REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	CTA CRIM. CASE NOS. O-321 to O-324
	Members:
- versus -	BAUTISTA, *Chairperson*, FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
CARLO J. CAPARAS, Accused.	Promulgated: MAY 31 2017 3:40 pm

x- -x

RESOLUTION

FABON-VICTORINO, J.:

For Court action is the Motion for Reconsideration dated January 30, 2017 filed by accused Carlo J. Caparas, praying for the reversal of the Resolution dated January 12, 2017 which denied for lack of merit his Demurrer to the Prosecution's Evidence dated August 22, 2016.

Accused claims that it was improper for the Court to use any admission he allegedly made, or his failure to deny the accusation against him as basis in rejecting his demurrer to evidence. He believes that any implied admission on his part cannot serve as basis to establish his guilt of the crimes charged anchored on the principle that in the prosecution of criminal cases, the burden of proof is upon the prosecution. This, in turn, springs from the Constitutional provision that the accused is presumed innocent until the contrary is proved. Thus, his silence on whether or not he filed VAT returns for taxable years 2006 to 2009 cannot adversely affect him as to eclipse the constitutional presumption of innocence in his favor.

Accused repeats his argument that the prosecution failed to establish that he is the person charged in the four (4) Informations filed with the Court. The evidence presented by the prosecution pertain to the person with TIN 157-741-560-000 while his TIN is 158-139-684-000, hence, he could not possibly be the person who failed to file the required VAT returns referred to in the four (4) Informations filed by the prosecution. An illustration is the Preliminary Assessment Notice (PAN), presented by the prosecution indicating his TIN as 158-139-684-000. His admission that he is the same person charged in the four (4) subject Informations will not cure the deficiency of the prosecution's evidence. Further, under the equipoise rule, in case of doubt, the same must be resolved in favor of the innocence of the accused.

Accused again cites the BIR's alleged failure to issue a valid assessment in violation of his right to be informed of the facts and law on which the assessment was made in violation of Section 228 of the Tax Code. Allegedly, the assessment presented by the prosecution pertains to the taxpayer with TIN 157-741-560-000 and not to him with TIN 158-139-684-000. Effectively, no valid assessment was issued against him.

Further, the basis of such assessment was only the two (2) Certifications issued by Victoria V. Santos and by Ma. Gracia R. Bolutano of the BIR. The said Certifications were however not presented during the trial. Without these Certifications, the issuance of the assessment has no basis, much more the filing of the criminal charges against him.

Likewise, no evidence was presented that such assessment was served and actually received by him. Absence proof of such receipt, the instant criminal cases are dismissible for failure to accord him due process.

Finally, accused opines that no preliminary investigation was conducted by the BIR since the latter filed the complaint against him with the Department of Justice (DOJ) a day before the period for his presentation of documents to it lapsed. Besides, no BIR investigation report was presented during the trial, an indicium that no preliminary investigation was conducted by the BIR before referring the case to the DOJ.

By way of comment,[1] the prosecution argues that accused failed to raise any new or substantial issue in his bid for reconsideration. In fine, no ground exists for the Court to reverse the assailed Resolution of January 12, 2017.

The argument that the person charged with TIN 157-741-560-000 is not him since his TIN is 158-139-684-000, has been amply discussed and passed upon by the Court in the assailed Resolution. And as consistently argued by the prosecution, the BIR records and the BIR's TIN based system show and identify accused as the person to whom TIN 157-741-560-000 was issued. The testimonies of and the documents identified by the prosecution witnesses show that accused owns TIN 157-741-560-000 and has not paid VAT and filed returns for taxable years 2006 to 2009 in violation of the Tax Code.

With his claim that his TIN is 158-139-684-000, accused has the burden of proof to prove the same during the presentation of defense evidence. Even granting that the PAN indicates the taxpayer's TIN as 158-139-684-000, the same is inconsequential because accused himself repudiates it on the ground that it is null and void. Accused should not be allowed to take an ambivalent stance, i.e., reject the PAN and at the same time conveniently claim it as proof in his favor.

Contrary to the statement of accused, the Certifications issued by Victoria V. Santos and Ma. Gracia R. Bolutano were presented in Court as Exhibits P-5 and P-42, respectively. More importantly, the two Certifications were not the sole basis for the issuance of the PAN against him. Third party information volunteered by his own clients and collated by the BIR also provided sufficient basis for issuance of assessment against accused.

On the alleged denial of due process, the prosecution is of the opinion that it is not proper in a demurrer to evidence, nor as a subject of the instant motion for reconsideration of

---

[1] Comment/Opposition (To the Accused's Motion for Reconsideration filed on January 31, 2017) dated February 24, 2017.

the denial of his demurrer. Moreover, this issue has previously been raised by accused and deemed without merit both in the preliminary investigation before the DOJ and during the trial before the Court.

On the alleged non-presentation of the investigation report, which accused claims as the sole proof that a preliminary investigation was conducted by the BIR, the prosecution counters that the discretion on what evidence to adduce to substantiate its allegations belongs to it. In any event, the evidence it presented sufficiently established that the BIR conducted an investigation resulting in the filing of the cases against accused for failure to file VAT return and pay the corresponding VAT in violation of Section 108, in relation to Section 255 of the NIRC, as amended.

In his Reply[2], accused again denies that TIN 157-741-560-000 is his. He posits that the prosecution cannot rely merely on what appears in the BIR Record or its computer data system with regard to his TIN in the light of his position. The inability of the prosecution to present other proof generates some doubts as to whom TIN 157-741-560-000 was actually issued, which redounds to his benefit being the accused.

Indeed, there is nothing in the Motion for Reconsideration filed by accused that was not amply discussed and determined by the Court in the assailed Resolution of January 12, 2017. Accused' argumentations are mere reiteration of the issues he raised in his demurrer to evidence. By latching on to his old arguments, accused magnifies his position justifying the need for presentation of his own evidence.

There is no arguing that accused' client, the Philippine Charity Sweepstakes Office (PCSO), as the withholding agent, had the legal obligation to withhold appropriate taxes from payments it made in his favor for the services he rendered to it. However, accused cannot possibly pass on the criminal liability to it, if there is any, simply because separate provisions in the Tax Code govern it and provide sanctions for its violation.

---

[2] Reply (to Prosecution's Comment/Opposition) dated March 6, 2017.

Contrary to the contention of accused, neither his admission, which is not even implied as he wants it to appear, nor his failure to deny that "he did not file VAT returns" was the basis of the Court's rejection of his demurrer to evidence. The evidence presented by the prosecution simply warrant his presentation of evidence to prove his hypothesis of innocence.

It is also incorrect for accused to state that no prior investigation was conducted by the BIR before referring the cases to the DOJ. The record is pregnant with documents indicating that prior investigation was conducted by the BIR during which it secured and collated various information leading to the filing of the complaint with the DOJ, which in turn conducted preliminary investigation for the purpose of filing the cases in Court.

On the issue of assessment, let it be emphasized that a final assessment is not necessary in the filing of the complaint with the DOJ. In fact, the BIR, in the interim, may still secure evidence for purposes of establishing the civil aspect of the case which is simultaneously filed with the criminal case in court.

On the application of the equipoise rule, it is at this instance, premature, if not inapplicable. The obtaining circumstances of the cases do not fall squarely to the situation where the rule may be applied. Equipoise rule provides that where the inculpatory circumstances are capable of two inferences, one of which is consistent with the presumption of innocence and the other compatible with a finding of guilt, the court must acquit the accused because the evidence does not fulfill the test of moral certainty and therefore is insufficient to support a judgment of conviction.[3]

Finally, it is unfortunate that accused even tried to mislead the Court by claiming that the Certifications issued by prosecution witnesses Victoria V. Santos and Ma. Gracia R. Bolutano were not presented in Court when in fact, they were authenticated by the very same persons who issued them.

---

[3] People v. Noel Santos, G.R. No. 127500, June 8, 2000.

It must be emphasized that in arriving at its ruling, or any ruling for that matter, the Court considered not just any alleged admission, or a solitary testimony, or a single document taken in isolation, but instead took into consideration the totality of the evidence presented. After such review of the totality of the evidence, it was the conclusion of the Court that the accused must be given the opportunity to present his evidence in his defense. Nothing has been put forward which will convince the Court to alter such finding.

WHEREFORE, the Motion for Reconsideration dated January 30, 2017 filed by accused is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NOS. O-321 to O-324**
	Members: *Bautista,* Chairperson, *Fabon-Victorino,* and *Ringpis-Liban, JJ.*
- versus -	
CARLO J. CAPARAS, *Accused.*	Promulgated:
	3:42 p.m.

x---x

DISSENTING OPINION

BAUTISTA, J:

I disagree with the ruling of the *ponencia* that the defense's Motion for Reconsideration should be denied for lack of merit. Contrary to the finding of the *ponencia,* the defense raised valid arguments which warrant the reversal of the Court's Resolution dated January 12, 2017 (the "Assailed Resolution") and the granting of its demurrer to evidence.

On June 8, 2016, the defense filed a Motion for Leave to File Demurrer to Evidence arguing that the prosecution failed to establish the guilt of the accused beyond reasonable doubt based on the following grounds: (a) the Tax Identification No. ("TIN") utilized by the prosecution to support its claim of non-filing refers to another person and does not belong to accused; (b) assuming there was an alleged omission to file his value-added tax ("VAT") returns, the prosecution failed to adduce evidence that the failure or omission was willful; and (c) the prosecution failed to adduce evidence to establish there was a valid assessment against the accused to warrant the filing of the complaint.

On July 4, 2016, the prosecution filed its Comment/Opposition (To the Accused's Motion for Leave of Court to File Demurrer to Evidence) wherein it argued that: (a) the TIN presented belongs to the accused; (b) the argument of the accused quoting the testimony of Dorothy Robles is misleading; and (c) accused should not be allowed to file the demurrer to evidence since the non-extendible five (5)-day period for filing the same from the time the prosecution has rested its case has already expired.

On July 13, 2016, the Court issued a Resolution denying the defense's Motion for Leave to File Demurrer to Evidence as the same was premature considering a pending incident on the prosecution's formal offer of evidence. The said pending incident was resolved by the Court in a Resolution dated August 11, 2016.

On August 22, 2016, the defense filed the present Motion for Leave to File Demurrer to Evidence and to Admit Attached Demurrer to Evidence wherein it reiterated the grounds stated in its Motion for Leave to File Demurrer to Evidence filed on June 8, 2016. In the attached Demurrer to the Prosecution's Evidence, the defense argues that: (a) no evidence was adduced to prove beyond reasonable doubt that the person referred in the exhibits to have failed to make or file the VAT returns is the accused; (b) accused was deprived of due process of law; (c) no preliminary investigation was conducted by the Bureau of Internal Revenue ("BIR") as mandated by Revenue Memorandum Order ("RMO") No. 27-10; (d) no evidence was adduced to show that the alleged omission or failure to file the VAT returns or pay the same were willful; and (e) there was no valid assessment or notice of assessment. Accordingly, the defense prayed that the Court dismiss the Information filed against the accused for failure to establish his guilt beyond reasonable doubt.

On September 19, 2016, the prosecution filed a Comment/Opposition (To the Accused's Motion for Leave to File Demurrer to Evidence and to Admit Attached Demurrer to Evidence dated August 22, 2016) wherein it contended that: (a) accused failed to pay and file his quarterly VAT returns for the calendar years (CYs) 2006 to 2009; (b) accused willfully failed to file the same for the aforementioned period; (c) accused cannot dictate what the prosecution should offer in evidence; (d) accused was accorded due process; and (e) the prosecution has presented evidence to prove the validity of the assessment. Thus, the prosecution prayed that the defense's Motion for Leave to File Demurrer to Evidence and to Admit

Attached Demurrer to Evidence be denied for lack of legal basis.

On January 12, 2017, the Court promulgated the Assailed Resolution finding that the opportunity to present the defense's evidence in full is warranted given the circumstances.

On January 31, 2017, the defense filed the present Motion for Reconsideration wherein it stated that: (a) the failure of the accused to deny the allegations made by the prosecution does not and cannot amount to an admission; (b) accused never admitted he was the same person indicated in the documents presented by the prosecution; (c) there was no valid assessment or notice of assessment; (d) accused was deprived of due process of law; and (e) no preliminary investigation was conducted by the BIR.

On February 27, 2017, the prosecution filed its Comment/Opposition (To the Accused's Motion for Reconsideration Filed on January 31, 2017) wherein it countered that: (a) accused is the holder of the TIN which failed to file the VAT returns; (b) the Certifications issued by the prosecution's witnesses were duly presented and identified during trial; (c) the accused was accorded due process; (d) the presentation and offer of the BIR's Memorandum of Report is not mandatory; and (e) accused failed to filed the VAT returns for the period covered.

On March 7, 2017, the defense filed a Reply (To Prosecution's Comment/Opposition) wherein it posited that the duty to prove ownership of the TIN in question solely lies with the prosecution.

A closer inspection of the arguments raised by the parties as well as the evidence presented by the prosecution reveals that the granting of the defense's demurrer to evidence is proper.

The *Revised Rules of Court* provides the procedure and guidelines for demurrers to evidence. Specifically, *Section 23, Rule 119* thereof states:

> Sec. 23. *Demurrer to evidence.* - After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon

> demurrer to evidence filed by the accused with our without leave of court.
>
> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
>
> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment.

In *Ong v. People*,[1] the Supreme Court discussed the nature of a demurrer to evidence in this wise:

> A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.

On the other hand, in *People v. Sandiganbayan*,[2] the Supreme Court laid down the basis and effect of a court's resolution on a demurrer to evidence, thus:

---

[1] G.R. No. 140904, October 9, 2000, 342 SCRA 372.
[2] G.R. No. 140633, February 4, 2002, 376 SCRA 74.

N

> Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court. Thus, in resolving the accused's demurrer to evidence, the court is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or support a verdict of guilt. The grant or denial of a demurrer to evidence is left to the sound discretion of the trial court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of discretion. Significantly, once the court grants the demurrer, such order amounts to an acquittal; and any further prosecution of the accused would violate the constitutional proscription on double jeopardy. This constitutes an exception to the rule that the dismissal of a criminal case made with the express consent of the accused or upon his own motion bars a plea of double jeopardy.

Applying the foregoing principles to the case at bar, the Court is required to ascertain whether the evidence presented by the prosecution is competent or sufficient to support a verdict of guilt. In this regard, a review of the evidence presented by the prosecution shows that the prosecution failed to overcome this burden. Specifically, the prosecution failed to prove that the TIN which supposedly belonged to the taxpayer who failed to file the required VAT returns for the CYs 2006 to 2009 indeed belonged to accused.

Based on the evidence presented by the prosecution, the following documents were issued against a Carlo Jose Caparas with TIN 157-741-560: Letter of Authority ("LOA")[3], Certification from the BIR's Information Systems Operations Service[4], Certification from the BIR's Document Processing Section[5], First Request for Presentation of Records[6], and Notice for Informal Conference ("NIC")[7].

Thereafter, the following documents were issued against accused with TIN 158-139-684: Preliminary Assessment Notice ("PAN")[8], Formal Demand Letter ("FLD")[9], Audit Result/Assessment

---

[3] *Records, CTA Crim. Case No. O-321, Vol. 4, Exhibit "P-3," Letter of Authority,* p. 1375.
[4] *Id., Exhibit "P-5," Certification,* p. 1377.
[5] *Id., Exhibit" P-42," Certification,* p. 1428.
[6] *Id., Exhibit "P-14," First Request for Presentation of Records,* p. 1393.
[7] *Id., Exhibit "P-15," Notice for Informal Conference,* p. 1394.
[8] *Id., Exhibit "P-16," Preliminary Assessment Notice,* pp. 1395-1397.
[9] *Records, Vol. 4, Exhibit "P-25," Formal Demand Letter,* pp. 1408-1411.

Notices (BIR Form No. 0401)[10], and Revenue Officer's Audit Reports on VAT (BIR Form No. 0507)[11].

It can be seen from the evidence presented by the prosecution that the basis for the alleged violation by accused of *Section 108 in relation to Section 255 of the 1997 National Internal Revenue Code*[12], *as amended ("1997 NIRC")* belongs to a different taxpayer. Accused admits that his TIN is 158-139-684, and not 157-741-560. The latter TIN, for which the LOA, BIR Certifications, request for presentation of records, and NIC were issued were the bases for the investigation conducted by the BIR and, subsequently, by the Department of Justice ("DOJ"). It was only upon the issuance of the PAN and the subsequent documents that the TIN and identity of accused were presented. Hence, it cannot be traced how the latter set of documents were issued when, to begin with, the LOA indicated a different TIN, *i.e.*, the PAN and FLD were issued based on a LOA for a different TIN. Further, it cannot be said that the BIR Certifications stating the non-filing of the VAT returns for the period covered are attributable to accused as, again, the TIN indicated therein is different from that of the accused. These inconsistencies are violative of the right of accused to due process because the assessment and subsequent informations were not made properly.

In *Republic v. Sandiganbayan*[13], the Supreme Court elucidated on the requirement for substantial as well as procedural due process in this wise:

> Due process of law has two aspects: substantive and procedural due process. In order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both substantive and the procedural requirements thereof.
>
> In the present context, substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property. On the other hand, procedural due process means compliance with the procedures or steps, even periods, prescribed by the statute, in conformity with the

---

[10] *Records, Vol. 4, Exhibits "P-30" to "P-33," Audit Result/Assessment Notices (BIR Form No. 0401)*, pp. 1416-1419.
[11] *Id., Exhibits "P-38" to "P-41," Revenue Officer's Audit Report on VAT (BIR Form No. 0507)*, pp. 1424-1427.
[12] *Republic Act No. 8424*, as amended (1997).
[13] G.R. No. 152154, November 18, 2003, 416 SCRA 133.

/ʋ

standard of fair play and without arbitrariness on the part of those who are called upon to administer it.

As applied to the present case, accused cannot be said to have been accorded procedural due process by virtue of the inconsistency as regards the TIN indicated in the LOA vis-à-vis the TIN indicated in the assessment. The failure of the prosecution to establish the continuity of the administrative procedure on the issuance of the assessments clearly establishes the violation of the right of due process of the accused.

Accordingly, I vote to grant the present Motion for Reconsideration. The January 12, 2017 Resolution should be set aside and the defense's Motion for Leave to File Demurrer to Evidence and to Admit Attached Demurrer to Evidence should be granted. Consequently, CTA Crim. Case Nos. O-321 to O-324 should be dismissed for insufficiency of evidence.

LOVELL R. BAUTISTA
Associate Justice