REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

REYNALDO A. PAZCOGUIN, III, with residence at Block 8 Lot 15, Multinational Village, Muntinlupa, City;
NENITA BIAG, with residence at 264 Moriones Street, Tondo, Manila; and
REN TRANSPORT CORPORATION, with place of business at 14-A Timog Avenue, Quezon City,
Accused.

CTA CRIM. CASE NOS. O-237, O-238 & O-239

For: Failure to Supply Correct and Accurate Information under Sec. 255 of the National Internal Revenue Code

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

REYNALDO A. PAZCOGUIN, III, with residence at Block 8 Lot 15, Multinational Village, Muntinlupa, City;
NENITA BIAG, with residence at 264 Moriones Street, Tondo, Manila;
EDSON O. FERNANDEZ, at large, with last known office address at 14-A Timog Avenue, Quezon City; and
REN TRANSPORT

CTA CRIM. CASE NO. O-240

For: Failure to Supply Correct and Accurate Information under Sec. 255 of the National Internal Revenue Code

Members:

BAUTISTA, *Chairperson;*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAY 15 2017
4:02 p.m.

CORPORATION, with place of business at 14-A Timog Avenue, Quezon City,
Accused.

x- -x

RESOLUTION

FABON-VICTORINO, *J.*

On November 2, 2016, the Court promulgated a Decision, the dispositive of which reads:

> **WHEREFORE**, in view of the death of accused Reynaldo Pazcoguin III, the cases against him under Criminal Case Nos. O-237, 0-239 and O-240 are hereby **DISMISSED**. Accordingly, the cashbond posted for his provisional liberty in the four (4) cases for violations of Section 255 of the National Internal Revenue Code of 1997, as amended, in the total amount of EIGHTY THOUSAND PESOS (PHP80,000.00), is ordered **RELEASED** to his legal or duly authorized representative upon presentation of pertinent documents.
>
> On the other hand, accused **Nenita Biag** is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt.
>
> Insofar as accused **Edson O. Fernandez**, who to date remains at large, let an *alias* warrant for his arrest be issued to be returned only upon his arrest. However, the case against him shall be archived to be revived upon his arrest.
>
> With regard to the civil liability, **Ren Transport Corporation** is **ORDERED** to **PAY** its deficiency income tax for the taxable years 2006, 2007, and 2008, in the amounts of Php159,028,465.79, Php180,894,075.72, and Php79,317,526.15, respectively, inclusive of penalties,

> surcharges and interests, plus 20% delinquency interest per annum counted from December 31, 2011 until full payment thereof, pursuant to Section 249 (C) (3) of the NIRC of 1997, as amended.
>
> In addition, **Ren Transport Corporation** is further **ORDERED TO PAY** a fine of Php100,000.00, for each of the criminal case, pursuant to Section 256 of the NIRC of 1997, as amended.
>
> **SO ORDERED.**

In assailing the verdict, Ren Transport Corporation (Corporation) wants the Decision of November 2, 2016, finding it civilly liable and directing it to pay deficiency taxes for taxable years 2006, 2007 and 2008, plus penalties, interests and surcharges, reconsidered anchored on the following grounds:

a. This Honorable Court committed reversible error in finding REN Transport Corporation civilly liable for deficiency income tax for the taxable years 2006, 2007, and 2008.

b. This Honorable Court committed a reversible error in not finding that the alleged tax liability of the Accused has not been fully and properly determined.

For the Corporation, it was erroneous for the Court to impose civil liability for deficiency income tax for taxable years 2006, 2007 and 2008 as there was yet no valid assessment against it at the time the cases for tax evasion were filed with the Department of Justice (DOJ). Allegedly, the assessment and notice relative to its alleged non-payment of income tax for taxable years 2006, 2007 and 2008 were made after the Complaint-Affidavit of BIR examiners was filed with the DOJ. For want of assessment at the time of the filing of the complaints, civil liability could not be imposed for lack of basis. Per the Corporation, assessment was necessary for civil aspect of the case since the civil action for the recovery of civil liability in a tax case is automatically instituted with the criminal action.

While the Corporation admits that an assessment is not necessary in the prosecution of a criminal action for tax evasion since it is instituted not to demand payment, but to penalize the erring taxpayer for violation of the Tax Code, it submits that the opposite is true with regard the civil aspect of the case. Assessment is necessary for the imposition of civil liability as it contains not only the computation of total tax liabilities, but also the demand for payment within a prescribed period. In the absence of a valid assessment at the time the tax evasion cases were filed with the DOJ on October 7, 2010, the Court cannot enforce civil liability against the Corporation.

The Corporation also deemed as violation of its constitutional right to due process the following instances which allegedly indicate disregard on the part of the BIR of established procedures and rules for the investigation and filing of tax evasion cases, to wit:

a. The Complaint was filed without any assessment for the taxable years 2006 to 2009;

b. The BIR failed to issue Letters of Authority (LOA) for the said taxable years;

c. LOA No. 00045498 for taxable year 2008 dated August 25, 2009 was issued by RDO No. 39 after the Complaint was filed with the DOJ;

d. The Notice of Informal Conference for taxable year 2006 was issued to the Corporation after the institution of the Complaint with the DOJ.

The Corporation also complains the increase in the amounts of civil liability as compared to those indicated in the three Informations under CTA Criminal Case Nos. O-237, O-239 and O-240 filed in Court and puts the blame on the absence of assessment prior to the lodging of both the criminal and civil cases before the DOJ. The Corporation posits that the amounts stated in the three (3) sets of Information are the yardstick for the determination of the amount suffered by government. The civil liability may be reduced depending on the evidence presented, but it may not be increased without violating the right of accused to be informed of the nature and cause of the accusation against it. On account of the foregoing, the amounts imposed in the assailed Decision of November 2, 2016, are null and void, hence, cannot be enforced.

Assuming that the Court can validly impose the civil liability for deficiency taxes, the assessment for taxable year 2006 for deficiency income tax of ₱159,028,465.79 had already prescribed when the instant cases were filed with the DOJ on October 7, 2010, applying the 3-year period to assess which allegedly commenced on April 16, 2007, the day after the last day prescribed by law for filing of the required return.

The Court also erred when it gave weight and credence to the Certifications issued by the Local Government Units (LGUs) as they were not the required proof for the imposition of tax deficiency liability on a taxpayer citing Section 5 of the NIRC of 1997, as amended. The best evidence, says the Corporation, would be its accounting records, records of gross profit and net profit sales or similar documents from those engaged in the same line of business.

The Certifications from the LGUs are also not proof of its receipt of payments for they merely indicate the amounts released to the Corporation. There is nothing in the said Certification that states that it actually received the amounts stated therein. The Corporation believes that only its own official receipts (ORs) issued to the LGUs for their payments could be the basis of its actual receipt of income payments for services it rendered to them. In addition, the originals of the contracts for the garbage hauling services it rendered with the named LGUs were not also presented.

In its Comment/Opposition to the reconsideration sought, the prosecution is convinced that it sufficiently established that the Corporation failed to supply correct and accurate information in its ITRs for taxable years 2006, 2007 and 2008. Its witnesses from the Cities of Caloocan, Malabon, Muntinlupa and San Juan were able to prove that the Corporation rendered garbage hauling services to their respective LGUs pursuant to the service agreement each executed with the Corporation. The said witnesses verified the Certifications of income payments they personally issued based on existing office records. However, for purposes of audit, the originals of the disbursement vouchers, receipts and contracts pertaining to the subject garbage hauling services rendered by the Corporations were submitted to the Commission on Audit (COA).

Anent amounts of civil liability which is more than that stated in the three Informations filed with the Court, the same was brought about by the inclusion of interests and penalties incurred computed from the date the assessment was issued.

Contrary to the contention of the Corporation, the BIR issued LOA No. 211-2010-00000225 dated September 21, 2010 authorizing Revenue Officers (ROs) Nilda T. Se, Marites P. Arias, Americia G. Ami and Josephine Madera, to investigate the Corporation for tax liabilities for taxable years 2006 to 2009.

On the issue of prescription for taxable year 2006, the ten (10) year prescriptive period under Section 222 of the NIRC of 1997 and not the three (3) year prescriptive period under Section 203 of the same Code that should apply considering the substantial under-declaration made by Corporation in its annual ITR for 2006 as evidenced by various documents presented by the prosecution, which is prima facie evidence of a fraudulent return under Section 248(B) of the NIRC of 1997, as amended.

Finally, the prosecution was able to show that all the BIR notices, specifically the LOA, the Notice to Taxpayer, the Preliminary Assessment Notice (PAN), and the Final Assessment Notice (FAN), were all timely issued and personally served by the members of the investigating team at No. 14 Timog Avenue, Laging Handa, Quezon City, the registered address of the Corporation.

THE COURT'S RULING

The Motion for Reconsideration is bereft of merit.

The prosecution was able to establish that REN Transport Corporation has a total tax liability of Php159,028,465.79, Php180,894,075.72, and Php79,317,526.15, inclusive of penalties, surcharges and interests, for taxable years 2006, 2007 and 2008, respectively.

The Corporation theorizes that no civil liability against the Corporation could be imposed by the Court as there was yet no assessment issued by the BIR at the time the cases were filed with the DOJ on October 7, 2010. While the Corporation admits that assessment is not necessary for the filing of the cases in court, it insists that for purposes of civil liability, assessment must be simultaneously filed with the Joint-Complaint Affidavits before the DOJ in order for the Court to determine its civil liability following the provision in the Tax Code that the civil aspect of the case is automatically instituted with the criminal action for tax evasion.

Obviously, the Corporation failed to consider that the referral of the case to the DOJ for preliminary investigation is different from the filing of the case in Court for the prosecution of the case. The referral of the case by the BIR to the DOJ is just a part of the whole administrative process in order to determine the existence of probable cause for the purpose of filing the case in court. The judicial proceeding commences only upon the filing of the DOJ of the information with the proper court. In other words, the wheel of justice starts to grind only when the case is lodged with the court. Once the court acquires jurisdiction over the case, it takes control of the proceeding until the termination of the case. Precisely, before this stage, no legal obstacle exists for the complaining witness to secure and collate evidence for presentation during the preliminary investigation before the DOJ. Unless barred by the rules or regulations, the parties, even after the filing of the case in court, may still continue to obtain evidence to support or strengthen their respective positions. This is precisely what occurred in the present tax evasion cases. After determining the tax deficiencies incurred by the Corporation it referred the cases to the DOJ but continued with the assessment and notice. Essentially, the details of tax deficiencies of the Corporation were already in the hands of the BIR at the time the tax evasion cases were referred to the DOJ, only that the due process requirement of assessment and notice must be complied with for the cases to prosper. Precisely, the principal amounts of tax liabilities for each pertinent taxable year were already stated in individual Information filed with the Court.

Anent the claim of the Corporation that it is not liable for deficiency income tax pertaining to taxable year 2006, in the amount of ₱159,028,465.79, as the three-year period to assess had already prescribed, suffice it to say that the under-declaration of more than 30% of income received made by the Corporation in its annual ITR for 2006 is *prima facie* evidence of a fraudulent return under 248(B) of the NIRC, as amended, applies. Hence, the ten-year period to assess under Section 222 of the NIRC, as amended, applies.

The award of civil liability is based on an assessment that has become final, executory and demandable:

Accused claims that the evidence of the prosecution shows that its alleged tax liability has not been fully and properly determined.

The Court is not persuaded.

The FAN issued by the BIR and received by the Corporation, through its established authorized representative Carlota "Chuchay" P. Coronel, became final and executory for failure of the Corporation to file a protest against it within the prescribed period. The said final assessment was presented in Court and became the basis of the finding that the corporation is liable for deficiency income tax, value-added tax and expanded withholding tax for taxable years 2006, 2007 and 2008 in the total amounts of ₱159,028,465.79, ₱180,894,075.72, and ₱79,317,526.15, respectively. Since, the subject assessment became final for failure of the taxpayer to file a protest within the time allowed, the validity or correctness of the said assessment may no longer be impugned on appeal.

Section 205 of the NIRC of 1997, as amended, 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"*.

Finally, contrary to the perception of the Corporation, all the Certifications issued by the LGUs combined with the testimonies of the very officers who issued them based on existing office records sufficiently established to the satisfaction of the Court that the Corporation received income payments from the named LGUs as compensation for garbage hauling services it rendered to them. Amazingly, the Corporation claims that there is nothing in the Certifications that states that it actually received income payments from the LGUs but at the same time admits that the very same Certifications state that the amounts specified therein were released in its favor.

IN VIEW OF ALL THE FOREGOING, REN Transport Corporation's Motion for Reconsideration (of the Decision dated 02 November 2016) is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice