REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

-*versus*-

JOEL C. MENDEZ,
Respondent.

CTA *EB* CRIM. NO. 038
(CTA Crim. Case No. O-014)

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JOEL C. MENDEZ,
Petitioner,

-*versus*-

PEOPLE OF THE PHILIPPINES,
Respondent.

CTA *EB* CRIM. NO. 039
(CTA Crim. Case No. O-014)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

DEC 07 2017 3:58 p.m.

x- x

RESOLUTION

MANAHAN, J.:

This resolves petitioner People of the Philippines' (People) **Motion for Reconsideration (Re: Resolution dated September 8, 2017)**[1] filed on October 11, 2017 under CTA EB Crim. No. 038 and petitioner Joel C. Mendez' **Motion for**

[1] *Rollo*, CTA EB Crim. Case No. 038, pp. 150-156.

Reconsideration[2] filed on October 11, 2017 under CTA EB Crim. No. 039. The first motion actually refers to the *En Banc* Decision dated September 8, 2017 (assailed decision) which seeks to set aside the assailed decision and prays for the issuance of a new one that will impose the deficiency income tax against the respondent Joel C. Mendez (Mendez). As to the second motion, petitioner Mendez seeks for the reversal and setting aside of the assailed decision and the issuance of a new one dismissing the case against him.

Under CTA EB Crim. No. 038, petitioner People insists that the tax deficiency may be collected in a court proceeding even without an assessment.

On the other hand, under CTA EB Crim. No. 039, petitioner Mendez argues that the criminal case against him should be dismissed since the amount in the amended information is merely estimated and not exact nor certain.

<u>CTA EB Crim. No. 038</u>

Although the argument of petitioner was already properly discussed and disposed of in the assailed decision, this Court shall reiterate its earlier discourse on the instant case.

As discussed in the assailed decision, Exhibit "AAA"[3] appears to be merely a computation or a schedule of deficiency income tax which was not addressed to the respondent and it did not demand the payment of the tax liability within a fixed period. There was also no indication that an assessment notice was mailed or sent to the taxpayer by the Commissioner which would satisfy the requisites of a formal assessment.

Section 205 of the 1997 National Internal Revenue Code (NIRC), as amended, requires that, in the judgement of the criminal case against an accused, the tax liabilities which are the subject of the case should be included. However, the provision expressly states that such tax liabilities must be "as finally decided by the Commissioner."

Now, the question is what is that "final decision" of the Commissioner of Internal Revenue (CIR)? *cm*

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[2] *Id.* at 157-160.
[3] Docket, CTA Crim. Case No. O-014, p. 834.

Paragraph 3.1.5 of Revenue Regulations No. 18-2013 dated November 28, 2013 refers to the Final Decision on Disputed Assessment (FDDA) of the CIR. It also provides the requisites as to the contents of said FDDA which include the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, and the same constitutes the final decision of the CIR.

However, those requisites were not even contained or attached to the said exhibit. Hence, the Court in Division had properly considered said exhibit as merely an estimate or a schedule. Such cannot be the basis of a civil liability that may be included in the judgment of the criminal case.

Petitioner should be aware that such requirement is expressly provided in the 1997 NIRC which is a tax statute. Tax statutes are to be construed strictly against the government and liberally in favor of the taxpayer, for taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares.[4]

Further, the provision of said law is very clear that in order for the deficiency taxes to be included as civil liabilities in the final judgment of a criminal case, there must be a final assessment issued by the Commissioner. When the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis*, as expressed in the maxim index *animi sermo* or speech is the index of intention.[5]

CTA EB Crim. No. 039

Petitioner Mendez should be aware that he was charged under Section 255 of the 1997 NIRC, as amended, which pertains to a criminal offense for failure to file his income tax return (ITR) in taxable year 2001.

Section 255 of the said law provides that:

> **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund* cm

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[4] *Republic of the Philippines v. Intermediate Appellate Court et al.*, G.R. No. L-69344, April 26, 1991.

[5] *Milagros Amores v. House of Representatives Electoral Tribunal et al.*, G.R. No. 189600, June 29, 2010.

> *Excess Taxes Withheld on Compensation.* - **Any person required under this Code or by rules and regulations** promulgated thereunder **to** pay any tax, **make a return**, keep any record, or supply correct the accurate information, **who willfully fails to** pay such tax, **make such return**, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. (*Emphasis supplied*)
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> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

As discussed in the assailed decision[6] and in the abovementioned provision, the elements of the crime of failure to file a return are as follows:

1. The accused was a person required to make or file a return;

2. He failed to make or file such return at the time required by law; and

3. The failure to make or file the return was willful.

Nowhere in the afore-quoted enumeration does the amount of tax deficiency appear as an element in order for the offender to be convicted of the said crime. The amount becomes material only when the issue is about the imposition of civil liability which has been already amply discussed in the assailed decision.

As cited in the cases of *Adamson v. Court of Appeals*[7] and *Commissioner of Internal Revenue v. Pascor Realty and* am

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[6] *Rollo*, Decision dated September 8, 2017, p. 127.
[7] G.R. Nos. 120935 & 124557, May 21, 2009.

Development Corporation[8], one of the cases that may be filed in court without the necessity of a tax assessment is the failure to file a return. However, such assessment becomes necessary when the payment of taxes is imposed as part of the civil liability in the final adjudication of the criminal case pursuant to Section 205 of the 1997 NIRC, as amended.

In fine, since the Court has determined that all of the elements of said offense were present, petitioner Mendez was adjudged criminally liable in the instant case.

WHEREFORE, premises considered, both motions are hereby **DENIED** for lack of merit. Accordingly, the Decision dated September 8, 2017 is hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I maintain my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(I maintain my Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

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[8] G.R. No. 128315, June 29, 1999.

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