REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CTA CRIM CASE NO. O-O71 & O-O85

-versus-

Members:

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

BIENVENIDO S. DIMSON,
Respondent.

Promulgated:

NOV 12 2014
[illegible] 5:59 p.m.

x---x

RESOLUTION

For resolution is the "Motion for Reconsideration (of the Decision Promulgated on 2 July 2014)" filed by accused on July 17, 2014 which prays that the Court reconsider, set aside and reverse its Decision and render a new one for the acquittal of the accused.

During the hearing on the accused's Motion for Reconsideration, the prosecution was given a period of fifteen (15) days within which to its Comment thereon. The defense counsel was also granted a period of ten (10) days from receipt of the Comment, to file a reply, if necessary. Counsel for the People was also granted the same period to file a rejoinder, if necessary. Thereafter, the incident shall be deemed submitted for resolution of the Court.

On September 10, 2014, the prosecution filed its "Comment To Accused's Motion for Reconsideration (Of the Decision Promulgated on 2 July 2014)."

According to Records Verification Report dated October 8, 2014, the defense failed to file his Reply to the prosecution's Comment to Accused's Motion for Reconsideration.

Thus, the "Motion for Reconsideration" is now submitted for resolution.

The accused presented the following grounds in his Motion for Reconsideration:

I. The prosecution failed to prove the guilt of the accused Bienvenido S. Dimson beyond reasonable doubt. Accused argue that the Court failed to consider the inconsistencies of the testimonies of the prosecution witnesses regarding the examination of books of accounts and other accounting records of the accused and the process of serving the notices to the accused. According to accused, the zealousness of the BIR in pursuing the case cannot just rest on mere suspicion and presumption of regularity, which may be controverted and challenged by clear and convincing proof to the contrary.

II. Dimson Manila, Inc. did not receive income from the said joint venture projects for it to be liable to pay income tax deficiencies. Accused maintains that the company did not actually receive such income because Dimson Manila, Inc. did not participate in the joint venture projects it originally joined. That since there was no income received, no income tax is due to the corporation. Accused is not actually avoiding the payment of taxes due because there were no taxes due to begin with. The accused had presented witnesses to prove that the declared income in the Income Tax Returns (ITR) for taxable years 1999 and 2000 refer to the Joint Venture projects which Dimson Manila, Inc. failed to have any participation.

III. The Honorable Court erred in finding the accused jointly and severally liable with Dimson Manila, Inc. in the amount of Php68,016,046.85 for taxable year 1999 and in the amount of Php10,031,184.02 for taxable year 2000, inclusive of penalties, surcharges and interest, plus 20% delinquency interest. Accused asserts that in Criminal Case No. O-O71, the prosecution witness testified that upon reassessment, the amount of the alleged income tax deficiency was not as high and iniquitous in the amount of Php10,031,184.02 and that in Criminal Case No. O-O85, the prosecution's witness testified that the amount of the alleged income tax deficiency is only Php3,507,083.66 excluding of penalties and not Php68,016,046.85. Thus, the computation of the alleged income tax deficiencies is highly doubtful and was not consciously examined. A doubtful computation can hardly be the basis of a criminal conviction.

The prosecution counters that the grounds relied upon by the accused are conclusions of the accused in his desperate move to reverse the Decision of the Court. The prosecution was able to prove and substantiate each and every elements of the crime charged: that Dimson Manila, Inc. is the juridical person required to pay tax under Section 23(E) of the NIRC where penal liability is pinned upon the responsible officer, specifically, accused Bienvenido Dimson being its President; that the deficiency income taxes were sufficiently established by the evidence presented by the prosecution and that the notices were received by accused, proving knowledge of the tax deficiencies being demanded by the BIR; and that willful non-payment of the tax deficiencies was proven by direct admission of the accused on cross-examination.

The Motion for Reconsideration lacks merit.

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

Accused was charged of willful non-payment of deficiency income taxes. As discussed in the Decision, all the elements of the crime were sufficiently proven by the prosecution. Accused is the person responsible for the acts of the corporation; accused was aware that there was demand on him to pay deficiency taxes; and accused willfully failed to pay the assessed tax liabilities in both cases at the time it was legally required to be paid.

Anent accused's argument that the taxes due had already been paid by another party legally liable to pay the same, this matter was thoroughly discussed by the Court in its Decision. To reiterate, the evidence presented is not sufficient to overturn his declaration of income in his ITR.

Accused offered in evidence the Joint Affidavit[1] which states that the Joint Ventures Concrete Aggregates Corporation and Manila Amman Trading Corporation jointly consent to the relief of equipment and financial responsibility of Dimson (Manila), Inc. in the Quirino Highway contract with the DPWH; Certification dated March 7, 2007[2] which states that the Quirino Highway Project, Tagkawayan-Del Gallego Section, Quezon & Camarines North Provinces was undertaken only by the Authorized Managing Office Concrete Aggregates Corporation and Manila Amman Trading without any participation of Dimson (Manila), Inc.; and the Certification dated January 30, 2007[3] which states that the construction of the Luneta Waterfront Development was solely undertaken by the Authorized Managing Office Hilmarc's Contruction Corporation without any participation of Dimson

---

[1] Exhibit "1", executed by the Presidents and General Manager of Dimson (Manila), Inc., Manila Amman Trading Corporation and Concrete Aggregates Corporation.
[2] Exhibit "2", executed by the General Manager of Concrete Aggregates Corporation.
[3] Exhibit "3", executed by Authorized Managing Partner of Hilmarc's Construction Corporation.

(Manila), Inc. and that all the project revenues were reported under the name of the Joint Venture. The Joint Affidavit and Certifications, which were executed during the time that these cases were already on trial are not sufficient to prove that accused did not participate in the joint venture projects. While the Certification issued by Emmanuel A. Rapadas mentions that all taxes were paid by Concrete Aggregates Corporation and Manila Amman Trading[4], Emmanuel A. Rapadas was not presented to testify on the matters stated therein. No other evidence were presented to show that the taxes due from the joint venture projects of the accused were paid and shouldered by the joint venture partners of the accused.

It bears stressing that the willfulness of the act of the accused was manifested through his failure to make the necessary amendments or corrections in the ITRs, if he had really no intention to defraud the government. The prosecution was able to prove that the accused was properly notified by the BIR regarding the assessment notices. Accused did not submit evidence before the administrative body to refute the assessments.

In fine, accused was not able to give convincing evidence to back up his assertion that he indicated the income only "for purposes of complying with the DPWH requirement."

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

SO ORDERED.

Ma. Belen S. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

---

[4] Exhibit "2".