REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-247**
-versus-	*For: Failure to Supply Correct and Accurate Information under Sections 24 (Income Tax on Individuals), 51(A)(1)(a) in relation to Section 255 of the National Internal Revenue Code of 1997, as amended.*
JUAN MIGUEL M. ARROYO, *Accused.*	

x- -x

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-248**
-versus-	*For: Failure to Supply Correct and Accurate Information under Sections 24 (Income Tax on Individuals), 51(A)(1)(a) in relation to Section 255 of the National Internal Revenue Code of 1997, as amended.*
JUAN MIGUEL M. ARROYO, *Accused.*	

x- -x

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-249**
-versus-	*For: Failure to File Income Tax Return under Sections 24 (Income Tax on Individuals), 51(A)(1)(a) in relation to Section 255 of the National Internal Revenue Code of 1997, as amended.*
	Members:
	Del Rosario, *P.J., Chairperson,* **Uy**, *and* **Mindaro-Grulla**, *JJ.*
JUAN MIGUEL M. ARROYO, *Accused.*	**Promulgated:** AUG 08 2018 2:16pm

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RESOLUTION

DEL ROSARIO, P.J.:

For resolution is plaintiff's **Motion for Reconsideration (of the Decision dated March 21, 2018)** filed on April 5, 2018, with accused's **Opposition** filed on June 22, 2018.

Plaintiff moves that the assailed Decision be reconsidered insofar as it dismissed the civil action to collect the tax deficiencies. Plaintiff raises the following grounds in support thereof:

> I
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> The Honorable Court erred when it ruled that the plaintiff failed to prove that the accused derived any taxable income for the years 2004, 2006 and 2007 and that the assessment was based on mere presumptions and not actual facts. Specifically:
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> (a) The Honorable Court erred when it ruled that the requisites of Revenue Memorandum Circular (RMC) No. 43-74 must be complied with before the Net-Worth Method may be used in assessing the tax liabilities of the accused. Jurisprudence recognizes and authorizes the use of the Net Worth Method even without compliance with the requisites of RMC No. 43-74.
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> (b) The Honorable Court erred when it ruled that the prosecution is burdened to identify the likely source of the unreported or undeclared income of the accused in order to sustain a conviction. There is no such requirement under existing laws and jurisprudence.
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> (c) The Honorable Court erred when it ruled that the BIR failed to take into consideration the 2002 Supplemental/Amended SALN of the accused containing a net-worth of Php68,736,539.39 in determining the beginning net-worth of the accused for 2004. The 2002 Supplemental/Amended SALN was not executed under oath and is self-serving.
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> II
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> The Honorable Court erred when it ruled that the accused is not required to file a separate ITR for 2007 since his employer's Annual Information Return on Income Tax Withheld on Compensation (BIR Form 1604CF) is considered as his substitute ITR. Accused is a mixed-income earner disqualified from substituted filing and he is required to file an ITR.

III

> The Honorable Court erred when it used "clear, convincing and competent evidence" in determining the civil liability of the accused and ruling that the BIR failed to consider the non-taxable items of the accused. The applicable quantum of proof in determining the civil liability of the accused is "preponderance of evidence" and the accused failed to refute the allegations of the BIR.

IV

> The Honorable Court erred when it denied the civil actions for recovery of tax liabilities on the ground of the absence of an assessment notice. Under Section 205 and Section 222 of the National Internal Revenue Code of 1997, as amended, ("NIRC of 1997") a criminal case for false or fraudulent return with intent to evade tax or failure to file a return is a mode for collecting taxes even without an assessment.

In his Opposition, accused prays that plaintiff's motion be denied. He contends that while Article 29 of the Civil Code is the general law on the matter, the complete statement of the law is embodied in Section 1 of Rule 111 of the Rules of Court which provides that extinction of the penal action does not carry with it the extinction of the civil action, but the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist. Accordingly, the rule by which all courts of the land have lived since time immemorial is that the judgment of acquittal extinguishes liability of the accused for damages when it includes a declaration that the facts from which the civil liability might arise did not exist. Citing the commentaries of Arturo M. Tolentino on the Civil Code, which he claimed has shed light on Article 29 of the Civil Code, accused argues that the doctrine is justified by practical necessity as it is useless and punitive to re-litigate an issue the juridical conclusion of which is already known.

Anent the plaintiff's claim that the Court erred in using "clear, convincing and competent evidence" as a quantum of evidence in determining the civil liability of the accused, the latter argues that the Court did not use the term as a quantum of evidence but merely to describe the quality of evidence the prosecution presented. Accused insists that the Court's pronouncement means that there was not even a preponderance of evidence on the civil liability precisely because the assessment issued against him was based on mere presumption and not on actual facts.

Accused also avers that a judgment of acquittal cannot be reopened or appealed as a judgment of acquittal is the final verdict. He submits that he is entitled as a matter of law to a right of repose as a direct consequence of his acquittal.

The Motion for Reconsideration is bereft of merit.

The civil action for the recovery of alleged deficiency taxes, which is deemed simultaneously instituted in these criminal cases pursuant to Sec. 7(b)(1) of Republic Act No. 9282, is plainly based on the accusation that accused failed to supply correct and accurate information in his 2004 and 2006 Annual Income Tax Return (ITR) and failed to file his ITR for 2007, which accordingly resulted into the alleged deficiency income taxes in the respective amounts of P21,717,225.56, P3,457,960.00, and P2,130,129.50 during the concerned taxable years. It is the prosecution's theory that the unreported income of the accused may be established by a comparison between the increase in net worth and the reported taxable income using the Net Worth Method.

This Court acquitted the accused of the charges against him due to the prosecution's failure to prove all the elements of the crime beyond reasonable doubt. The corresponding civil action was likewise dismissed as the act or omission from which the civil liability might arise did not exist.

As stated in the assailed Decision, in criminal cases, like the cases at bar, the prosecution is burdened to identify the likely source of the unreported or undeclared income of the accused to sustain a conviction. In contrast, however, in an assessment case, the application of the net worth method does not require identification of the sources of the alleged unreported income and the determination of the tax deficiency by the government is *prima facie* correct.[1] Considering that these are criminal cases, *albeit* with civil action deemed simultaneously instituted, the applicable rule to justify the use of Net Worth Method is that relating to a criminal case as the corresponding civil action is merely based on the delict imputed against the accused, and not on account of a regular disputed tax assessment appealed by a taxpayer before the Court.

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[1] Commissioner of Internal Revenue vs. Avelino, G.R. No. L-14847, September 19, 1961 citing Perez vs. CIR, G.R. No. L-10507, May 30, 1958.

Generally, the basis of civil liability arising from crime is the fundamental postulate of our law that every man criminally liable is also civilly liable.[2] It has also been said that civil action based on delict is extinguished if there is a finding in the final judgment of acquittal 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 omission imputed to him.[3]

Upon judicious evaluation of the arguments of the prosecution, and the re-assessment of the evidence at hand, the Court sees no cogent reason to reconsider the dismissal of the civil action since the act or omission being charged against the accused did not actually exist, apart from the reason that the assessment issued against him by the Bureau of Internal Revenue (BIR) is invalid, as extensively discussed in the assailed Decision.

To stress, the deficiency taxes in these cases were computed using the Net Worth Method wherein the BIR compared the increase in accused's net worth and the reported taxable income and considered the difference as unreported income. An inference or presumption of guilt is therefore made by the prosecution to the effect that the increase in networth was the result of "undeclared income" and such income was of the nature or kind that should have been reported in an income tax return. **Such conclusion, however, could not be sustained since it disregards the more important presumption of innocence in accused's favor *vis-à-vis* the probability that the increase in accused's net worth resulted from donations, gifts, inheritance and/or from passive or other income subjected to final tax, such as dividends, royalties, interests, capital gains.** Overall, the prosecution overstretched the significance of the facts obtained from the use of the Net Worth Method beyond its lawful purpose. In criminal cases, the prosecution is burdened to show beyond reasonable doubt each and every element of the crime - - more so when it is the very essence thereof - - as the existence of "undeclared income" involved in the present case.

Contrary to the claim of the prosecution, the Court correctly gave weight to accused's 2002 Supplemental/Amended SALN,[4] to support its finding that the third condition in the use of the Net Worth Method *(i.e., fixed starting point or opening net worth at which time the taxpayer's financial condition can be affirmatively established with*

[2] Banal vs. Tadeo, Jr., G.R. No. 78911-25, December 11, 1987.
[3] Salazar vs. People of the Philippines, G.R. No. 151931, September 23, 2003.
[4] Marked as Exhibit 43; CTA Docket, pp. 620-621.

some definiteness) had not been complied with. Truth to tell, such document was offered by the accused and was admitted in evidence.[5] The importance of this document cannot be ignored considering that no less than the parties' counsels stipulated during the September 10, 2014 hearing that the Supplemental SALN for 2002 exists and is in the custody of the Office of the Ombudsman.[6]

The prosecution's allegations that accused was a mixed income earner who was therefore disqualified from the substituted filing of ITR in 2007, being unsubstantiated, cannot be given weight and credence.

As stated in the assailed Decision, accused is not required to file a separate ITR for the year 2007 since his employer's Annual Information Return on Income Tax Withheld on Compensation (BIR Form 1604CF) is considered as his "substitute" ITR pursuant to Section 2.83.4 of Revenue Regulations (RR) No. 02-98, as amended by RR No. 03-02. To reiterate, accused earned compensation income from his employer, the House of Representatives, which withheld income tax thereon. There was no indication that the amount withheld by the House of Representatives was incorrect, and there was no proof that the accused derived income from other sources. In the absence of proof that accused earned income other than that derived from the House of Representative, the theory of the prosecution must necessarily fail.

With regard to the prosecution's claim that the Court used as quantum of proof "clear, convincing and competent evidence" in determining the civil liability of the accused, as aptly observed by the accused, the phrase "clear, convincing and competent evidence" was simply descriptive of the quality of evidence the prosecution has presented in relation to the civil action.

The Court is not unaware of the rule that the quantum of proof in determining the civil aspect of the case is "preponderance of evidence",[7] which has been duly considered in the assailed Decision. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term greater weight of evidence or greater weight of the credible evidence. Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is **evidence which is more convincing** to the court as worthy of belief than that

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[5] Resolution dated October 3, 2017.
[6] September 10, 2014 Transcript of Stenographic Notes, p. 4, 10.
[7] Salazar vs. People of the Philippines, G.R. No. 151931, September 23, 2003.

which is offered in opposition thereto.[8] **"Preponderant evidence" must itself be "clear, convincing and competent".**

Apropos, it is a basic rule in evidence that the burden of proof lies on the party who makes the allegations *Et incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit* (The proof lies upon him who affirms, not upon him who denies; since, by the nature of things, he who denies a fact cannot produce any proof). In civil case, like the present case, the party having the burden of proof must establish his case by a preponderance of evidence.[9]

As oft-repeated, the Court reiterates its finding that the prosecution has failed to present clear, convincing and competent evidence to warrant a conclusion that accused is civilly liable of the alleged deficiency taxes. Record is bereft of evidence that accused has taxable income which was not declared in his 2004 and 2006 ITRs, or that he was required to file an Annual ITR for 2007 since he was eligible for the substituted filing of ITR for the same year. Simply put, the prosecution failed to prove its case by preponderance of evidence, or in the language of the assailed Decision, "**the evidence is wanting of the fact upon which the civil liability may arise**."

In sum, the prosecution's failure to observe the procedure for the use of the Net Worth Method and in overstating its use beyond its lawful significance *vis-à-vis* the issuance of tax deficiency assessment that is patently void (based as it was on mere presumptions and not on actual facts) and without even stating any due date for payment, altogether justify the dismissal of the civil action for collection of alleged deficiency taxes.

All told, the Court finds no compelling reason to reconsider, modify or reverse the Decision dated March 21, 2018.

WHEREFORE, premises considered, the **Motion for Reconsideration (of the Decision dated March 21, 2018)** filed by plaintiff on April 5, 2018 is **DENIED** for lack of merit.

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[8] Ching vs. Nicdao, G.R. No. 141181, April 27, 2007.
[9] Ching vs. Nicdao, G.R. No. 141181, April 27, 2007.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice