REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ROMULO L. NERI,
Petitioner,

-*versus*-

PEOPLE OF THE PHILIPPINES,
Respondent.

CTA EB CRIM. NO. 046
(CTA Crim. Case Nos. O-251 & O-252)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
AUG 27 2019 1:03 p.m.

x- x

DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Romulo L. Neri on January 10, 2018 praying for the reversal of the Decision[2] dated August 30, 2017 and Resolution[3] dated December 6, 2017 of the Court of Tax Appeals (CTA) Third Division, with respect to the Court's finding that petitioner is liable for deficiency income tax in the amount of Php474,381.63 for taxable year 2009.

The Facts

The facts, as summarized by the Court in Division, are as follows:

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[1] *Rollo*, CTA EB Crim. No. 046, pp. 14-63.
[2] *Rollo*, pp. 65-128.
[3] *Rollo*, pp. 130-136.

[Petitioner] is registered with the Bureau of Internal Revenue ("BIR"), Revenue District Office ("RDO") No. 39, South Quezon City, with Tax Identification Number ("TIN") 102-764-852.

For TYs 2008 to 2010, [petitioner] was the President and Chief Executive Officer ("CEO") of the Social Security System ("SSS"), SSS nominee director of Union Bank of the Philippines ("UBP") and Philex Mining Corporation ("Philex") for which SSS has investments. As such public official, [petitioner] received taxable income or compensation from SSS, UBP, Philex, Commission on Higher Education ("CHED"), and Philippine Health Insurance Corporation ("Philhealth").

For TY 2009, [petitioner] received income as director of Philhealth in the amount of Php290,625.00, and Php1,400,000.00 as *per diems* for attendance during board meetings; and Php15,431,036.51 as profit share in UBP.

[Petitioner] filed his amended ITRs for TYs 2008 and 2009 where he declared the amounts of Php1,352,614.00 and Php15,424,164.73, respectively, as his gross income. He also filed his 2010 ITR and declared a gross income of Php20,913,786.67.

On September 25, 2010, [petitioner] received Letter of Authority ("LOA")-211-2010-00000231 SN: eLA201000015025 dated September 24, 2010.

On May 6, 2011, Asst. State Prosecutor ("ASP") Amor L. Robles ("ASP Robles"), Senior Deputy State Prosecutor Miguel F. Gudio, Jr., and Prosecutor General Claro A. Arellano ("PG Arellano"), all of the Department of Justice ("DOJ"), issued a Resolution recommending the filing of Informations for two (2) counts of violation of *Section 255 of the 1997 NIRC* against [petitioner], upon finding that [petitioner], a registered taxpayer required to pay any tax or supply correct and accurate information pertaining to all income and compensation received by him for TY's 2008 and 2009, under declared all his income in his ITRs, as a result of which, [petitioner] failed to pay his correct and accurate taxes for TYs 2008 and 2009, as follows:

xxx xxx xxx

> On November 16, 2011, a Resolution was promulgated by the DOJ, recommending the denial of the BIR's and [petitioner]'s Motions for Reconsideration.
>
> On November 24, 2011, [respondent], through ASP Robles and PG Arellano, filed two (2) separate Informations before the Court of Tax Appeals ("CTA"), docketed as *CTA Crim. Case Nos. O-251* and *O-252*, the first was raffled to the Third Division, and the second to the Second Division, xxx
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> xxx xxx xxx[4]

CTA Crim. Case No. O-252 was consolidated with CTA Crim. Case No. O-251, the latter bearing the lower docket number. Subsequently, petitioner-accused entered a plea of "Not Guilty" to the two (2) cases filed against him.

After trial, the CTA Division ruled as follows:

> **WHEREFORE**, premises considered, accused **ROMULO L. NERI** is hereby **ACQUITTED**, for failure of the prosecution to prove his guilt beyond reasonable doubt.
>
> With regard to the civil liability, accused is **ORDERED TO PAY** deficiency income tax for TYs 2008 and 2009 in the amounts of **Php3,267.12** and **Php474,381.63**, respectively, inclusive of the twenty-five percent (25%) surcharge imposed under *Section 248(A)(3) of the 1997 NIRC.*
>
> In addition, accused is ordered to pay:
>
> 1. Deficiency interest at the rate of twenty percent (20%) *per annum* on the basic deficiency income tax of Php2,613.70 and Php379,505.30 computed from April 15, 2009 and April 15, 2010, respectively, until full payment thereof pursuant to *Section 249(B) of the 1997 NIRC*; and
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> 2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the aggregate amount of Php477,648.75 (Php3,267.12 plus Php474,381.63), representing the basic deficiency income tax of

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[4] *Rollo*, Decision dated August 30, 2017, pp. 65-67.

> Php382,119.00 (Php2,613.70 plus Php379,505.30) and twenty-five percent (25%) surcharge of Php95,529.75 (Php653.42 plus Php94,876.33) and on the twenty percent (20%) deficiency interest which have accrued as aforestated in (1), computed from July 26, 2011 until full payment thereof pursuant to *Section 249(C) of the 1997 NIRC.*
>
> **SO ORDERED**.

The Motion for Partial Reconsideration filed by petitioner-accused was denied in the Resolution[5] dated December 6, 2017.

On January 10, 2018,[6] petitioner filed the instant Petition for Review appealing the Third Division's Decision dated December 6, 2017, only in regard to the civil liability for taxable year 2009 amounting to Php474,381.63.

On April 24, 2018, respondent People of the Philippines, through the Office of the Solicitor General (OSG), filed its Comment.[7] Said Comment was filed beyond April 4, 2018 which was the extended period granted in the Minute Resolution dated March 16, 2018.[8]

On May 3, 2018, the Court required the parties to submit their respective memoranda within thirty (30) days from receipt of notice.[9]

On May 31, 2018, the Court received respondent's Manifestation and Motion (In Lieu of Memorandum)[10] stating that it is adopting its Comment as its Memorandum.

On June 6, 2018, resolving respondent's Motion for Reconsideration[11] filed on April 24, 2018, the Court admitted respondent's Comment in the interest of justice. The Court reiterated that the parties have thirty (30) days from receipt of

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[5] *Rollo*, pp. 130-136.
[6] Within the extended period granted by the Court *En Banc* in the Minute Resolution dated January 8, 2018.
[7] *Rollo*, pp. 167-179.
[8] *Rollo*, Minute Resolution dated March 16, 2018, p. 161.
[9] *Rollo*, pp. 186-187.
[10] *Rollo*, pp. 196-200.
[11] *Rollo*, pp. 180-183.

the May 3, 2018 Resolution within which to submit their memoranda.

On June 20, 2018, petitioner filed his Manifestation and Compliance with Motion to Admit Attached Memorandum,[12] to which respondent interposed no objection.[13]

On September 20, 2018, petitioner's Memorandum[14] was admitted, and as such the case was deemed submitted for decision, also taking into consideration respondent's Manifestation that it is adopting its Comment as its Memorandum.[15]

Issues

Petitioner submits the following issues:

> The principal issue in this petition is whether or not the petitioner had actually declared a Unionbank Profit Share (hereinafter, UBP) income of P4,472,130.60 in his Amended 2009 Income Tax Return contrary to the finding of the Third Division of this Court that he only declared P3,134,123.56.
>
> The corollary issue is whether or not the petitioner is liable to pay deficiency taxes amounting to P474,381.63 for the Taxable Year 2009.[16]

Ruling of the Court

The Court will now look into the timeliness of the instant appeal, before delving into the substantive issues.

The Petition for Review was timely filed.

The Court in Division issued the assailed Decision on August 30, 2017. Further, the Court in Division issued the Resolution dated December 6, 2017 denying petitioner's Motion

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[12] *Rollo*, pp. 205-207.
[13] *Rollo*, respondent's Manifestation (In lieu of Comment), pp. 257-260.
[14] *Rollo*, pp. 208-253.
[15] *Rollo*, pp. 263-264.
[16] *Rollo*, Petition for Review (PFR), p. 20.

for Partial Reconsideration filed on September 6, 2017. Said Resolution was received by petitioner on December 14, 2017.

Under Rule 9, Section 9(b) of the Revised Rules of the Court of Tax Appeals (RRCTA), an appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review within fifteen (15) days from receipt of the decision or resolution appealed from. The Court *en banc* may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen (15) days.

Thus, petitioner had fifteen (15) days from December 14, 2017, or until December 29, 2017 within which to file his petition for review. On December 27, 2017, petitioner filed his Motion for Extension of Time to File Petition for Review[17] praying for an extension of fifteen (15) days from December 29, 2017 or until January 13, 2018, within which to file his Petition for Review. Said extension was granted.[18]

On January 10, 2018, petitioner timely filed the subject Petition for Review.

There is a compelling reason to reverse the Court in Division's findings as to petitioner's civil liability.

The Court in Division computed petitioner's basic deficiency income tax for taxable year 2009, as follows:[19]

DETAILS	TY 2009
UBP Income:	
Should Be Income	Php 5,872,130.66
Per ITR Income	3,134,123.56
Deficiency Income	2,738,007.10
Tax Rate	32%
DEFICIENCY INCOME TAX	Php 876,162.27
Voluntary Payment	496,656.97
Basic Deficiency Income Tax	Php 379,505.30
Surcharge (25%)	94,876.33
TOTAL INCOME TAX DUE	**Php 474,381.63**

[17] *Rollo*, pp. 1-6.
[18] *Rollo*, Minute Resolution dated January 8, 2018, pp. 13-13A.
[19] *Rollo*, Decision dated August 30, 2017, pp. 126-127.

Petitioner argues that he actually declared Php4,472,130.60 and not the Php3,134,123.56 in his annual income tax return (ITR) for taxable year 2009. Petitioner states that the amount of Php4,472,130.60 was already included in the Php14,117,945.36 reflected in Line 29 of his 2009 ITR. Petitioner also states that there was no need for further evidentiary proof of the breakdown of the declared Php14,117,945.36 stated in Line 29 of the ITR as this amount could be arrived at by adding the income figures already proven by the evidence. Petitioner also states that the difference of Php1,360,000.00 between Note 6 and Line 29 of the ITR (Php14,117,945.36 – 12,757,945.00) has been explained by the testimony of witness Ms. Michaela Sophia E. Rubio from Union Bank of the Philippines (UBP). Petitioner further argues that the Division erred in holding him still liable for deficiency taxes when the total of the proven income items for 2009 was only Php14,095,952.45 but it was found that petitioner had actually declared more in the amount of Php14,117,945.36.

Respondent, in its Comment, states that petitioner's taxable income for taxable year 2009 should be Php5,872,130.66 (Php1,400,000.00 *per diem* plus Php510,416.67, Php3,086,713.98, and Php875,000.00). However, petitioner only reported in his amended ITR the amount of Php3,134,123.56 for taxable year 2009. Thus, petitioner had unreported income for taxable year 2009 amounting to Php2,738,007.10 (Php5,872,130.66 less Php3,134,123.56). Respondent states that the Court rightfully computed the total tax due amounting to Php474,381.63. Respondent further asserts that petitioner failed to prove that his unreported income from UBP pertains to the difference between the income he declared in his amended ITR and the total amount of income shown to have been received by him in 2009.

The Petition for Review has merit.

It is an elementary rule in criminal procedure that the extinction of the penal action does not carry with it the extinction of the civil liability where the acquittal is based on reasonable doubt as only preponderance of evidence is required in civil cases. Preponderance of evidence is defined as the weight, credit, and value of the aggregate evidence on either side and is usually considered synonymous with the term greater weight of evidence or greater weight of credible evidence. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[20]

In this case, petitioner was acquitted of the crime of failure to supply correct and accurate information in his income tax return for taxable year 2009. However, the Court in Division found petitioner liable for civil liability for taxable year 2009 amounting to Php474,381.63, computed as follows:

DETAILS	TY 2009
UBP Income: Should Be Income *Per* ITR Income Deficiency Income Tax Rate	 Php 5,872,130.66 3,134,123.56 2,738,007.10 32%
DEFICIENCY INCOME TAX Voluntary Payment	Php 876,162.27 496,656.97
Basic Deficiency Income Tax Surcharge (25%)	Php 379,505.30 94,876.33
TOTAL INCOME TAX DUE	**Php 474,381.63**

There is no dispute with the "should be" income amount of Php5,872,130.66, which is composed of the following:

AMOUNT	**DETAILS**
Php 1,400,000.00	*Per diems* in 2009[21]
510,416.67	Profit share received by accused on February 27, 2009[22]
3,086,713.99	Profit share received by accused on March 17, 2009[23]
875,000.00	Profit share received by accused on December 18, 2009[24]
Php5,872,130.66	

Of these amounts, petitioner admitted that Php1,400,000.00 was not reported in his ITR, and thus, voluntarily paid deficiency taxes thereon on May 31, 2011.

Thus, what remains to be reconciled is Php1,338,007.09, computed as follows:

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[20] *Emilia Lim v. Mindanao Wines & Liquor Galleria*, G.R. No. 175851, July 4, 2012.
[21] *Rollo*, Decision dated August 30, 2017, p. 111.
[22] *Rollo*, Decision dated August 30, 2017, p. 117.
[23] *Rollo*, Decision dated August 30, 2017, p. 117.
[24] *Rollo*, Decision dated August 30, 2017, p. 117.

AMOUNT	DETAILS
510,416.67	Profit share received by accused on February 27, 2009[25]
3,086,713.99	Profit share received by accused on March 17, 2009[26]
875,000.00	Profit share received by accused on December 18, 2009[27]
Php4,472,130.65	
3,134,123.56	Gross Income reported in Note 6 (Php510,416.67 + 2,623,706.89)[28]
Php1,338,007.09	

A review of petitioner's arguments shows that petitioner explained this discrepancy as the tax withheld from Php3,086,713.99 amounting to Php463,007.10 (resulting to the Php2,623,706.89 reported in Note 6). These amounts of Php463,007.10 plus Php875,000.00 were allegedly not included in Note 6, but were included in the Php14,117,945.36 reported in Line 29 of the amended ITR.

After examining the documents presented by both the petitioner and respondent in the trial before the Court in Division, the Court *En Banc* finds that petitioner included the full amount of Php 4,472,130.65 in Line 29 of his amended ITR.

The full amount of the UBP income was declared and reported to the BIR in petitioner's un-amended ITR for 2009, as shown in Note 6,[29] portions of which are shown below:

NOTE 6 – SUMMARY OF INCOME — 2009
FOR THE TAXABLE YEAR ENDED
December 31, 2009

TAXABLE COMPENSATION			INCOME TAX WITHHELD	
INCOME	PERIOD COVERED	GROSS INCOME	BIR 2316	BIR FORM 2307
SOCIAL SECURITY SYSTEM	xxx	xxx	Xxx	
Union Bank	Oct to dec. 09	510,416.67		76,562.50
Xxx	xxx	xxx		xxx
Union Bank of the Phils.	jan to mar 2009	3,961,713.93		594,257.09
TOTAL		14,095,952.40		2,114,392.86

The total of Php510,416.67 and Php3,961,713.93 shown above is Php4,472,130.60 which is different by a mere five centavos (Php0.05) from the proven UBP income.

[25] *Rollo*, Decision dated August 30, 2017, p. 117.
[26] *Rollo*, Decision dated August 30, 2017, p. 117.
[27] *Rollo*, Decision dated August 30, 2017, p. 117.
[28] Docket, Vol. 3, Exhibit "Q-4", p. 1300.
[29] Docket, Vol. 3, Exhibit "P-15", p. 1296.

When petitioner's ITR was amended, the supporting Note 6 was changed but only as to the amount of UBP income. The figures are presented for comparison below:

		Note 6, Un-amended ITR[30]		Note 6, Amended ITR[31]	
Income	Period covered	Gross Income	BIR Form 2307	Gross Income	BIR Form 2307
Union Bank	Oct to dec. 09	510,416.67	76,562.50	510,416.67	76,562.50
Union Bank of the Phils.	jan to mar 2009	3,961,713.93	594,257.09	2,623,706.89	594,257.09
Total		4,472,130.60		3,134,123.56	

It is notable that the amount of gross income was lowered in Note 6 of the amended ITR, but the corresponding tax withheld was not. The declared tax withheld of Php594,257.09 is 15% of Php3,961,713.93, and not of Php2,623,706.89. This bolsters the finding that the actual declared income in line 29 of the amended ITR is Php4,472,130.60 (510,416.67 plus 3,961,713.93) consistent with that declared in the un-amended ITR; and, that the modification of the Union Bank income from Php3,961,713.93 in the un-amended ITR to Php2,623,706.89 in Note 6 of the amended ITR is erroneous.

Further, the prosecution, in the case before the Division, did not prove any other income of the accused in addition to the incomes received from the Social Security System (SSS), UBP, Philex Mining Corporation (Philex), Commission on Higher Education (CHED), and Philippine Health Insurance Corporation (Philhealth).

Based on the foregoing, the Court *En Banc* finds that petitioner sufficiently explained the discrepancy in Note 6 and Line 29 of his amended ITR. The proven income items of the petitioner amount to Php14,095,952.45[32] while that declared in Line 29 of the amended ITR is greater at Php14,117,945.36. This warrants the reversal of the Court in Division's finding of civil liability against the accused for taxable year 2009.

WHEREFORE, the instant Petition for Review is **GRANTED**. Accordingly, the imposition of civil liability amounting to Php474,381.63 for taxable year 2009 in the Decision dated August 30, 2017 and Resolution dated

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[30] Docket, Vol. 3, Exhibit "P-15", p. 1296.
[31] Docket, Vol. 3, Exhibit "Q-4", p. 1300.
[32] Php290,625.00 + Php9,333,196.80 + Php4,472,130.65 (consisting of Philhealth, Philex, and UBP incomes)

December 6, 2017, of the Court in Division in CTA Crim. Case Nos. O-251 and O-252, is hereby **REVERSED**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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