REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-617 and O-618** For: Violation of Section 255 in relation to Sections 253 (d) and 256, of the NIRC, as amended.
-versus-	Members: **CASTAÑEDA, JR.,** *Chairperson, and* **MINDARO-GRULLA,** *JJ.*
BONNER PURPURA ARMADA *Accused.*	Promulgated: JUN 28 2019 4:00 p.m.

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RESOLUTION

For this Court's resolution is accused's **Motion for Reconsideration**, filed on May 20, 2019, without prosecution's comment.

The instant Motion alleges that this Court erred in denying the demurrer to evidence on the ground that the prosecution has sufficiently established a prima facie case against the accused.

After due consideration, the Motion for Reconsideration must fail. We do not find the reasons raised by the accused meritorious enough to warrant the attention of the members of this Court to reverse the order of denial. Nonetheless, this Court shall expound the discussion of the issues reiterated herein for clarity and accused's better understanding.

In its attempt to dissuade this Court of its ruling, accused alleges that failure to supply correct and accurate information is not necessarily included in the offense charged in the Information.

Let it be stressed that the law must not be read in truncated parts; its provisions must be read in relation to the whole law. Every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.[1]

In the case at bar, accused is charged before this Court for violation of Section 255 of the NIRC, as amended, for taxable years 2009 and 2010, to wit:

> "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. X X X" (Emphasis Supplied)

It is a cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Thus, a reading of the whole provision stated above necessarily includes the offense that accused allegedly

[1] Vivenne K. Tan vs. Vincent "BingBong" Crisologo, G.R. No. 193993, November 8, 2017.

committed under Section 255 of the NIRC of 1997, as amended.

We reiterate, in order to sustain a conviction for failure to make or file a return under Section 255 of the NIRC of 1997, as amended, the following elements must be established:

1. The accused was **required under the NIRC of 1997 to pay any tax**, make a return keep any record, or **supply 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;

2. The **accused failed to pay the required tax**, make a return or keep the required record, or **supply the correct and accurate information**; and

3. The **accused willfully failed 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.

Bearing in mind the above provisions and the allegations in the information, the Court has carefully scrutinized the evidence presented by the prosecution and determined that the pieces of evidence presented are sufficient to establish a *prima facie* case against the accused.

A careful scrutiny of the afore-mentioned elements would reveal that the second and third elements are dependent on the first element. Therefore, when the first element is established, it is only then that the remaining elements must be determined to exist.

The showing of the failure to pay the pertinent tax and the willfulness of such failure is dependent on whether the accused is required to pay the said tax in the first place. In sum, there can be no willful failure to pay a tax if there is no requirement to pay the same at all.

As to the first element, it is necessary to determine who are those required to file an income tax return. Sections 51(A) of the NIRC of 1997, as amended, mandates:

> "SEC. 51. 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;
>
> xxx xxx xxx

Corollary thereto, Section 74 of the same Code provides:

> "Sec. 74. 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. x x x"

A careful review of the evidence adduced by the prosecution reveals that accused is indeed a resident Filipino citizen who is clearly required to file an ITR, which brings us to determine the second element of the offense charged. The crux of the issue is whether accused paid the corresponding tax based on the information supplied in ITRs for taxable years 2007.

Pursuant to Section 51, subsections (B) and (C)(1)[2], of the NIRC of 1997, as amended, a person with legal residence or principal place of business in the Philippines shall file his return with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality. The return shall be filed on or before the 15th day of April of each year covering income for the preceding taxable year.

Under this premise, accused was clearly supposed to register, file his ITR and pay the corresponding income taxes due with the authorized agent bank, Revenue District Office, Collection Agent or duly authorized Treasurer of the City, where he has his legal residence or principal place of business.

Regrettably, while the ITR's have been filed, the prosecution was able to establish that there has been a substantial under-declaration of purchases in accused's ITR and VAT returns, which is tantamount to filing a false or fraudulent return.

We now proceed to the third element, wherein it requires that failure to make or file the return was willful. The term "willful" in tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown[3].

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[2] SEC. 51. Individual Return

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> (B) Where to File. - Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.
>
> (C) When to File. -
>
> (1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.

[3] Ongsiako, Jr., Et.Al.,. Vs. People Of The Philippines, CTA EB Crim. Case No. 031, May 26, 2015, Citing Mertens (Law Of Federal Income Taxation) Chapter 47.05, P. 28, Vol. 13 Cited In People Of The Philippines Vs. Estelita Delos Angeles, Cta Crim. Case No. 0-027, November 25, 2009.

In *People v. Judy Anne Santos y Lumagui*[4], the accused was charged with violation of Section 255 by allegedly under-declaring her income. On the issue of willfulness, the CTA ruled as follows:

> Citing *Black's Law Dictionary,* the term "willful" is defined as voluntary and intentional. And in *Merten's Law of Federal Income Taxation,* "willful" in tax crimes statutes is defined as voluntary, intentional violation of a known legal duty.
>
> Applying the foregoing in the case at bench, the element of willful failure to supply correct and accurate information must be fully established as a positive act or state of mind; it cannot be presumed nor attributed to mere inadvertent or negligent acts. *(Citations omitted, underscoring supplied)*

The crime of failure to pay tax under Section 255 is defined by the element of "willfulness" of not paying the tax, which in turn, requires the showing of "knowledge" and "voluntariness". Simply stated, the offender is aware or knows the existence of, and obligation to pay a tax liability but voluntarily and intentionally failed to pay it.

While willful intent seems to be present in this case, nonetheless, to rule on such matter would be premature at this stage considering that the arguments of the accused involve factual issues which can only be resolved after a full-blown trial.

Accordingly, Let the defense be reminded that in establishing a prima facie case, only moral certainty is required. Moral certainty is that degree of proof which produces conviction in an unprejudiced mind[5]. At best, the evidence proffered by the prosecution only goes so far as to create a suspicion that accused probably perpetrated the crime charged.

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[4] CTA Crim. Case No. O-012, January 16, 2013.
[5] Rule 133, Rules of Court.

Consequently, once the prosecution makes out a prima facie case in his favor, the duty or the burden of evidence shifts to accused to controvert the prosecution's prima facie case, otherwise, a ruling must be returned in favor of prosecution[6].

Thus, absent proof that the under-declaration or failure to supply correct and accurate information of accused in his tax returns for taxable year 2007 was a mere mistake or was unintentional, then there is *prima facie* evidence of accused's willfulness in not paying the required taxes.

Notably however, the denial of accused's demurrer to evidence is not an adjudication on the merits but merely an evaluation of the sufficiency of the prosecution's evidence to determine whether or not a full-blown trial would be necessary to resolve the case.

We reiterate the ruling in *Te vs. Court of Appeals, et al.*[7], wherein the the Supreme Court ruled in this wise:

> The Court also finds it necessary to correct petitioner's misimpression that by denying his demurrer to evidence in view of the existence of a *prima facie* case against him, the trial court was already making a pronouncement that he is liable for the offense charged. As correctly held by the Court of Appeals, **the order of the RTC denying the demurrer was not an adjudication on the merits but merely an evaluation of the sufficiency of the prosecution's evidence to determine whether or not a full-blown trial would be necessary to resolve the case.** The RTC's observation that there was a *prima facie* case against petitioner **only meant that the prosecution had presented sufficient evidence to sustain its proposition that petitioner had committed the offense** of bigamy, and unless petitioner presents evidence to rebut the same, such would be the conclusion. Said declaration by the RTC should not be construed as a pronouncement of petitioner's

[6] Vitarich Corporation vs. Chona Losin, G.R. No. 181560, November 15, 2010.
[7] G.R. No. 126746, November 29, 2000.

> guilt. It was precisely because of such finding that the trial court denied the demurrer, in order that petitioner may present evidence in his defense and allow said court to resolve the case based on the evidence adduced by both parties.

Applying the foregoing, the Court deems it proper to have a full-blown trial to give the accused the opportunity to prove their factual claims.

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

SO ORDERED.

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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