

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM. CASE NO. O-166

For: Violation of Section 255 in
relation to Sections 253(a)
and 256 of the 1997 Tax
Code, as amended

- versus -

Members:

CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

JACQUELINE P. MARZAN,
Accused.

Promulgated:

AUG 23 2010

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8:15 a.m.

RESOLUTION

Submitted for resolution are as follows:

1. Accused's "**Manifestation and Motion**" filed on June 9, 2010;
2. Prosecution's "**Comment to the Accused's Manifestation and Motion**" filed on June 15, 2010;
3. Accused's "**Reply**" filed by mail on July 19, 2010; and
4. Prosecution's "**Rejoinder to the Accused's Reply**" filed on July 30, 2010.

In the said Manifestation and Motion, accused states that she voluntarily paid the aggregate amount of P640,505.44 supposedly as full settlement by 8M Realty Corporation for the taxable year 1999, pursuant

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to Section 204 of the NIRC of 1997. Hence, accused moves that the instant case be now deemed closed and terminated.

By way of Comment thereto, the prosecution maintains that the Bureau of Internal Revenue (BIR) is barred from entertaining said offer of compromise settlement due to the prohibition provided for under Section 204 of the NIRC of 1997 that criminal violations already filed in Court can no longer be compromised.

In Reply, accused begs leave from this Court to allow the parties to formalize the settlement by way of compromise in the interest of substantial justice and considering that the tax liability has already been fully paid and which payment, was acknowledged by the prosecution.

As a Rejoinder, the prosecution states that it did not acknowledge the voluntary payment made by 8-M Realty Corporation but merely laid down the existing BIR rules and practice regarding compromise settlement under Section 204 of the NIRC of 1997, as amended. Further, the prosecution states that even assuming that this Court approves the prayer of accused to allow her to settle the civil aspect of the case, such extinguishment of her civil liability does not extinguish her criminal liability.

However, after a re-study of the records of the case, We noted that the basic taxes due for deficiency Income, VAT, and Final Withholding Tax are as follows:

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Kind of Tax	Assessment No.	Year	Date	Amount
Def. Income	32-99	1999	12/17/02	P266,517.29 ¹
Def. VAT	32-99	1999	12/17/02	471,971.17 ²
Def. Final Withholding Tax	32-99	1999	12/17/02	<u>240,000.00³</u>
				<u>P978,488.46</u>

Accused Jacqueline P. Marzan, is charged before this Court with violation of Section 255 in relation to Sections 253(d) and 256 of the 1997 Tax Code, as amended, in an Information, the pertinent portion of which reads:

"That on or about December 17, 2002 and continuously up to the present, in the City of Manila, the said accused, being the President or responsible officer of 8M Realty Corporation with business address located at 1633 Craig Street, Sampaloc, Manila, did then and there willfully, unlawfully and feloniously fail, refuse and neglect to pay deficiency Income Tax, VAT, and Final Withholding Tax in the amounts of P409,385.88, P745,975.68 and P439,332.84 respectively due from said corporation for the taxable year 1999 in the total amount of P1,594,694.40 under BIR Assessment Notice No. 32-99 despite notice of said assessment, without formally protesting against or appealing the same, and repeated demands made upon her to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid sum of P1,594,694.40 Philippine Currency.

CONTRARY TO LAW."

In the instant case, the Information states that the accused "willfully, unlawfully and feloniously fail, refuse and neglect to pay deficiency Income Tax, VAT, and Final Withholding Tax in the amounts of P409,385.88, P745,975.68 and P439,332.84 respectively due from said corporation for the taxable year 1999 in the total amount of P1,594,694.40". But based on the Assessment Notices attached to the

¹ Annex "A" attached to the Information filed.

² Annex "B" attached to the Information filed.

³ Annex "C" attached to the Information filed.

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Information filed, however, the amounts stated in the Information do not only pertain to basic taxes but also include surcharges and interests. As computed above, the basic taxes due amount to P978,488.46.

Sections 7(b)(1) of Republic Act No. 1125, as amended by Republic Acts No. 9282 and 9503, and 3(b)(1) of Rule 4 of the 2005 Revised Rules of the CTA, as amended, pertinently read as follows:

"SEC. 7. Jurisdiction

xxx xxx xxx

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00)** or where there is no specified amount claimed **shall be tried by the regular Courts** and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized." (*Emphasis Supplied*).

"SEC.3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

xxx xxx xxx

(b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

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(1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; (Emphasis Supplied).**

Based on the foregoing provisions, the CTA Division has exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code, among others, when the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more.

In fine, the CTA Division has no exclusive original jurisdiction over the instant criminal case where the principal amount of taxes and fees claimed amounts only to P978,488.46 and which is less than one million pesos or more.

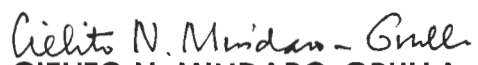
Consequently, we now find it unnecessary to resolve accused's *Manifestation and Motion* and subsequent pleadings thereto for being moot and academic.

WHEREFORE, the instant case is hereby **DISMISSED** without prejudice for lack of jurisdiction.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice