CTA Form No. 8

18-000504-0340

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NOS. O-679 to O-682

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

RAPPLER HOLDINGS CORPORATION/MARIA A. RESSA,
Accused.

NOTICE OF RESOLUTION

To:

PROS. GEN. BENEDICTO A. MALCONTENTO
ASST. STATE PROS. ZENAMAR J.L. MACHACON-CAPARROS
Department of Justice
Padre Faura Street
Ermita, Manila 1000

ATTY. CATHERINE ROSE R. TORTOLES
ATTY. JAMAICA KAY DELA CRUZ
ATTY. GRACE E. UNTALAN
ATTY. ROBERTO G. DAMIAN, JR.
Bureau of Internal Revenue
Room 704, 7th Floor, Prosecution Division
BIR National Office Building
BIR Road, Diliman, Quezon City

MS. MARIA A. RESSA
Unit B, 3/F, North Wing, Estancia Offices
Capitol Commons, Ortigas Center, Pasig City

ANGARA ABELLO CONCEPCION REGALA & CRUZ
22nd Floor, ACCRALAW Tower
2nd Avenue corner 30th Street
Crescent Park, West Bonifacio Global City
1635 Taguig City

GREETINGS:

You are hereby notified by these presents that on **May 18, 2023,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 23, 2023.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

RAPPLER HOLDINGS CORPORATION/ MARIA A. RESSA,
Accused.

CTA Crim. Case Nos. O-679 to O-682

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN,
BACORRO-VILLENA[1], and
REYES-FAJARDO, *JJ.*

Promulgated:
MAY 18 2023; 8:15AM

x- x

RESOLUTION

For resolution is plaintiff's *Formal Entry of Appearance with Motion for Reconsideration* filed on February 2, 2023 with accused's *Comment/Opposition (To the Motion for Reconsideration Dated 01 February 2023)* posted on February 27, 2023 and received by the Court on March 2, 2023.

In view of the Court's Resolution dated February 10, 2023 taking note of the Formal Entry of Appearance of plaintiff's counsels, this Court will now proceed to resolve plaintiff's *Motion for Reconsideration.*

Plaintiff seeks the reconsideration of the Court's Decision promulgated on January 18, 2023, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the Court rules as follows:
>
> 1. In CTA Crim. Case Nos. O-679, O-680, O-681 and O-682, accused Rappler Holdings Corporation and Maria A. Ressa are **ACQUITTED**, for failure of the prosecution to prove their guilt beyond reasonable doubt;

---

[1] Special Member.

2. No civil liability may be adjudged against the accused as the alleged unpaid tax obligations have not been factually and legally established and proven; and

3. The respective cash bail bonds of the accused for the said cases are likewise **CANCELLED** and ordered **RELEASED** to them upon presentation of proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED."

Plaintiff declares that there will be a miscarriage of justice if the assailed Decision is not reversed alleging that the Court misapprehended the facts of the case when it acquitted the accused in the above-captioned case. Plaintiff argues that accused Rappler Holdings Corporation (RHC) as a duly registered domestic corporation is duty bound to file its annual income tax returns (ITR) and value-added tax (VAT) returns and supply therein correct and accurate information and to pay the corresponding taxes pursuant to the relevant provisions of the 1997 National Internal Revenue Code (NIRC), as amended. It contends that accused, as a dealer in securities, filed its annual ITR and quarterly VAT returns for taxable year 2015 indicating zero declarations of income and sales in spite of the income it derived from the purchase and re-sale of securities, particularly from its purchases of shares of Rappler Inc.'s (RI) and their subsequent re-sale to NBM Rappler and Omidyar Network (ON) through the issuance of the Philippine Depositary Receipts (PDRs). Plaintiff considers the PDRs as securities which were sold three (3) times by RHC to different holders on a regular basis from the time of its incorporation until such time that the Bureau of Internal Revenue (BIR) discovered the same, suggesting that the sales thereof are not isolated transactions but part of the activities of RHC as a dealer in securities. Plaintiff maintains that RHC's registration as a holding company does not detract from the fact that the actual business activities of RHC classifies it as a dealer in securities and must be taxed as such.

The alleged income tax deficiencies of accused RHC stems from the theory of plaintiff that RHC earned trading income from the issuance of PDRs to foreign entities, namely NBM Rappler and ON on various occasions. Plaintiff asserts that the Court failed to see that the sale of a PDR involves the transfer of economic rights or beneficial ownership in RI shares and income was derived therefrom by the accused. om

Plaintiff attributes the alleged erroneous conclusion by the Court from its failure to see that RHC actually received cash from the PDR transactions from NBM Rappler and ON as admitted by accused Maria A. Ressa in her Amended Judicial Affidavit[2], quoted as follows:

> "Q. – What happened after NBM and RHC reached an agreement on the PDR transaction?
>
> A. – In accordance with the terms of the investment, NBM remitted the total investment in the form of cash, RHC and NBM executed a PDR instrument confirming the issuance (of) 12,028,718 PDRs in favor of NBM, RHC and RI also entered into a subscription agreement separately, and all of the cash received from NBM less the cost used to pay for documentary stamp taxes where thereafter invested by RHC in RI."

Plaintiff describes the nature of a PDR as follows:

> "A PDR is a derivative. Under the Implementing Rules and Regulations of the Securities and Regulations Code, the term derivative is defined as a "financial instrument, including options and warrants, whose value depends on the interest in or performance of an underlying security, but which does not require any investment of principal in the underlying security."

Plaintiff goes on to elaborate its theory by highlighting the significance of a PDR *vis a vis* its role in accused's earning of trading income. The PDR, according to plaintiff, derives its value from the underlying RI shares, hence, the holder thereof gains economic benefits such as financial returns through a pass-through arrangement, whereby any amount accused RHC would receive from RI would then pass-through entirely to the holders of the PDR.

Plaintiff disagrees with the Court in holding that the three (3) requisites for the imposition of income were not present in the subject transactions. On the contrary, plaintiff posits that RHC already gained income and profit when it sold the PDRs at an excess of the cost of the underlying shares.

---

[2] Exhibit "A-116" and "A-116-A", Docket (Crim. Case No. O-679) – Vol. X, pp. 6487 to 6525.

Even granting that the prosecution was not able to prove the guilt of the accused beyond reasonable doubt, plaintiff maintains that such acquittal does not serve as a hindrance to collecting the corresponding civil liability arising from the acts of the accused and that the latter should still be obligated to pay the alleged income tax and VAT deficiencies for taxable year 2015.

In their *Comment/Opposition (To the Motion for Reconsideration Dated 01 February 2023)*, accused pronounce that the filing of plaintiff's Motion for Reconsideration is a violation of their constitutional right against double jeopardy and cites the "finality-of-acquittal doctrine," that proscribes prosecution for the same act after a judgment of acquittal is rendered by the Court.

Citing the case of *People vs. Uy,*[3] accused reiterate the rationale of the rule against double jeopardy, i.e., "to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes." This rationale is sourced from Section 7 of Rule 117 of the Revised Rules of Criminal Procedure which provides that the acquittal of the accused shall be a bar to another prosecution for the same offense charged.

Accused further call the Motion for Reconsideration of plaintiff as *pro forma* as it contains mere reiterations of the arguments it raised during trial and which have already been passed upon by the Court. Plaintiff, according to the accused, did not even specify in its motion the findings and conclusions of the Court that were allegedly contrary to law or not supported by evidence and this alone should be a ground for dismissing the instant Motion for Reconsideration.

As to the substantive merits of the arguments of plaintiff, accused contravene the contention that it is a dealer in securities because it had made substantial, frequent and repeated trading of securities (in stock and equity derivatives). On the contrary, accused state that there is no evidence that will prove that RHC was habitually nor regularly engaged in the purchase, re-sale of or "trading of any securities" because these were done for a legitimate business purpose as a holding

---

[3] G.R. No. 158157, September 30, 2005. *cmn*

company, i.e., to raise capital for its subsidiary Rappler Inc. (RI). Accused further disagree with the allegation of plaintiff that it derived trading income from the issuance of the subject PDRs and insist that said issuance to NBM Rappler and ON did not involve a sale of shares of stock but were mere investment transactions. Accused echo the discussion of the Court on the elements for an income tax liability to attach and its conclusion that none of these were present in the PDR transactions with NBM and ON as there were no sale of securities.

Accused brand the arguments of plaintiff in its Motion for Reconsideration as baseless and highly speculative particularly its allegation that RHC is a mere "pass through entity." Accused reiterate that RHC is a holding company and not a mere pass-through entity and in issuing the PDRs, it did not sell any shares and neither were the holders thereof classified as "customers" who purchased shares. Accused allege that even the Court of Appeals recognize that in a PDR transaction, the issued PDR does not make the PDR holder a shareholder of RI for as long as the "option" is not exercised by the PDR holder.

As regards the civil liability that may be separately charged against them in spite of a judgment of acquittal, accused assert that the Court has already made a factual determination that RHC has no tax deficiency for income tax and VAT, hence, plaintiff can no longer prosecute the same

RULING OF THE COURT

We shall first resolve the timeliness of the filing of plaintiff's *Motion for Reconsideration* with the Court.

On January 18, 2023, the Court issued a Decision in the above-captioned cases, acquitting the accused in CTA Crim. Case Nos. O-679, O-680, O-681 and O-682.

A copy of the assailed Decision was received by the Prosecution Division of the Department of Justice (DOJ) on January 19, 2023 and by the Prosecution Division of the Bureau of Internal Revenue (BIR) on January 20, 2023.[4]

---

[4] Court Docket, Volume No. XIV, page 8772.

Pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), a party dissatisfied with a decision of the Court must file a motion for reconsideration or new trial within fifteen (15) days from receipt thereof, and we quote:

> **"Rule 15**
> **Motion for Reconsideration or New Trial**
>
> **Section 1.** *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question."

Counted from plaintiff's counsels' receipt of the assailed Decision, plaintiff had until February 4, 2023 to file its Motion for Reconsideration. Records show that plaintiff filed a Formal Entry of Appearance with Motion for Reconsideration on February 2, 2023, hence, the instant motion was timely filed.

The Court, however, finds that plaintiff's Motion for Reconsideration must fail.

This Court adheres to the finality-of-acquittal doctrine that prescribes that a judgment of acquittal can no longer be reconsidered because it violates the Constitutional provision against double jeopardy. Section 21, Article III of the 1987 Philippine Constitution provides, to wit:

> "Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

Consistent with said constitutional principle, jurisprudence is replete with declarations that no person shall be twice put in jeopardy of punishment for the same offense.[5] The Supreme Court further ruled in the case of *Lejano vs. People,* [6] (*Lejano* case) that to reconsider a judgment of acquittal places the accused twice in jeopardy of being

---

[5] *People of the Philippines vs. Sandiganbayan (Fourth Division) and Bienvenido A. Tan, Jr.*, G.R. No. 152532, August 16, 2005.
[6] Resolution, G.R. No. 176389, January 18, 2011.

punished for the crime of which he has already been absolved. It is important to note, however, that exceptions exist to the finality-of-acquittal doctrine. In the *Lejano* case, the Supreme Court further ruled that, "a motion for reconsideration after an acquittal is possible," but goes on to say that the grounds for exception are exceptional and narrow, and we quote:

> "Of course, on occasions, a motion for reconsideration after an acquittal is possible. **But the grounds are exceptional and narrow as when the court that absolved the accused gravely abused its discretion, resulting in loss of jurisdiction, or when a mistrial has occurred**." (emphasis supplied)

In the recently decided case of *Estate of Williams vs. Percy*,[7] the Supreme Court elaborated upon the exception to the finality-of-acquittal doctrine, in this manner:

> "Case law provides only one exception to the finality-of-acquittal doctrine, i.e., **when the trial court has acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham, thus, rendering the assailed judgment void**." (emphasis supplied)

A review of the records of this case reveals quite clearly that none of the exceptions is obtaining in the instant consolidated cases. A full-blown trial was conducted in these consolidated cases where both the prosecution and the accused were given the opportunity to present both testimonial and documentary evidence. The Court in its eighty-one (81) paged decision dated January 18, 2023, had comprehensively reviewed, analyzed and appreciated all of the said evidence in coming up with the decision to acquit the accused, hence it is safe to assume that the trial conducted is not a sham nor was there a mistrial that would render the judgment void.

Notwithstanding the above conclusion, the Court finds it imperative to rule upon the argument of plaintiff that accused should still be made liable for the civil liability by paying the alleged deficiency income tax and VAT for taxable year 2015.

---

[7] G.R. No. 249681, August 31, 2022.

Plaintiff, citing the case of *Dy vs. People,*[8] asserts that the civil liability survives an acquittal in a criminal case for failure to prove guilt beyond reasonable doubt.

As a general rule, the acquittal of the accused does not necessarily extinguish the civil aspect of the case. This is true particularly in crimes involving violation of the provisions of the 1997 NIRC, as amended, where the alleged non-payment of taxes may be an essential element. However, similar to the finality-of-acquittal doctrine, this rule admits of exceptions. In *Antonio L. Daluraya vs. Marla Oliva*[9] *(Daluraya* case*),* the Supreme Court ruled that the extinction of the penal action does not carry with it the extinction of the civil liability in the following instances:

1) The acquittal is based on reasonable doubt as only preponderance of evidence is required;

2) The court declares that the liability of the accused is only civil; and,

3) The civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted.

But the Supreme Court, in the *Daluraya* case, cited one exception when it stated, thus:

> "However, the civil action based on delict may be deemed extinguished if there is a finding on the final judgment in the criminal action **that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omissions imputed to him**." (emphasis supplied)

To recall, the Informations filed by the prosecution charged the accused of alleged violations of Sections 254 and 255 of the 1997 NIRC, as amended, quoted below:

> "SEC. 254. *Attempt to Evade or Defeat Tax.* -Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment

[8] G.R. No. 189081, August 10, 2016.
[9] G.R. No. 210148, December 8, 2014.

thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (P30,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: *Provided,* That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes."

"SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years."

One of the essential elements of the crimes charged is accused RHC's alleged willful failure to pay the corresponding income tax and VAT for taxable year 2015 as a dealer in securities that derived trading income from the purchase and sale of securities as evidenced by the PDRs.

The Court, in the assailed Decision, exhaustively discussed and resolved these issues and ruled that RHC is not a dealer in securities and neither did it earn any trading income from the issuance of PDRs to foreign entities, namely, NBM Rappler and ON. This Court will no longer belabor the justifications and discussions made in disposing of said issues as these will merely repeat the disquisitions and rulings embodied in the assailed Decision.

Not having been found liable for said deficiency taxes, no civil liability may be imposed upon the accused. The situation of accused falls within the exception to the rule that the civil liability may survive the acquittal of the accused in the criminal case. To reiterate, the accused was found not to be guilty of the acts and omissions charged. In the dispositive portion of the assailed Decision, the Court ruled that **no civil liability may be adjudged against the accused as the** *[initials]*

alleged unpaid tax obligations have not been factually and legally established and proven by the prosecution.

From the above disquisitions, the Court finds no compelling reason to reverse nor modify the assailed Decision dated January 18, 2023.

WHEREFORE, in view of the foregoing premises, the *Motion for Reconsideration* filed by plaintiff on February 2, 2023 is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice/Special Member

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice