REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

PEOPLE OF THE PHILIPPINES,

Plaintiff,

- versus -

RIZALDY GOLORAN CHUA,
(Purok Gumamela, Sta. Cruz, Rosario, Agusan Del Sur)

Accused.

CTA CRIM CASE NOS. O-792 & O-793
For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
OCT 29 2024
11:29 a.m.

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DECISION ON THE CIVIL ASPECT

RINGPIS-LIBAN, J.:

Background

On November 30, 2023, this Court promulgated a Decision[1] acquitting accused Rizaldy Goloran Chua of the criminal charge of willful failure to supply correct and accurate information in his income tax return for taxable years 2009 and 2010, under the Informations in CTA Crim. Case Nos. O-792 and O-793.

In the interest of justice however, the Court decided to reopen the case for reception of accused's evidence on the civil aspect of the case. This is because accused did not present evidence both for criminal and civil aspects following the recently promulgated Supreme Court case of *People of the Philippines v. Joel C. Mendez*[2] (*People v. Mendez*). Accordingly, accused was given the opportunity to

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[1] Docket (CTA Crim Case Nos. O-792 & O-793), pp. 1287-1327.
[2] G.R. Nos. 208310-11 and 208662, March 28, 2023.

present evidence for the civil aspect of the case. Thereafter, plaintiff was allowed to present rebuttal evidence, if any.

The dispositive portion of the Decision reads:

> "**WHEREFORE,** premises considered, accused **RIZALDY GOLORAN CHUA** is hereby **ACQUITTED** of the offenses charged against him in Criminal Case Nos. O-792 and O-793, for failure of the plaintiff to prove his guilt beyond reasonable doubt.
>
> As regards his civil liability, the same shall be adjudicated after hearing and reception of evidence.
>
> **SO ORDERED.**"[3]

Reception of Evidence for the Civil Aspect of the Case

The presentation of defense evidence as regards the civil aspect of the case was then set on March 12, 2024 at 9:00 a.m.[4]

On March 06, 2024, accused filed the "Judicial Affidavit (of Lenne Chua)"[5] *via* licensed courier.

On March 12, 2024, the defense presented its witness, Ms. Lenne Chua, who testified on direct examination by way of her judicial affidavit. Her testimony was completed and terminated after the cross-examination.[6]

On March 19, 2024, accused filed his "Formal Offer of Exhibits"[7] *via* licensed courier to which plaintiff filed its "Comment and Opposition (To Accused's Formal Offer of Evidence)"[8] *via* registered mail on April 02, 2024.

On May 15, 2024, the "Judicial Affidavit of Roberto P. Rara, Jr."[9] was filed by plaintiff.

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3 Docket (CTA Crim Case Nos. O-792 & O-793), pp. 1325-1326.
4 *Id.*, Minutes of Hearing dated November 30, 2023, p. 1329.
5 *Id.*, pp. 1370-1379.
6 *Id.*, Minutes of Hearing dated March 12, 2024, p. 1436.
7 *Id.*, pp. 1443-1450.
8 *Id.*, pp. 1567-1572.
9 *Id.*, pp. 1573-1579.

In the Resolution[10] dated May 29, 2024, the Court admitted all the exhibits of accused, and set the presentation of plaintiff's rebuttal evidence on June 18, 2024 at 9:00 a.m.

On June 06, 2024, the presentation of plaintiff's rebuttal evidence was cancelled and reset to July 18, 2024, at 9:00 a.m., in view of the 70th Founding Anniversary Program of the Court of Tax Appeals on June 18, 2024 at the Multi-Purpose Hall.[11]

During the hearing on July 18, 2024, plaintiff presented its rebuttal witness, Roberto P. Rara, Jr. There being no sur-rebuttal witness to be presented by the defense, upon joint motion, the parties were given a simultaneous period of twenty (20) days within which to file their respective memoranda.[12]

On August 07, 2024, plaintiff filed its "Memorandum"[13] *via* registered mail, while the "Memorandum (for Accused Rizaldy G. Chua on the Civil Aspect)"[14] was filed also *via* registered mail on August 12, 2024.

A Minute Resolution was then issued on September 17, 2024 submitting the instant case for decision as regards to the civil liability.

Witness Recalled for the Defense

Ms. Lenne B. Chua, accused's wife, was recalled to the witness stand and testified[15] that she and her husband do not have any remaining tax liability with the Bureau of Internal Revenue ("BIR") with respect to their dealings with the Bangko Sentral ng Pilipinas ("BSP") for the years 2009 to 2010. This is because they filed their Annual Income Tax Returns for the taxable years 2009 and 2010 on April 15, 2010 and April 15, 2011, respectively, but only received an assessment for tax deficiency about five (5) years thereafter when the BIR issued the Preliminary Assessment Notice ("PAN")[16] on January 19, 2016. Therefore, the BIR's period to assess tax has already prescribed before the assessment was made. She also testified that they filed a Protest[17] to the PAN on January 30,

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10 *Id.*, pp. 1581-1583.
11 *Id.*, p. 1584.
12 *Id.*, p. 1587.
13 *Id.*, pp. 1589-1608.
14 *Id.*, pp. 1609-1641.
15 *Id.*, Judicial Affidavit (of Lenne B. Chua) and Minutes of hearing dated March 12, 2024, pp. 1370-1378 and 1436.
16 *Id.*, Exhibit "P-9", pp. 322-326; Exhibits "A-10" and "A-10-1", pp. 1468-1471.
17 *Id.*, Exhibits "A-11" and "A-11-1", p. 1472.

2016 on the ground of prescription, discrepancy in the amount and retroactive application of Revenue Regulations ("RR") No. 6-2012. Thereafter, they received another Letter[18] from the BIR dated March 10, 2016 with attached Revised PAN[19] dated March 16, 2016 acknowledging BIR's mistake on requiring them to comply with RR No. 6-2012, but pointing out that the period to assess has not yet lapsed since there was tax fraud or under-declaration of more than thirty percent (30%). On April 01, 2016, accused filed a Protest to the PAN.[20] Subsequently, a Formal Letter of Demand[21] ("FLD") dated May 06, 2016 was received, to which accused filed another letter-protest[22] dated June 09, 2016. The BIR, through OIC-Regional Director Atty. Nasser A. Tanggor, then issued a Final Decision of Disputed Assessment ("FDDA")[23] dated July 26, 2016, to which accused filed a Request for Reconsideration[24] on the FDDA dated November 08, 2016. Afterwards, she testified that they did not receive any letter from the BIR resolving the Request for Reconsideration despite the lapse of almost eight (8) years.

On cross examination, she testified that the accused received the FDDA and that the amount of gold sales stated in the FDDA is not the same as the one declared in the accused's Annual Income Tax Returns for 2009 and 2010.

Rebuttal Witness for the Prosecution

During his presentation as rebuttal witness, **Roberto P. Rara, Jr.** testified[25] that during his investigation, they compared documents from the BIR and BSP and found that accused failed to supply correct and accurate information in his Annual Income Tax Returns for taxable years 2009 and 2010. This is because the sale of gold by accused to BSP amounted to Php87,910,434.73 in 2009 and Php8,120,045.04 in 2010, but only declared in his Annual Income Tax Returns income amounting to Php190,532.00 in 2009 and Php2,04,061.75 in 2010. He also testified that accused's underdeclaration of income of more than thirty percent (30%) shows that the failure to supply correct and accurate information was willful, voluntary, intentional and with specific intent to make a false return.

On cross examination, Mr. Rara, Jr. testified that the prescriptive period to assess is three (3) years for ordinary investigation. While on re-direct

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18 *Id.*, Exhibit "A-12" and "A-12-1", pp. 1473-1475.
19 *Id.*, Exhibit "P-9-a", pp. 327-332; Exhibit "A-13", pp. 1476-1478.
20 *Id.*, Exhibit "A-14", pp. 1479-1480.
21 *Id.*, Exhibit "P-10", pp. 333-342; Exhibit "A-15", pp. 1481-1484.
22 *Id.*, Exhibit "A-16", pp. 1485-1489.
23 *Id.*, Exhibit "A-17", pp. 1490-1491.
24 *Id.*, Exhibit "A-18", pp. 1492-1498.
25 *Id.*, Judicial Affidavit of Roberto P. Rara, Jr. (Exhibit "P-14") and Minutes of hearing dated July 18, 2024, pp. 1573-1579 and 1587.

examination, he testified that for cases where there is fraud, the prescriptive period is ten (10) years after discovery.

On clarificatory questions from the Court, he testified that he was not aware that the BSP did not collect taxes for such gold sales, and only withheld taxes after 2011.

The Issue

Whether or not accused is liable for deficiency income tax for the taxable years 2009 and 2010, as charged in the Informations subject of the consolidated cases.

The Arguments

The prosecution avers that the finding of liability for unpaid taxes in a criminal tax case is a consequence of the government's exercise of its remedy to collect taxes in the same action to prosecute a criminal offense under the tax laws citing *People v. Mendez*. Likewise, the civil action for collection of deficiency taxes is deemed instituted; hence, a formal assessment issued by the BIR is not required for the imposition of civil liability for unpaid taxes.

In this vein, plaintiff maintains that it has provided sufficient evidence to prove the civil liability of the accused, as follows:

1) Accused is a person required under the National Internal Revenue Code ("NIRC") of 1997, as amended, to pay any tax, make a return, keep any record, or supply correct and accurate information at times required by law and regulations. Accused filed his Annual Income Tax Returns for taxable year 2009[26] with declaration of only Php4,066.83 and for taxable year 2010[27] with declaration of only Php7,173.49;

2) Accused failed to supply such correct and accurate information in his tax returns and to pay such tax. Plaintiff was able to prove that accused had not reflected the income and sales receipts for his gold transactions with the BSP, and accused failed to controvert the same; and

[26] *Id.*, Exhibit "P-3", pp. 308-312; Exhibit "A-8", pp. 1451-1456.
[27] *Id.*, Exhibit "P-4", pp. 313-317.

3) Accused's failure to supply such correct and accurate information in his tax returns and to pay such tax was willful.

On the other hand, accused contends that the landmark case of *People v. Mendez* presupposes that the period to assess (be it the three (3) year period or the extraordinary ten (10) year period) has not yet prescribed before the filing of the criminal case. According to accused, the three (3) year period to assess has already prescribed in the case at bar and therefore, the BIR is already barred from instituting a tax deficiency collection case. Additionally, accused alleges that the extraordinary ten (10) year period applies only in cases where there is filing of false or fraudulent returns with intent to evade tax, unlike in the instant case. Citing *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*[28], accused is of the opinion that the defense was able to overcome the *prima facie* presumption falsity or fraud. Accused's submission of his Annual Income Tax Returns, although possibly containing errors, does not meet the threshold of fraud required to invoke the exception under Section 222(a) of the NIRC of 1997, as amended.

Finally, accused claims that the tax due for the sale of gold to BSP was already paid and settled by the BSP with the BIR, as evidenced by Letter[29] by BSP to BIR dated June 10, 2011 adressed to then BIR Commissioner Kim S. Jacinto-Henares regarding the settlement and payment of excise tax for gold purchases by the BSP for taxable years 2001 to 2010. Another proof is the Certificate of Approval[30] from BIR dated April 16, 2012 certifying that BSP had availed of the provisions of Section 2.4 of RR No. 13-2001 and its application for the abatement/cancellation of fifty percent (50%) basic tax, surcharges and interests in the total amount of Php6,639,211,269.43 of the deficiency excise taxes for the years 2001 to 2010 has been accepted and approved.

The Ruling of the Court

Preliminarily, this Decision pertains to the civil liability of the accused, since We have already acquitted accused Rizaldy Goloran Chua in the Decision promulgated last November 30, 2023, of the charge of willful failure to supply correct and accurate information, in his income tax return for taxable years 2009 and 2010.

28 G.R. No. 247737, August 08, 2023.
29 Docket, Exhibit "A-2", p. 1045.
30 *Id.*, Exhibits "A-3" and "A-19", pp. 1046 and 1500.

The only question now is whether accused is liable for deficiency income tax for the taxable years 2009 and 2010.

We rule in the negative.

The Commissioner of Internal Revenue ("CIR") is given the power to assess and collect taxes under Section 2 of the NIRC of 1997, as amended:

> "**SEC. 2.** *Powers and Duties of the Bureau of Internal Revenue.* — The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the **assessment and collection of all national internal revenue taxes**, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.
>
> The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws."[31]

Nonetheless, the Tax Code also prescribes a statute of limitations for both assessment and collection of unpaid taxes.

As a general rule, internal revenue taxes must be assessed within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Section 203 of the NIRC of 1997, as amended, provides:

> "**SEC. 203.** *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes **shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period**: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."[32]

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31 *Emphasis supplied.*

32 *Emphasis and underscoring supplied.*

As an exception thereto, Section 222(a) of the NIRC of 1997, as amended, provides for a ten-year prescriptive period when a false or fraudulent return is filed with the intent of evading the tax or when no return was filed at all, *viz.*:

> "**SEC 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."[33]

The ten-year period for prescription begins, or is counted from the date of discovery of the falsity, fraud or omission. For the ten-year period under Section 222(a) to apply, it is not enough that fraud is alleged in the complaint, it must be established by clear and convincing evidence.[34] Moreover, the error or misstatement in a false return should be deliberate or willful.[35]

The Supreme Court in *Republic of the Philippines v. Luis G. Ablaza*[36] explained the purpose behind this statute of limitation as follows:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense[,] taxpayers would furthermore be under obligation

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33 *Emphasis and underscoring supplied.*

34 *Republic of the Philippines represented by the Bureau of Internal Revenue (BIR) v. GMCC United Development Corporation, Jose C. Go, And Xu Xian Chun*, G.R. No. 191856, December 07, 2016 *citing Republic of the Philippines v. Rita Lim De Yu*, G.R. No. L-17438, April 30, 1964.

35 *Mcdonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*, G.R. No. 247737, August 08, 2023.

36 G.R. No. L-14519, July 26, 1960.

> to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law."

In these consolidated cases, the petitioner failed to discharge the burden of proving fraud or falsity. Although Section 248(B)[37] of the NIRC of 1997, as amended, provides, among others, that a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions shall constitute *prima facie* evidence of a false or fraudulent return, it merely operates as *prima facie* evidence of fraud which can still be contradicted by other evidence.

We have ruled in the Decision promulgated on November 30, 2023 that there was no such evidence showing actual fraud on the part of accused in not including his income from the sale of gold with the BSP during 2009 and 2010 in his Annual Income Tax Returns. This Court found that he merely relied on representations made by the BSP Davao City Buying Station that the same were tax-free.

This honest mistake and reliance with the BSP also does not make accused's Annual Income Tax Returns false. As ruled by the Supreme Court, only intentional errors in the return may justify the application of the extraordinary 10-year period.

Having settled that the case falls under Section 203 of the Tax Code, the three-year prescriptive period to assess should be applied.

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[37] SEC. 248. *Civil Penalties.* —

xxx xxx xxx

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: *Provided, further,* That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

The BIR has three (3) years from the filing of the Income Tax Returns to assess accused. Accused filed his Annual Income Tax Returns for the taxable years 2009 and 2010 on April 15, 2010[38] and April 15, 2011[39], respectively. Thus, the BIR only had until April 15, 2013 to make its consolidated assessment. The BIR however issued the FLD assessing accused for taxable years 2009 and 2010, on May 06, 2016[40] or more than three (3) years beyond the period within which an assessment could be made. For this reason, the FLD issued after the three-year prescriptive period is not valid.[41]

Considering the foregoing, the assessment of accused's unpaid taxes is barred by prescription. Accused cannot be liable anymore for deficiency income tax for the taxable years 2009 and 2010.

WHEREFORE, premises considered, accused **RIZALDY GOLORAN CHUA** is exonerated from the civil liability for the unpaid taxes in relation to the offenses charged against him in Criminal Case Nos. O-792 and O-793.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[38] Docket, Exhibit "A-8-1", p. 1451.
[39] *Id.*, Exhibit "P-4", pp. 313-317.
[40] *Id.*, Exhibit "P-10", pp. 333-342; Exhibit "A-15", pp. 1481-1484.
[41] *See Commissioner of Internal Revenue v. Next Mobile, Inc.*, G.R. No. 212825, December 07, 2015.

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above 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