REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

BENEDICTO P. CAGUIMBAL,
Accused.

CTA CRIM. CASE NOS. O-546 & O-547

Members:
FABON-VICTORINO, &
RINGPIS-LIBAN, *JJ.*

Promulgated:
FEB 18 2019
8:45 a.m.

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AMENDED DECISION

RINGPIS-LIBAN, *J*.:

For resolution is the "Motion for Reconsideration" filed by accused through his counsel on October 11, 2018, praying that the Decision be set aside and that an order of acquittal be issued.

On November 6, 2018, the Court issued a Resolution ordering the plaintiff to file its Comment on the "Motion for Reconsideration," within ten (10) days from notice.

On November 21, 2018, the plaintiff filed a "Comment/Opposition."

In her "Motion for Reconsideration," accused repeatedly claims that the basis in filing the criminal complaint against him is the Letter Notice; that there was no Letter of Authority (LOA) issued in relation to the instant cases; that the revenue officers who conducted an examination on accused have no authority to examine and issue tax assessments; that his right to due process was violated because he was not served with a copy of the assessment notices and other notices sent by the Bureau of Internal Revenue (BIR). Thus, he cannot be said to have wilfully and deliberately violated the provisions of the National Internal Revenue Code (NIRC) of 1997.

On the other hand, in the Comment/Opposition of the plaintiff, it states that it agrees with the assailed Decision, hence, the accused's "Motion for Reconsideration" should be denied for lack of merit; that the elements of violation of Section 255 of the NIRC of 1997 are attendant in the instant cases; that accused cannot validly claim that his right to due process was violated since the assessment and other BIR letters/communications were sent to his registered address at 2240-B Severino Reyes Street, Sta. Cruz, Manila, though he admitted that he never hold office therein; that it was only later or on June 13, 2013, when the case was already under preliminary investigation at the Department of Justice (DOJ) that accused, in his Sinumpaang Ganting Salaysay wherein he indicated that his residence address is at Unit C 218 2F, Bldg. C, El Pueblo Manila, Sta. Mesa, Manila; that at that time, all the notices were already sent to accused's registered address; and that an assessment, whether valid or void, shall become final and executory, when no administrative protest is filed within thirty (30) days from receipt of the assessments.

After consideration, the Court resolves to deny the "Motion for Reconsideration."

A perusal of the accused's motion shows that the arguments raised therein are substantially the same as his previous arguments which have been duly considered and discussed in the assailed Decision.

Accused argues that the revenue officers who conducted an examination of his tax liabilities were not authorized because there was no LOA issued. Hence, the assessment made is null and void. Consequently, the finding of guilt against him is unwarranted.

This Court finds accused argument unmeritorious. Accused was charged of violation of Section 255 of the NIRC for his failure to declare his income and to pay the corresponding taxes thereon. **Accused may be prosecuted even without an assessment pursuant to Section 222 of the NIRC[1]. Hence, the prosecution of criminal cases against accused may proceed even without an assessment.**

[1] Section 222. *Exception 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 return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without an 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.

In the case of *Lucas G. Adamson, Therese June D. Adamson, and Sara S. Delos Reyes, in their capacities as president, Treasurer and Secretary of Adamson Management Corporation, vs. Court of Appeals and Liwayway Vinzons-Chato,*[2] *citing the case of CIR vs. Pascor Realty, et al.,*[3] the Supreme Court ruled that an assessment is not necessary before a criminal charge can be filed. It states as follows:

> "To reiterate, said Section 222 states that an assessment is not necessary before a criminal charge can be filed. This is the general rule. Private respondents failed to show that they are entitled to an exception. Moreover, the criminal charge need not only be supported by a *prima facie* showing of failure to file a required return. This fact need not be proven by an assessment.
>
> The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. In contrast, the criminal charge need not go through all these. The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the commission has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code."

As discussed in the assailed Decision, all the elements of the crime of violation of Section 255 of the NIRC were sufficiently proven by the plaintiff.

As found by the Court, accused is a resident Filipino citizen and registered taxpayer with Tax Identification Number 264375606; that he is engaged in the business that contracts electrical works and his business name is "Caguimbal Electrical Work"; that he did not declare his income for taxable year 2010; and that the notices of the BIR were sent to his registered address at 2240-B Severino Reyes Street, Sta. Cruz, Manila.

The contentions of accused that he did not receive the notices issued by the BIR and that he does not know the persons who received the notices are self-serving statements. The bare allegation of accused that he did not receive all the notices issued by the BIR is not sufficient to overcome the presumption

[2] G.R. Nos. 120935 and 124557, May 21, 2009.
[3] G.R. N. 128315, June 29, 1999.

that the notices were sent and received in the ordinary course of mail. Accused never controverted the evidence presented by the plaintiff that the PAN, FAN and FLD were mailed and indeed received by persons on behalf of accused. In the absence of any formal request for change or transfer of registered address of the accused, the BIR is bound to send the notices to the registered business address of accused. Thus, accused is estopped from claiming violation of due process because he did not receive the notices, when he in fact admitted that he merely used the address, *i.e.* 2240-B Severino Reyes Street, Sta. Cruz, Manila for the purpose of having a registered business address. Accused has the duty to inform the BIR of his true address for purposes of mailing and in compliance with the provisions of Section 248 (a)(2) of the NIRC of 1997.

As previously held by this Court in the assailed Decision, the omission on the part of accused to declare his income and pay the corresponding taxes, knowing that he makes money out of his electrical works business is tantamount to a wilful violation of the provisions of the NIRC.

Hence, the Court finds no reason to reverse its ruling in the assailed Decision. However, the Court finds the necessity of modifying the dispositive portion of the assailed Decision, with regard to the imposition of the relevant interest on the final amount adjudged to be payable in this case in order to conform to the new provisions of Republic Act (RA) No. 10963, or more commonly known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law", which took effect on January 1, 2018, as implemented by Revenue Regulations No. 21-2018.

WHEREFORE, in view the foregoing considerations, the accused's "**Motion for Reconsideration**" is **DENIED** for lack of merit. The **assailed Decision** dated September 26, 2018 is **AFFIRMED with MODIFICATION.**

Accordingly, Benedicto P. Caguimbal is **ORDERED TO PAY SIXTEEN MILLION THREE HUNDRED SEVENTY-ONE THOUSAND SIX HUNDRED TWENTY-SIX AND 74/100 PESOS (₱16,371,626.74)** representing deficiency taxes for taxable year 2005, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the Tax Code, as amended, and twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Section 249(A) and (B), respectively, of the same Code, computed until December 31, 2017, which is prior to its amendment under RA No. 10963, thus:

	IT	VAT	TOTAL
Basic Tax Due	₱2,481,968.50	₱1,006,787.40	₱3,488,755.90
Add: 50% Surcharge	1,240,984.25	503,393.70	1,744,377.95
20% Deficiency Interest from April 15, 2011			

to February 11, 2013			
[₱2,481,968.50 x 20% x 668/365 days]	908,468.47		908,468.47
20% Deficiency Interest from January 25, 2011 to February 11, 2013			
[₱1,006,787.40 x 20% x 748/365 days]		412,644.92	412,644.92
Total Amount Due, February 11, 2013	**₱4,631,421.22**	**₱1,922,826.02**	**₱6,554,247.24**
Add: 20% Deficiency Interest from February 12, 2013 to December 31, 2017			
[₱2,481,968.50 x 20% x 1784/365 days]	2,426,209.21		2,426,209.21
[₱1,006,787.40 x 20% x 1784/365 days]		984,169.16	984,169.16
20% Delinquency Interest from February 12, 2013 to December 31, 2017			
[₱4,631,421.22 x 20% x 1784/365 days]	4,527,372.85		4,527,372.85
[₱1,922,826.02 x 20% x 1784/365 days]		1,879,628.28	1,879,628.28
Total Amount Due, Dec. 31, 2017	**₱11,585,003.28**	**₱4,786,623.46**	**₱16,371,626.74**

In addition, Benedicto P. Caguimbal is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total amount due as of February 11, 2013 in the amount of **₱6,554,247.24**, as determined above, computed from January 01, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Acting Division Chairperson's Attestation, is it hereby certified that the conclusions in the above Amended Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice