeclaration income?

MR. MATANOG:
A: We just cross-refer, your Honors. I mean. As to the details, the total of the ATRIG versus the total of the importation, we were not able to compare the same.

JUSTICE MANAHAN:
So you did not really examine the very source documents of this list, mainly whether as ano *(sic)* that the importer paid for these importations. So, that based on the summary, then you just computed the alleged underdeclaration or non-declaration.

MR. MATANOG:
A: Yes.

Based on the foregoing, De Guzman's tax liability could not be established from the mere presentation of the BOC's Summary List of Importations without having examined its source documents. Also, no evidence was presented regarding De Guzman's likely source of income.[12] The Court could not simply rely on conjectures in ascertaining the amount of accused's civil liability.

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[12] Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000), Revenue Audit Memorandum Order No. 1-00, March 17, 2000.

In fine, the prosecution failed to establish De Guzman's civil liability by preponderant evidence.

WHEREFORE, the *Motion for Reconsideration (of the Decision promulgated on October 3, 2023)* filed by the People of the Philippines and the *Motion for Reconsideration* filed by Ronnel Lampa De Guzman are **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice