REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

-*versus*-

JOEL C. MENDEZ,
Respondent.

CTA *EB* CRIM. NO. 038
(CTA Crim. Case No. O-014)

x-------------------------------------x

JOEL C. MENDEZ,
Petitioner,

-*versus*-

PEOPLE OF THE PHILIPPINES,
Respondent.

CTA *EB* CRIM. NO. 039
(CTA Crim. Case No. O-014)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

SEP 08 2017 1:46 p.m.

x- x

D E C I S I O N

MANAHAN, J.:

This resolves the consolidated *Petition for Review*[1] filed by the Commissioner of Internal Revenue (CIR), representing the People of the Philippines, on November 2, 2016, and the *Petition for Review*[2] filed by the respondent-accused, Joel C. Mendez, on November 4, 2016, pursuant to Section 3(b), Rule

[1] *Rollo*, CTA EB Crim. Case No. 038, pp. 7-23.
[2] *Rollo*, CTA EB Crim. Case No. 039, pp. 5-22.

8 of the Revised Rules of the Court of Tax Appeals, as amended,[3] wherein the former seeks the reconsideration and setting aside of the February 10, 2016 *Decision*[4] and September 23, 2016 *Resolution*,[5] enunciated by the Special First Division of the Court of Tax Appeals (CTA) in CTA Crim. Case No. O-014, entitled "*People of the Philippines v. Joel C. Mendez*". On the other hand, respondent-accused seeks the reversal and the setting aside of said Decision and Resolution and the issuance of a new one acquitting him of the offense charged.

The dispositive portions of the assailed Decision and Resolution read:

Decision[6] dated February 10, 2016:

> "**WHEREFORE**, the Court finds accused Joel C. Mendez, **GUILTY** beyond reasonable doubt of violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and he is hereby SENTENCED to suffer an indeterminate prison term of ONE (1) YEAR, as minimum, to THREE (3) YEARS, as maximum. In addition, accused is ORDERED TO PAY a fine in the amount of TEN THOUSAND PESOS (Php10,000.00), with subsidiary imprisonment in case accused has no property with which to meet such fine pursuant to Section 280 of the NIRC of 1997, as amended."

Resolution[7] dated September 23, 2016:

> "**WHEREFORE**, the prosecution's Motion for Partial Reconsideration and accused' Motion for Reconsideration, are hereby **DENIED,** both for lack of merit."

The Facts

An Information dated October 10, 2005 was filed against the respondent-accused for violation of Section 255 of

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[3] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[4] *Rollo*, CTA EB Crim. Case No. 038, pp. 24-48.
[5] *Rollo*, CTA EB Crim. Case No. 038, pp. 49-53.
[6] *Supra*, Note 4.
[7] *Supra*, Note 5.

Republic Act No. 8424, as amended.[8] After review of the record of the case, the Court found no probable cause against him and dismissed the case without prejudice on February 14, 2006. The dismissal, however, was reconsidered and set aside at the instance of the People in Resolution dated August 22, 2006.[9]

Respondent-accused moved for the reconsideration of said resolution but was denied under Resolution dated November 6, 2006. Thus, he questioned both resolutions before the Supreme Court by filing a Petition for Certiorari and Prohibition with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction, which was eventually dismissed on March 8, 2007.[10]

On June 12, 2007, the Court in Division allowed the amendment of the Information on the ground that it was merely formal and would neither change the nature of the accusation nor adversely affect the right of the accused. However, he challenged said ruling but was denied on August 13, 2007.[11] Hence, he filed another Petition for Certiorari and Prohibition (with prayer for issuance of TRO and/or writ of preliminary injunction)[12] which was eventually dismissed by the Supreme Court on June 11, 2014 and became final and executory on May 29, 2015.[13]

During the pendency of the abovementioned petition in the Supreme Court, the trial of the instant case continued and the Court in Division approved the Joint Stipulation of Facts and Issues (JSFI) on December 5, 2007. Both the prosecution and the defense presented their witnesses. The case was submitted for decision on May 19, 2010.[14]

Hence, after the decision of the Supreme Court on said petition became final and executory, and the record of the case was transmitted back to the Court in Division on November 4, 2015[15], the assailed decision was promulgated on February 10, 2016.

Both the petitioner and respondent-accused moved for the reconsideration of the assailed decision. The former filed cm

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[8] *Rollo*, CTA EB Crim. Case No. 038, Decision, p. 24.
[9] *Rollo*, CTA EB Crim. Case No. 038, Decision, p. 25.
[10] *Id.*
[11] *Id.* at 26.
[12] *Id.*
[13] *Id.* at 28.
[14] *Id.* at 26 to 27.
[15] *Id.* at 28.

its Motion for Partial Reconsideration on February 24, 2016 while the latter filed his Motion for Reconsideration on February 26, 2016.[16] However, both motions were denied under the assailed resolution. Hence, both filed their respective petitions for review before the Court *En Banc* after granting their motions[17] for extension to file the same.

On November 8, 2016, the Court *En Banc* consolidated both petitions since they were appeals from the same decision and resolution.[18]

On December 12, 2016, both parties were ordered to file their comments.[19] Petitioner filed its Comment[20] on January 9, 2017 while respondent-accused filed his Comment[21] on January 17, 2017. After considering both pleadings, the Court *En Banc* gave due course to both petitions and ordered them to submit their consolidated Memoranda[22].

Respondent-accused submitted his Memorandum[23] on February 28, 2017 while petitioner submitted its Memorandum[24] on March 13, 2017. Hence, on April 5, 2017, the Court *En Banc* considered the case deemed submitted for decision[25].

The Issue

Whether the Special First Division erred in finding the respondent-accused guilty beyond reasonable doubt of violating Section 255 of the National Internal Revenue Code of 1997 as amended (NIRC) but not liable for the civil liability amounting to Php1,089,439.08 as charged.

Arguments of the People

In *Petition for Review*[26] under CTA EB Crim. No. 038, petitioner argues that the Court in Division erred in not cm

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[16] *Rollo*, CTA EB Crim. Case No. 038, Resolution, p. 49.
[17] *Rollo*, CTA EB Crim. Case No. 038, Minute Resolution dated October 17, 2016, p. 6; and CTA EB Crim. Case No. 039, Minute Resolution dated October 25, 2016, p. 4.
[18] *Rollo*, CTA EB Crim. Case No. 038, Minute Resolution, p. 54.
[19] *Rollo*, CTA EB Crim. Case No. 038, Resolution dated December 12, 2016, pp. 56-57.
[20] *Rollo*, CTA EB Crim. Case No. 038, Comment, pp. 58-64.
[21] *Rollo*, CTA EB Crim. Case No. 038, Comment/Opposition, pp. 65-73.
[22] *Rollo*, CTA EB Crim. Case No. 038, Resolution dated January 30, 2017, pp. 75-76.
[23] *Rollo*, CTA EB Crim. Case No. 038, Memorandum, pp. 77-93.
[24] *Rollo*, CTA EB Crim. Case No. 038, Memorandum, pp. 94-112.
[25] *Rollo*, CTA EB Crim. Case No. 038, Resolution dated April 5, 2017, pp. 114-115.
[26] *Supra*, Note 1.

holding respondent-accused civilly liable for the deficiency tax assessment made by Revenue Officer Alexander D. Martinez considering it had the valid approval of the Commissioner.

Arguments of the Respondent-Accused

In *Petition for Review*[27] under CTA EB Crim. No. 039, respondent-accused argues that the Court in Division had no jurisdiction to hear the case as there was no assessment issued by the Bureau of Internal Revenue (BIR) against him considering that said assessment is now mandatory under the expanded jurisdiction of the CTA.

Further, he argues that the prosecution failed to identify the accused and the fact that the offense was committed within the jurisdiction of this Court.

Ruling of the Court *En Banc*

The Court observes that the points and arguments in the present Petition for Review had already been painstakingly discussed and substantially resolved by the CTA Third Division in its February 10, 2016 *Decision*[28] and September 23, 2016 *Resolution*[29].

CTA has jurisdiction over the instant case.

Respondent-accused posits that the Court in Division had no jurisdiction to hear the case because there was no assessment made by the CIR, hence, the amount of tax liability was not exact and accurate. He argues that the amount of deficiency tax being inaccurate and not exact does not conform to the provisions of Section 7(b)(1), Republic Act No. 9282 otherwise known as "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes" which, in part, provides:

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[27] *Supra*, Note 2.
[28] *Supra*, Note 4.
[29] *Supra*, Note 5.

Sec. 7. Jurisdiction. - The CTA shall exercise:

xxx xxx

> b. Jurisdiction over cases involving criminal offenses as herein provided:
>
> > 1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: *Provided, however,* That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the 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, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized.

As shown in the assailed decision, he was charged under Section 255 of the NIRC for failure to file his income tax return (ITR) for taxable year 2001 which had injured or prejudiced the government in the estimated amount of Php1,089,439.08 under the Amended Information.[30]

Section 222(a) of the NIRC provides that:

SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -

> (a) <u>In the case of</u> a false or fraudulent return with intent to evade tax or of <u>failure to file a return</u>, the tax may be assessed, or <u>a proceeding in court for the collection of such tax may be filed without assessment,</u> at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in

[30] *Rollo*, CTA EB Crim. Case No. 038, Decision, p. 26.

> the civil or criminal action for the collection thereof. (*Underscoring ours*)

As shown by the abovementioned provision, the filing of the case before this Court does not require assessment. In order for this Court to acquire jurisdiction over the instant case, the Information need only to comply with the requisites under Section 6, Rule 110 of the Rules of Court, portions of which are quoted below:

> Sec. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information.

The trial of the case is the best evidence that this Court judicially determined the existence of a probable cause against respondent-accused who had committed the criminal offense alleged by the CIR.

Further, it is well-settled by jurisprudence that the filing of the case under Section 255 of the NIRC, as amended, does not require an assessment considering that the case filed by petitioner was for a criminal offense. In *Adamson v. Court of Appeals*[31], the Supreme Court ruled that the assessment is not necessary in the filing of said case, *to wit*:

> The next issue is whether the filing of the criminal complaints against the private respondents by the DOJ is premature for lack of a formal assessment.
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> Section 269 of the NIRC (now Section 222 of the Tax Reform Act of 1997) provides:
>
>> Sec. 269. Exceptions as to period of limitation of assessment and collection of taxes.-(a) <u>In the case of</u> a false or fraudulent return with intent to evade tax or of <u>failure to file a return</u>, the tax may be assessed, or <u>a proceeding in court after (sic) the collection of such tax may be begun without assessment</u>, at any time within ten years after the discovery of the

[31] G.R. Nos. 120935 & 124557, May 21, 2009.

> falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for collection thereof... (*Underscoring supplied*)

> The law is clear. When fraudulent tax returns are involved as in the cases at bar, **a proceeding in court after** (sic) **the collection of such tax may be begun without assessment.** Here, the private respondents had already filed the capital gains tax return and the VAT returns, and paid the taxes they have declared due therefrom. Upon investigation of the examiners of the BIR, there was a preliminary finding of gross discrepancy in the computation of the capital gains taxes due from the sale of two lots of AAI shares, first to APAC and then to APAC Philippines, Limited. The examiners also found that the VAT had not been paid for VAT-liable sale of services for the third and fourth quarters of 1990. Arguably, the gross disparity in the taxes due and the amounts actually declared by the private respondents constitutes badges of fraud.

Further, in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*[32], the Supreme Court ruled that:

> Private respondents maintain that the filing of a criminal complaint must be preceded by an assessment. **This is incorrect, because Section 222 of the NIRC specifically states that** in cases where a false or fraudulent return is submitted or **in cases of failure to file a return** such as this case, **proceedings in court may be commenced without an assessment.** Furthermore, Section 205 of the same Code clearly mandates that the civil and criminal aspects of the case may be pursued simultaneously. In *Ungab v. Cusi*, petitioner therein sought the dismissal of the criminal Complaints for being premature, since his protest to the CTA had not yet been resolved. The Court held that such protests could not stop or suspend the criminal action which was independent of the resolution of the protest in the CTA. This was because the commissioner of internal revenue had, in such tax evasion cases, discretion on whether to issue an assessment or to file a criminal case against the taxpayer or to do both.
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> xxx xxx
>
> The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the

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[32] G.R. No. 128315, June 29, 1999.

> taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. In contrast, the criminal charge need not go through all these. The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the commissioner has issued an assessment. **It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code**. (*Emphasis supplied*)

As shown in the assailed decision, the jurisdictional amount of Php1,089,439.08 was arrived at using the Expenditure Method as basis for determining income which propounds the theory that if the taxpayer's expenditures during the given year exceed his reported income or when there was no income reported at all, the source of such expenditure is unexplained, it may be inferred that such expenditures represent unreported income.[33]

In the determination of such jurisdictional amount, the BIR may use the best available evidence it can obtain to arrive at the amount a taxpayer may owe the government particularly when such taxpayer did not declare any income nor file the necessary tax return.

Section 6(B) of the NIRC as implemented by Revenue Memorandum Circular 23-2000 dated November 27, 2000[34] provides that:

> **SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*** –
>
> xxx xxx
>
> (B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* - <u>When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming</u> within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or

[33] *Rollo*, CTA EB Crim. Case No. 038, Decision, p. 45.
[34] Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the "Best Evidence Obtainable."

> erroneous, <u>the Commissioner shall assess the proper tax on the best evidence obtainable</u>.
>
> In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes. (*Underscoring supplied*)

Assuming *arguendo* that the Court in Division had, indeed, no jurisdiction to hear the instant case, respondent-accused had appeared and participated during the duration of the case until its promulgation. Hence, he voluntarily submitted himself before this Court.

It is true that "in order for the court to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter and the parties."[35] Thus, when it appears from the pleadings that the court has no jurisdiction over the subject matter, the court should dismiss the case.[36] The issue of jurisdiction maybe raised at any stage of the proceedings of the case and even during its appeal.

However, such rule admits an exception. In *Venancio Figueroa Y Cervantes v. People of the Philippines,*[37] the Supreme Court ruled that although jurisdiction may be raised at any stage of the proceedings, such issue of jurisdiction may be barred by reason of *estoppel by laches, viz*:

> The Court, thus, wavered on when to apply the exceptional circumstance in *Sibonghanoy* and on when to apply the general rule enunciated as early as in *De La Santa* and expounded at length in *Calimlim*. The general rule should, however, be, as it has always been, that *the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. Estoppel by laches, to bar a litigant from asserting the court's absence or lack of jurisdiction, only supervenes in exceptional cases similar to the factual milieu of Tijam v. Sibonghanoy.* Indeed, the fact that a person attempts to invoke unauthorized jurisdiction of a court does not estop him from thereafter challenging its jurisdiction over the subject matter, *mm*

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[35] *Antiporda, Jr. v. Garchitorena,* G.R. No. 133289. December 23, 1999.
[36] Section 1, Rule 9, Rules of Court.
[37] G.R. No. 147406, July 14, 2008.

> since such jurisdiction must arise by law and not by mere consent of the parties. This is especially true where the person seeking to invoke unauthorized jurisdiction of the court does not thereby secure any advantage or the adverse party does not suffer any harm.
>
> Applying the said doctrine to the instant case, the petitioner is in no way estopped by laches in assailing the jurisdiction of the RTC, considering that he raised the lack thereof in his appeal before the appellate court. At that time, no considerable period had yet elapsed for laches to attach. True, delay alone, though unreasonable, will not sustain the defense of "estoppel by laches" *unless it further appears that the party, knowing his rights, has not sought to enforce them until the condition of the party pleading laches has in good faith become so changed that he cannot be restored to his former state, if the rights be then enforced, due to loss of evidence, change of title, intervention of equities, and other causes.* **In applying the principle of estoppel by laches in the exceptional case of *Sibonghanoy*, the Court therein considered the patent and revolting inequity and unfairness of having the judgment creditors go up their Calvary once more after more or less 15 years.** The same, however, does not obtain in the instant case. (*Emphasis supplied*)

As shown in the *Figueroa* case, the time that elapsed from invoking the issue on jurisdiction was more or less four (4) years. On the other hand, in *Sibonghanoy* case, the issue on jurisdiction was only raised after fifteen (15) years. Thus, the defense of lack of jurisdiction was seasonably raised in *Figueroa* but not on *Sibonghanoy.*

In the instant case, from the time it was filed on October 10, 2005 up to the time of the promulgation of the assailed decision of the Court in Division on February 10, 2016, it took the respondent-accused more than ten (10) years to raise the issue on jurisdiction after his receipt of the unfavorable decision.

Further, when he elevated the issue of the Amended Information before the Supreme Court by way of Petition for Certiorari and Prohibition, never did he raise the issue of jurisdiction. Hence, it only showed that he recognizes that this Court had jurisdiction on this particular case.

It is a well-settled rule that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent, and after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction.[38]

Thus, respondent-accused is barred from raising the issue of jurisdiction by reason of *estoppel by laches.*

The Court in Division had proven the elements of Failure to File a Return

Respondent-accused also argues that the prosecution failed to identify the accused and the fact that the offense was committed within the jurisdiction of this Court.

Such reliance is truly misplaced. As shown in the assailed decision, the Court in Division established the following elements[39] of failure to file a return under Section 255 of the NIRC, to wit:

1. The accused was a person required to make or file a return;

2. He failed to make or file such return at the time required by law; and

3. The failure to make or file the return was willful.

On the first element, it was established that respondent-accused is practicing his profession as a doctor and rendering medical services under the name and style of "Weigh Less Center/Mendez Medical Group" (Group) as early as 1996.[40] It was also established that respondent-accused even placed several advertisements of his businesses in the newspaper such as the Philippine Star during the taxable year 2001.[41] Further, there was no indication that the said businesses were closed or retired to prove non-operation.

These facts only proved that the business of respondent-accused is existent and operating during taxable period 2001, the year when no annual income tax return (ITR) was filed

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[38] *Antiporda, Jr. v. Garchitorena*, supra.
[39] *Rollo*, CTA EB Crim. Case No. 038, Decision, pp. 36-45.
[40] *Rollo*, CTA EB Crim. Case No. 038, Decision dated February 10, 2016, p. 37.
[41] *Id.* at 38.

with the BIR. Thus, any income derived by him should have been declared and paid in his ITR being the sole proprietor of said Group. Section 51(A)(1)(a) of the NIRC, in part provides that:

> **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;

On the second element, it was also established from the testimony of the witnesses who were BIR officers of the Revenue Districts, where the supposed businesses of respondent-accused are located, that there was no ITR filed for taxable year 2001 by respondent-accused on April 15, 2002 and no record of such filing was found under the BIR Integrated Tax System.[42] Section 51(C) of the NIRC provides that:

> **SEC. 51. Individual Return.** –
>
> xxx xxx
>
> **(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.

Anent the last element, the Court in Division recognizes that respondent-accused is a Medical Doctor by profession, hence, it is undeniable that he is highly literate. He must be fully aware that when he established those businesses, he has the obligation to register them with the BIR and to pay their corresponding applicable tax obligation once due. Thus, he is presumed cognizant of such obligation.

However, instead of proving his allegation that he had no income for that particular taxable period, respondent-accused failed to submit his accounting records and other business

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[42] *Id.* at 41.

documents despite notice and opportunities given to him by the BIR revenue officers. Such act of non-submission of accounting records and documents is proof of willful and deliberate intent on his part to suppress evidence that would be adverse to him.[43] Hence, there is malice on his part which indicates willfulness in hiding his supposed income from said businesses, thus, meeting satisfactorily the third element of criminal intent under Section 255 of the NIRC.

Civil liability aspect in criminal case must be proven during the trial

CIR posits that the Court in Division erred in not holding the respondent-accused liable for the deficiency taxes assessed by Revenue Officer Alexander D. Martinez considering it had the valid approval of the Commissioner.

We reiterate our comment above that although the filing of the instant case requires no accurate and exact computation of the alleged civil liability of the accused as found in a formal assessment notice, proving the same is another thing.

Section 205 of the NIRC provides that:

> **SEC. 205. Remedies for the Collection of Delinquent Taxes.** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> (a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; and
>
> (b) By civil or criminal action.
>
> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: Provided, however, That the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).

[43] Section 3(e), Rule 131, Rules of Court.

> The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case **as finally decided by the Commissioner**.
>
> The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon. (*Emphasis and underscoring supplied*)

As shown in petitioner's CIR Exhibit "AAA", [44] the computation was not in the form of a formal assessment. Thus, the Court in Division was correct to consider that this is merely an estimate or, at most, a schedule of deficiency tax.

The abovementioned provision requires that in order to be included in the judgment of said civil liability, it must be the final decision of petitioner. Thus, it refers to a formal assessment. In *Adamson* case[45], the Supreme Court intimated the requisites of formal assessment, *viz*:

> We rule that the recommendation letter of the Commissioner cannot be considered a formal assessment. Even a cursory perusal of the said letter would reveal three key points:
>
> 1. It was not addressed to the taxpayers.
> 2. There was no demand made on the taxpayers to pay the tax liability, nor a period for payment set therein.
> 3. The letter was never mailed or sent to the taxpayers by the Commissioner.

Thus, applying the abovementioned case, a formal assessment should be: (1) addressed to the taxpayer; (2) contained a demand on the taxpayer to pay the tax liability and must set a period for payment; and (3) mailed or sent to the taxpayer by the Commissioner.

It appears that said computation or schedule had none of the said requisites. It even had no signature of the CIR. Hence, such document is not a formal assessment and not an evidence competent and sufficient enough to be included in

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[44] Docket, CTA Crim. Case No. O-014, p. 834.
[45] *Supra,* Note 31.

the final judgment of the instant case as provided under Section 205 of the NIRC.

WHEREFORE, premises considered, both Petitions for Review are hereby **DENIED** for lack of merit. The February 10, 2016 *Decision*[46] and September 23, 2016 *Resolution*[47], of the CTA Special First Division in CTA Crim. Case No. O-014, are hereby **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(With Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[46] *Supra*, Note 4.
[47] *Supra*, Note 5.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

SEP 08 2017 1:46 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by Joel C. Mendez in CTA EB Crim. No. 039 for lack of merit. With due respect, however, I am constrained to withhold my assent in the denial of the Petition for Review filed by the People of the Philippines in CTA EB Crim. No. 038.

CTA EB Crim. No. 039

As extensively discussed in the *ponencia*, the Court in Division has jurisdiction over the case, albeit no formal assessment notice (FAN) was issued by the Commissioner of Internal Revenue (CIR) against Mendez.

With regard to Mendez's allegation that the prosecution miserably failed to establish his identity, records reveal that the identity of Mendez as the accused in this case has never been an issue, not until the filing by Mendez of the present Petition for Review. In truth, records further disclose that Mendez voluntarily submitted himself to the jurisdiction of the Court when he appeared with his counsel and filed cash bond in the amount of P20,000.00 for his provisional liberty.[1] During his arraignment on March 5, 2007, Mendez, with the assistance of his counsel and *sans* any objection as to the reference to him as the accused, entered a plea of not guilty.[2] As aptly pointed out by the People, when Mendez voluntarily appeared before the Court and submitted himself to its jurisdiction, he truly confirmed that he is the same person charged in the Amended Information.

CTA EB Crim. No. 038

As aforestated, with utmost respect, I dissent on the conclusion of the Court in Division, as sustained in the *ponencia*, that since CIR's Exhibit "AAA" is not a formal assessment but a mere estimate or, at most, a schedule of deficiency tax that was not signed by the CIR, it is not competent and sufficient basis for the imposition of civil liability against Mendez.

On this issue, I reiterate the position I have previously taken in ***Joel C. Mendez vs. People of the Philippines / People of the Philippines vs. Joel C. Mendez***[3] involving the same parties in this case albeit relating to a different taxable period:

> "xxx, I dissent to the majority's finding that the Motion for Partial Reconsideration dated January 22, 2013 filed by the prosecution also lacks merit, thereby

[1] Division Docket, Volume I, no pagination (between pages 274 & 275).
[2] Division Docket, Volume I, p. 326.
[3] Resolution dated July 8, 2014, CTA EB Crim. Nos. 014 & 015.

sustaining the Court *En Banc*'s earlier finding that the computation of civil liabilities presented by the prosecution cannot be given credence as it was merely done by a revenue officer. Stated differently, since such computation was not signed and approved by the then Commissioner of Internal Revenue (CIR) pursuant to Section 205 of the 1997 National Internal Revenue Code (NIRC), as amended, there can be no basis for ruling on the civil liability of the accused.

Section 205 of the 1997 NIRC, as amended states that:

> 'SECTION 205. **Remedies for the Collection of Delinquent Taxes. — The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be:**
>
> (a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and
>
> (b) **By civil or criminal action.**
>
> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however,* that the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).
>
> **The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.**
>
> The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon.' (Emphasis supplied)

Under Section 205 of the 1997 NIRC, as amended, criminal action is now one of the recognized modes for the collection of taxes. Upon the filing of a criminal action, the corresponding civil action for the recovery of civil liability for taxes and penalty is deemed jointly instituted in the same proceeding. More importantly, no right to reserve the filing of such civil action separately from the criminal action is allowed. On this point, Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, vis-vis Section 11, Rule 9 of the Revised Rules of the Court of Tax Appeals provide:

Republic Act (RA) No. 1125, as amended by RA No. 9282

'Sec. 7. Jurisdiction. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) xxx;

xxx xxx xxx.

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. **Any provision of law or the Rules of Court to the contrary notwithstanding, the 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, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.**' (Emphasis supplied)

Revised Rules of the Court of Tax Appeals

'Rule 9

PROCEDURE IN CRIMINAL CASES

SEC. 11. Inclusion of civil action in criminal action. — In cases within the jurisdiction of the Court, **the criminal action and the corresponding civil action for the**

> **recovery of civil liability and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.**' (Emphasis supplied)
>
> **An assessment is not even necessary in a civil action for collection of delinquent taxes that is deemed filed in the prosecution of a criminal case.**
>
> Here, when the then CIR opted to file a criminal action under Section 205 of the 1997 NIRC, he necessarily initiated the corresponding civil action and adopted or, at the very least, approved the computations made by his duly authorized revenue officer. Needless to say, the collection of taxes does not require an approval from the CIR that is separate and distinct from the approval he issued in relation to the prosecution of the criminal case.
>
> It is then my humble opinion that when the CIR ordered the filing of a criminal case, he was fully aware that the civil action for collection of taxes and penalties is thereby deemed instituted and that the amount thereof is that which is reflected in the Joint-Affidavit executed by the complainants (with all pertinent annexes) as submitted to the Department of Justice. Stated otherwise, in instituting the criminal case, the then CIR has thereby approved the amount of civil liability as computed by the duly authorized revenue officer which the government seeks to recover from the accused.
>
> During trial, the prosecution has the burden of proving the amount of civil liability as stated in the Information, and the Court is bound to render judgment on the accused's civil liability to the extent of the amount proven or established by the prosecution." (Boldfacing supplied)

The absence of a separate "formal assessment" issued by the CIR against the accused is not at all fatal *nay* indispensable in the imposition of civil liability. **As in this case, "failure to file a return" - - an offense that may be criminally prosecuted under Section 255 of the NIRC of 1997, as amended - - does not require an assessment for the validity of an action for collection of tax as a remedy recognized in Section 205, *supra*.** The provision of Section

222 of the NIRC of 1997, as amended, is clear and categorical on this aspect, *viz.*:

> "SECTION 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —
>
> (a) **In the case of a false or fraudulent return with intent to evade tax or of <u>failure to file a return</u>**, the tax may be assessed, or **a <u>proceeding in court for the collection of such tax may be filed without assessment</u>**, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." (Boldfacing and underscoring supplied)

Verily, to require a formal assessment as a condition *sine qua non* in the imposition of civil liability in situation where the taxpayer failed to file a return would render nugatory the aforequoted provision.

All told, I VOTE to (i) DENY the Petition for Review filed by Joel C. Mendez in CTA EB Crim. No. 039 for lack of merit; and, (ii) GRANT the Petition for Review filed by the People of the Philippines in CTA EB Crim. No. 038. The case should be remanded to Court in Division for the determination of the amount of civil liability of the accused.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PEOPLE OF THE PHILIPPINES, Petitioner, -versus- **JOEL C. MENDEZ,** Respondent.	**CTA EB Crim. No. 038** (CTA Crim. Case No. 0-014)

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JOEL C. MENDEZ, Petitioner, -versus- **PEOPLE OF THE PHILIPPINES,** Respondent.	**CTA EB Crim. No. 039** (CTA Crim. Case No. 0-014) Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, J.J. Promulgated: SEP 08 2017 1:46 p.m.

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DISSENTING OPINION

CASANOVA, J.:

With all due respect with the learned ponente and my other colleagues, I dissent as to the findings that the accused is guilty beyond reasonable doubt for willful failure to file his income tax return for the taxable year 2001, in violation of Section 255 of the Republic Act (R.A.) No. 8424, as amended.

After analyzing carefully all the evidence on record both testimonial and documentary, the undersigned finds it strange that the fact, as alleged in the AMENDED INFORMATION, the accused failed to file his income tax return for the year 2001, to the damage and prejudice of the government in the ESTIMATED AMOUNT of P1,089,439.08, exclusive of penalties, surcharges and interest. The accusatory portion of the Amended Information is hereunder quoted for ready reference:

> "That on or about the 15th day of April, 2002, at Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the name and style of Weigh Less Center/Mendez Medical Group, with several branches in Quezon City, Muntinlupa City, Mandaluyong City, and Makati City, did then and there, willfully, unlawfully and feloniously fail to file his income tax return (ITR) with the Bureau with the Bureau of Internal Revenue for income earned for the taxable year 2001, to the damage and prejudice of the Government in the **estimated amount of P1,089,439.08**, exclusive of penalties, surcharges and interest.
>
> CONTRARY TO LAW."[1] (Emphasis supplied)

From the above, it is very evident and glaring that the amount of tax being claimed as alleged in the above-quoted Amended Information is merely **ESTIMATED** and **NOT EXACT NOR CERTAIN** which the Court **CANNOT ACCEPT** or **ENTERTAIN**. It must be noted that **in case the amount of tax deficiency is alleged in the Information, the same must be accurate and true, for the amount being claimed plays an important role.** The amount being claimed determines which Court has jurisdiction over the case. Accordingly, the amount must not be based on **ESTIMATES NOR PRESUMPTIONS** for **it will give undue power to the complainants to select the court** they feel will be in their favor. This fact holds true in the advent of the law creating the Court of Tax Appeals, Republic Act No. 1125, as amended by Republic Act No. 9282 otherwise known as the "The Expanded Jurisdiction of the Court of Tax Appeals." Section 7(b)(1) of the said law specifically provides as follows:

> "Sec. 7. JURISDICTION. — The CTA shall exercise:
>
> a) x x x x

[1] Per Resolution dated June 12, 2007, Division Docket (Vol. I), p. 496.

b) Jurisdiction over cases involving Criminal Offenses as herein provided:

1) Exclusive Original jurisdiction over all criminal offenses arising from violations of the NIRC or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: Provided, however, **That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties claimed is less than One Million Pesos (P1,000,000.00)** or where there is no specified amount claimed shall be tried by the regular courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court on the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of the civil liability for taxes and penalties shall at all times be simultaneously instituted with and jointly determined in the same proceedings by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.

Further, Section 3, Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, specifically enumerates the cases that fall within the jurisdiction of the Court of Tax Appeals in Division, *viz*:

"SEC. 3. Cases within the jurisdiction of the Court in Divisions. — The Court in Division shall exercise:

(a) x x x x

(b) Exclusive jurisdiction over cases involving criminal offenses, to wit:

(1) Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau

> of Internal Revenue or the Bureau of Customs, **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more**; (Emphases supplied)

From the above, it is crystal clear that before a taxpayer can be prosecuted for criminal offenses arising from violations of the NIRC or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs, the principal amount of taxes being claimed as alleged in the Information should only be definite or of no specified amount at all at the time of the filing of the case in Court. This is so because it determines the jurisdiction of the Court. In case the claim is One Million Pesos (P1,000,000.00) or more, the CTA has exclusive original jurisdiction over the case. On the other hand, if the claim is less than One Million Pesos (P1,000,000.00), or where no specified amount is claimed, the cases shall be tried before the Regular Courts and the jurisdiction of the CTA shall be appellate.

Considering that the amount of tax being claimed in the Amended Information was merely based on **ESTIMATE** or **PRESUMPTION**, it is uncertain as to which Court should have jurisdiction over the instant case. Thus, I have no recourse but to dismiss the case at bench for lack of jurisdiction.

In view of the foregoing, I move that the instant criminal case filed against the accused be **DISMISSED.**

CAESAR A. CASANOVA
Associate Justice