REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CTA CRIM. CASE NO. O-330

Members:
BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

FELONILA Z. CALUAG,
Accused.

Promulgated:

JAN 19 2018
11:58 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J*.:

For resolution is the "Motion for Reconsideration" filed by accused through her counsel on September 22, 2017, praying that the Decision be set aside and that an order of acquittal be issued.

On October 19, 2017, 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 6, 2017, the plaintiff filed a "Comment/Opposition (To the Accused's Motion for Reconsideration filed on September 22, 2017)."

In her "Motion for Reconsideration," accused repeatedly claims that she earned income in her sale of gold to the Bangko Sentral ng Pilipinas (BSP) but such income was sufficient only to cover her family's basic daily needs and nothing more. Accused argues that she should not be convicted because the prosecution failed to prove the amount of accused's income to justify conviction. Accused likewise argues that her admission of miniscule income is not an admission of the Letters of Delivery and Sale presented by the prosecution and that the Letters of Delivery and Sale were not authenticated. Moreover, accused argues that the BSP is at fault for its failure to withhold taxes due on the sale of gold by the traders. To convict accused of the instant charges would violate her constitutional right to equal protection of laws. Accused should not be prosecuted for the violation of law committed by the BSP.

On the other hand, in the Comment/Opposition of the plaintiff, it merely stated that the "Motion for Reconsideration" was filed out of time because the last day for filing the same was on September 21, 2017. The instant motion was filed on September 22, 2107. Hence, the plaintiff asserts that the decision already became final and executory when the instant motion was filed in Court.

After evaluation, the Court finds that the "Motion for Reconsideration" was filed on time. The date September 21, 2017 (Thursday) was declared by President Rodrigo Roa Duterte as a National Day of Protest,[1] a non-working holiday. Section 1, Rule 22, of the Rules of Court provides:

> *How to compute time.* – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of period, as thus computed, falls on a Saturday, a Sunday, or <u>a legal holiday in the place where the court sits, the time shall not run until the next working day.</u> *(Emphasis ours)*

The instant "Motion for Reconsideration" was filed on September 22, 2017, hence it was timely filed.

We shall now resolve the merits of the "Motion for Reconsideration."

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

Accused was charged of willful non-filing of income tax return. As discussed in the assailed Decision, all the elements of the crime were sufficiently proven by the plaintiff.

As found by the Court, the fact of sale was not denied by accused. She did not deny that she executed the Letters of Delivery and Sale offered in

[1] Proclamation No. 319.

evidence by the plaintiff. The Court admitted as evidence the Letters of Delivery Sale. The authenticity of the same were recognized during the hearing on October 23, 2013, when the prosecution moved that the provisionally marked documents (Exhibits "C to C^5) be crossed out and be permanently marked in view of the Certification issued by the Ms. Erlinda R. Derramas.[2] With regard to the amount of tax to be paid by accused, the Court will not disturb its finding that the evidence presented by the prosecution is adequate to prove accused's tax liability.

Accused should not put the blame on the BSP why she is being indicted of non-filing of an Income Tax Return (ITR) and non-payment of income taxes. The case against BSP for non-payment of excise tax is diverse from the instant case. Accused should not make an excuse that she did not pay the taxes because of the representation of the BSP that gold traders are not required to pay taxes. Accused ought to know that she is required to file an ITR and pay the corresponding income taxes pursuant to Sections 23, 32, 51 and 74 of the National Internal Revenue Code (NIRC) of 1997, as amended, because she earned income. Ignorance of the law excuses no one from compliance therewith.[3]

Section 23 of the NIRC provides:

> "*General Principles of Income Taxation in the Philippines.* - Except when otherwise provided in this Code:
>
> (A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;
> xxx"

Section 32 of the NIRC provides:

> "*Gross Income.-*
> (A) *General Definition.* – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including, but not limited to, the following items:
>
> (1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;

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[2] TSN dated October 23, 2016, p. 16.
[3] Article 3 of the Civil Code of the Philippines.

(2) Gross income derived from the conduct of trade or business or the exercise of a profession;
(3) Gains derived from dealings in property;
(4) Interests;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Annuities;
(9) Prizes and winnings;
(10) Pensions; and
(11) Partner's distributive share from the net income of the general professional partnership."

Section 51 of the NIRC provides:

"Individual Return. –
(A) Requirements.-
(1) Except as provided in paragraph (2) of this Subsection, the following individuals are required to file an income tax return:
(a) Every Filipino citizen residing in the Philippines;
(b) Every Filipino citizen residing outside the Philippines, on his income from sources within the Philippines;
(c) Every alien residing in the Philippines, on income derived from sources within the Philippines; and
(d) Every nonresident alien engaged in trade or business or in the exercise of profession in the Philippines.

Section 74 of the NIRC provides:

Declaration of Income Tax for Individuals.-
(A) In General. – Except as otherwise provided in this Section, every individual subject to income tax under Sections 24 and 25 (A) of this Title, who is receiving self-employment income, whether it constitutes the sole source of his income or in combination with salaries, wages and other fixed or determinable income, shall make and file a declaration of his estimated income for the current taxable year on or before April 15 of the same taxable year. In general, self-employment income consists of the earnings derived by the individual from the practice of profession or

conduct of trade or business carried on by him as a sole proprietor or by a partnership of which he is a member. *xxx*"

In the assailed Decision, the Court ruled as follows:

"Based on the evidence presented, it is clear that accused transacted with the BSP, sold gold to the BSP, received payment from the sale of gold, and earned income from her sale of gold.

However, accused repeatedly argued that only a small amount of profit was earned or sometimes she even lost profit because of the expenses incurred in the sale of gold. The Court is not convinced by the self-serving statements of accused. Her declarations during her testimony reveal that she profited from her sale of gold to the BSP. Accused cannot be permitted to invoke an excuse that she did not earn profit to exculpate her from criminal liability. The transactions in this case involve millions of pesos. It is highly improbable that accused did not earn income after being paid the amount of Php243,087,130.70. Hence, it is logical that a more stringent application of the mandate of our tax laws be applied to accused. The omission on the part of accused to file her ITR, knowing that she makes money out of her sale of gold to the BSP is tantamount to a willful non-filing of a return."

In view of the foregoing, the Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, the instant **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice