REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM CASE NO. O-212** For: Tax Evasion under Section 254 of the NIRC of 1997, as amended
- versus -	
	Members: **UY,** ***Chairperson,*** *and* **RINGPIS-LIBAN,** ***JJ.***
WILLIAM R. VILLARICA, Accused.	Promulgated: JUN 26 2019 3:10 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution is plaintiff's "Motion for Reconsideration (of the Decision Promulgated on February 26, 2019)"[1] ("Motion for Reconsideration") filed on March 13, 2019, praying that the Decision[2] issued on February 26, 2016 ("assailed Decision") dismissing the criminal case against accused William R. Villarica ("Villarica") be set aside, and the instant Motion for Reconsideration be given due course.

Plaintiff's Motion for Reconsideration assails not just the civil aspect of the case but also the criminal aspect of the Decision. Citing *People of the Philippines v. Court of Tax Appeals-First Division and Juan Miguel M. Arroyo*[3], Plaintiff argues that the filing of a motion for reconsideration on the criminal aspect with the CTA Division that issued the assailed Decision is the proper remedy for the State.

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1 Docket, pp. 3358-3374.

2 *Id.*, pp. 3318-3348.

3 G.R. Nos. 239519 and 239552-53, cited in Plaintiff's "Motion for Reconsideration (of the Decision Promulgated on February 26, 2019)".

For the criminal aspect, plaintiff claims that it was ahle to establish all the elements under Section 254 of the National Internal Revenue Code ("NIRC") of 1997, as amended. According to plaintiff, using the expenditure method, it was able to provide sufficient evidence to prove the guilt of accused Villarica beyond reasonable doubt in willfully filing a fraudulent return with intent to evade tax for taxable year 2007.

As to the civil aspect, plaintiff contends that contrary to the findings of this Court, accused Villarica was given opportunity to respond within fifteen (15) days from the date of receipt of the Preliminary Assessment Notice ("PAN"). However, he failed to do so. In fact, the Formal Letter of Demand dated June 16, 2011 with Assessment Notice ES-IT-2007-0921 ("FLD") was personally served on July 01, 2011, eighteen (18) days after the receipt of the PAN to ensure that accused Villarica had fifteen (15) days to reply to the PAN. Plaintiff adds that since there was no clear showing that accused Villarica protested the FLD, the assessment is already final, executory and demandable. Lastly, plaintiff points out that even if there was an acquittal on the criminal aspect, there can be still a finding of civil liability.

On March 22, 2019, the Court issued a Resolution[4] ordering accused Villarica to file his comment on plaintiff's Motion for Reconsideration within fifteen (15) days from notice.

On April 12, 2019, accused Villarica filed his "Comment/Opposition [Re: Motion for Reconsideration dated 13 March 2019]" *via* registered mail, containing the following assertions:

1) The Motion for Reconsideration filed by plaintiff violates the accused's right against double jeopardy;

2) Plaintiff failed to prove that the accused earned any income for the year of 2007; and

3) The accused was denied due process; therefore, the assessment is null and void.

On May 03, 2019, the Court issued a Resolution submitting plaintiff's Motion for Reconsideration for resolution.

We rule.

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[4] Docket, p. 3376.

At the outset, We deny plaintiff's Motion for Reconsideration in regard to the criminal aspect of this case. Section 21, Article III of the Constitution[5] guarantees that "no person shall be twice put in jeopardy of punishment for the same offense." Thus, the rule is that a judgment acquitting the accused is final and immediately executory upon its promulgation, and that accordingly, the State may not seek its review without placing the accused in double jeopardy.[6]

The Supreme Court in *Antonio Lejano v. People of the Philippines*[7] held:

> "But, as a rule, a judgment of acquittal cannot be reconsidered because it places the accused under double jeopardy. x x x
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> xxx xxx xxx
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> Ultimately, what the complainant actually questions is the Court's appreciation of the evidence and assessment of the prosecution witnesses' credibility. He ascribes grave error on the Court's finding that Alfaro was not a credible witness and assails the value assigned by the Court to the evidence of the defense. In other words, private complainant wants the Court to review the evidence anew and render another judgment based on such a re-evaluation. This is not constitutionally allowed as it is merely a repeated attempt to secure Webb, et al's conviction. The judgment acquitting Webb, et al is final and can no longer be disturbed."

Although the rule on double jeopardy admits of two exceptions: (1) where there has been deprivation of due process and where there is a finding of a mistrial, or (2) where there has been a grave abuse of discretion under exceptional circumstances,[8] none of these exceptions are present in the case at bar. Plaintiff had not been deprived of due process nor was there a mistrial because both plaintiff and accused were actually able to present their case and their witnesses. There is also no abuse of discretion amounting to lack or excess of jurisdiction.

From the foregoing, a re-examination of the elements of Section 254 of the NIRC of 1997, as amended, on the alleged tax evasion of accused can no longer be made. Plaintiff's arguments on the matter have already been exhaustively considered and passed upon by this Court in the assailed Decision. Our ruling acquitting accused Villarica is already final and executory.

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5 The 1987 Constitution of the Republic of the Philippines, Ratified February 02, 1987.

6 Dennis T. Villareal v. Consuelo C. Aliga, G.R. No 166995, January 13, 2014.

7 G.R. Nos. 176389 and 176864, January 18, 2011.

8 People of the Philippines v. Lino Alejandro y Pimentel, G.R. No 223099, January 11, 2018.

As for the civil aspect of Plaintiff's Motion for Reconsideration, We also find plaintiff's arguments to be untenable.

It is true that courts can acquit an accused on reasonable doubt but still order payment of civil liability in the same case, since "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"[9]. Even so, this rule does not apply when the court declares in its judgment that the fact from which the civil liability might arise did not exist.

As found in the assailed Decision, there was a violation of accused Villarica's right to due process. Thus, the subject assessment was declared invalid. There being no valid assessment, there is no obligation for the accused to pay the alleged assessed deficiency taxes.

Plaintiff insists however that the 15-day period to protest/respond to the PAN was complied with. According to plaintiff, the FLD was received by accused Villarica on July 01, 2011, or eighteen (18) days after he received the PAN.

This proposition is obviously misleading and repugnant to the purpose for which the 15-day period is prescribed under the rules. The 15-day period provides a taxpayer the opportunity to fully exercise its right to due process, to give it time to prepare and amply ventilate its defense for the consideration of the taxing authority.

Section 3[10] of Revenue Regulations ("RR") No. 12-99, as amended by RR 18-2013 is very clear. It provides that there must be at least fifteen (15) days between the time a PAN is received by a taxpayer and the issuance by the Bureau of Internal Revenue (BIR) of an FLD. When plaintiff in the instant case issued the FLD only

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9 Republic Act No. 9282, March 30, 2004, Section 7(b)(1).

10 SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 Preliminary Assessment Notice (PAN). – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx.

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

three (3) days after accused Villarica received the PAN, it essentially ignored or disregarded any defense of the accused against the assessment. In fine, any argument or evidence adduced by accused Villarica in support of its reply/protest against the PAN was pointless, if not moot, for at that time, plaintiff was already dead-set or bent on upholding the assessment as contained in the FLD. This indubitably constitutes denial of due process.

With the FLD having been issued in violation of accused Villarica's right to due process, the assessment contained therein is therefore void. Being invalid, the assessment cannot become final and executory. Hence, We see no reason to reverse Our Decision dated February 26, 2016 where We stated that there was no basis for accused Villarica's alleged civil tax liability.

WHEREFORE, premises considered, plaintiff's "Motion for Reconsideration (of the Decision Promulgated on February 26, 2019)" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ERLINDA P. UY
Associate Justice