



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 18, 2023**, which reads as follows:*

“G.R. No. 222280 – PEOPLE OF THE PHILIPPINES, Petitioner, vs. ITALCAR PILIPINAS, INC., FERNANDO T. FRANCISCO, and ANTONINO B. CARINGAL, Accused-Respondents.

This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision,² dated May 28, 2015, and the Resolution,³ dated January 5, 2016, of the Court of Tax Appeals (CTA) *En Banc*, in CTA EB Criminal Case No. 029. The CTA *En Banc* affirmed the Resolution,⁴ dated October 11, 2013, and the Resolution,⁵ dated February 11, 2014, of the CTA Division, in CTA Criminal Case Nos. O-049, O-050, and O-051 for violation of Section 255 of Republic Act No. 8424 (R.A. 8424), as amended, in relation to Section 253(d) of the National Internal Revenue Code (NIRC).

Petitioner is the People of the Philippines (**People**). Considering the nature of the charges against the accused, the case was prosecuted by the revenue officers of the Bureau of Internal Revenue (**BIR**), as represented by the Office of the Solicitor General (**OSG**).

Accused-Respondent ITALCAR Pilipinas Inc. (**ITALCAR**) is a domestic corporation. Accused-Respondents Fernando T. Francisco

¹ *Rollo*, at pp. 11-55.

² *Id.* at 63-77. Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Presiding Justice Roman del Rosario (*with Concurring and Dissenting Opinion*) and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy (*on leave*), Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas.

³ *Id.* at 80-84. Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Presiding Justice Roman del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas.

⁴ *Id.* at 86-92. Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas.

⁵ *Id.* at 93-99. Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas.

(Francisco) and Antonino B. Caringal (Caringal) are both corporate officers of ITALCAR.

The Facts

Sometime in November 2007, three separate Informations⁶ for violation of Section 255 of R.A. 8424, as amended, in relation to Section 253(d) of the NIRC, were filed against ITALCAR, Francisco, and Caringal (**the accused-respondents**) for failure to pay the tax deficiency for the taxable year 1999 despite assessment and demand from the BIR Commissioner. The Informations were respectively docketed as CTA Criminal Case No. O-049,⁷ O-050,⁸ and O-051,⁹ summarized in a table as follows:

Case No.	Amount of Tax Deficiency
O-049	PHP 21,640,717.52 in excise tax deficiency PHP 14,957,095.09 in penalties and charges Total: PHP 36,597,812.61
O-050	PHP 24,620,769.71 in VAT deficiency PHP 16,767,123.40 in penalties and charges Total: PHP 41,387,893.11
O-051	PHP 1,537,313.85 in withholding tax deficiency PHP 1,094,373.40 in penalties and charges Total: PHP 2,631,687.27

On January 21, 2008, upon arraignment, Francisco and Caringal pleaded not guilty to the crimes charged.¹⁰ Pre-trial then ensued. On July 27, 2009, pre-trial was concluded.¹¹

On 29 June 2011, Caringal's counsel filed a Manifestation with Motion to Dismiss in light of Caringal's death.¹² On September 2, 2011, the CTA Division issued a Resolution dismissing the case against Caringal.¹³

⁶ *Id.* at 111-118.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 67.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

On June 18, 2012, the People filed its Formal Offer of Evidence.¹⁴

On July 29, 2013, Francisco filed a Motion for Leave of Court to File and Admit Demurrer to Evidence.¹⁵

On August 1, 2013, the CTA Division issued a Resolution admitting Francisco's Demurrer to Evidence.¹⁶

The Ruling of the CTA Division

On October 11, 2013, the CTA Division issued a Resolution¹⁷ granting Francisco's Demurrer to Evidence, resulting in the dismissal of CTA Criminal Cases Nos. O-049, O-050, and O-051.¹⁸ It determined that the BIR's right to assess ITALCAR for deficiency taxes has prescribed, and that the three-year period applies in the absence of a fraud assessment.¹⁹ Lastly, the CTA Division found that the prosecution failed to present sufficient evidence to establish the guilt of the accused, considering that there is doubt as to the validity of the assessment.²⁰

On October 31, 2013, the People filed a Motion for Partial Reconsideration with respect to the civil aspect of the case.²¹

Meanwhile, on December 12, 2013, Francisco passed away.²² In light of this, on February 6, 2014, Atty. Peter T. Tabang (**Atty. Tabang**), his counsel, filed a Notice of Death of Accused Fernando T. Francisco and Withdrawal of Appearance of Counsel.

On February 11, 2014, the CTA Division issued a Resolution²³ denying the Motion for Partial Reconsideration of the civil aspect of the case on the ground that the People failed to prove and fortify its allegation of fraud against accused-respondents.²⁴ The CTA Division also maintained that

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 68.

¹⁷ *Id.* at 86-92.

¹⁸ *Id.*

¹⁹ *Id.* at 91.

²⁰ *Id.* at 92.

²¹ *Id.* at 67.

²² *Id.* at 68.

²³ *Id.* at 93-99.

²⁴ *Id.* at 99.

its assessment was void for being issued beyond the three-year period allowed by law.²⁵

On March 3, 2014, the CTA Division issued a Resolution holding that Francisco's civil liability *ex delicto* has been extinguished in light of his death, but denied his counsel's prayer to declare the cases closed and terminated, as the determination of civil liability has not yet been completely resolved. The CTA Division also directed Atty. Tabang to secure conformity from ITALCAR's authorized officer for the purpose of his withdrawal as counsel.

Aggrieved, the People filed a Petition for Review before the CTA *En Banc* under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals. The parties were also directed to file their respective Memoranda.

The Ruling of the CTA En Banc

On May 28, 2015, the CTA *En Banc* rendered its Decision denying the Petition for Review filed by the People on the ground that the BIR's assessment for deficiency taxes is void.²⁶ It upheld the Resolutions rendered by the CTA Division, dated October 11, 2013 and February 11, 2014, respectively.

The CTA *En Banc* clarified that the civil liability in these cases pertains only to ITALCAR as a corporation, considering that Francisco and Caringal's criminal and civil liabilities *ex delicto* were extinguished in light of their deaths pending trial.²⁷ On this score, it further ruled that the BIR's right to assess ITALCAR had already prescribed, as such was not done within the three-year period provided by law.²⁸ It determined that it was the three-year period of assessment that applied with respect to ITALCAR, and not the 10-year period, because of the prosecution's failure to establish the existence of fraud.

Unsatisfied, the People filed a Motion for Reconsideration.

On January 5, 2016, the CTA *En Banc* issued a Resolution denying the Motion for Reconsideration on the ground that the arguments presented

²⁵ *Id.*

²⁶ *Id.* at 63-77.

²⁷ *Id.* at 70.

²⁸ *Id.* at 72.

by the People are a mere rehash of its previous arguments that have been duly considered and thoroughly discussed.

Undeterred, the People, through the OSG, filed the present Rule 45 Petition for Review on *Certiorari* before the Court.

The Issue

Did the CTA *En Banc* commit reversible error in issuing the assailed Decision and Resolution dismissing the case filed by the People on the ground that the BIR's assessment was void?

The Ruling of the Court

The Court denies the Rule 45 Petition for Review on *Certiorari* filed by the People. The CTA *En Banc* did not commit any reversible error in dismissing the complaint, insofar as it held that the assessment is void on the ground that it had already prescribed for non-compliance with the three-year period. However, the Court clarifies that the dismissal of the complaint on the ground of the extinction of accused-respondents Francisco and Caringal's civil liability *ex delicto* in light of their deaths is erroneous.

In the Concurring and Dissenting Opinion of Presiding Justice Roman del Rosario,²⁹ he opined that the dismissal of the complaint should solely be based on the ground of prescription. According to him, death did not extinguish the civil liabilities of Francisco and Caringal, because such were predicated on law and not delict.

The Court finds that Justice del Rosario's position is in accordance with law and jurisprudence, as will be further discussed below.

Section 4, Rule 111 of the Rules of Criminal Procedure provides:

Section 4. Effect of death on civil actions – The death of the accused after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from delict. However, the independent civil action instituted under Section 3 of this Rule or which thereafter is instituted to enforce liability arising from other sources of obligation may be continued against the estate or legal representative of

²⁹ *Id.* at 78-79.

the accused after proper substitution or against said estate, as the case may be. The heirs of the accused may be substituted for the deceased without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.³⁰

The case of *People vs. Bayotas*³¹ thoroughly discusses the varying effects of death on an accused's criminal and civil liability, thus:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, i.e. civil liability *ex delicto in senso strictiore*."
2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Art. 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission.³²

Hence, to determine whether death extinguishes civil liability, it is therefore necessary to identify its source of obligation. This is because there is a significant difference in treatment between civil liability *ex delicto* and civil liability arising from other sources of obligation.

The government's power of taxation is legislative in character. Congress is given the plenary power to determine the subjects, purpose, and manner of taxation, and this is exercised through the enactment of tax statutes. For the guidance of the lower courts, the Court finds it necessary to emphasize that the obligation to pay taxes is one that arises from law, and not delict. It is independent of any criminal charge filed against the taxpayer for his or her failure to comply with this duty to the state.

Jurisprudence has also settled that it is indeed the law that imposes the obligation to pay taxes, independent of a charge for tax evasion. As early as 1967, the Court *En Banc* has categorically ruled:

The acquittal in said criminal cases cannot operate to discharge defendant-appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and

³⁰ Emphasis supplied.

³¹ 306 Phil. 266 (1994).

³² *Id* at 282-283. Emphasis supplied.

independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding, nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged.³³

The Court's ruling in *Proton Pilipinas Corp. vs. Republic*³⁴ is also instructive, thus:

It should borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid. Such obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself created civil liability on the part of the taxpayer. Such civil liability to pay tax arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.³⁵

As applied in this case, the Court therefore arrives at the conclusion that Caringal and Francisco's obligation to pay taxes was not extinguished by their death, as it did not arise from delict, but rather is based on law. What was extinguished is only their civil liability *ex delicto*.

Nevertheless, the complaint against all accused-respondents, namely ITALCAR, Caringal, and Francisco must still be dismissed, as it is based on a void assessment made beyond the three-year period.

Time and time again, this Court has ruled that for an assessment to be valid, such must be done in accordance with the procedure provided by law. Any prosecution for tax-related offenses must be predicated on a valid assessment. Otherwise, the assessment is void.

Section 203 of the NIRC, the governing law at the time, provides for the period within which the BIR is mandated to conduct its assessment upon the taxpayer, thus:

³³ *People vs. Patanao*, 127 Phil. 105, 109 (1967). Emphasis supplied.

³⁴ 535 Phil. 521 (2006).

³⁵ *Id.* at 532-533. Emphasis supplied.

SECTION 203. Period of Limitation Upon Assessment and Collection. Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, that in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

The exception to this is contained in Section 222(a) of the NIRC, which provides for the period of limitation in cases of fraud, thus:

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 failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, 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.

Based on the factual findings of the CTA *En Banc*, the material dates of assessment of the accused-respondents are established as follows.³⁶

Tax Type	Date of Filing/Last Day Prescribed	End of 3-Year Period
Excise Tax (latest date of withdrawal)	December 8, 1999	December 8, 2002
VAT (4 th quarter of 1999)	January 25, 2000	January 25, 2003
Withholding Tax (December 1999)	January 25, 2000	January 25, 2003

In its review of the records, the CTA *En Banc* also found that the Formal Letter of Demand of the BIR, dated May 7, 2003, was received by the accused-respondents on May 19, 2003.³⁷ Evidently, the right of the BIR to make an assessment for deficiency taxes against accused-respondents has already prescribed.

³⁶ *Id.* at 73.

³⁷ *Id.*

The assertion of the People that it is the 10-year period, rather than the three-year period, that must apply in the case of the accused-respondents must fail. The People, in arguing that the 10-year period should apply to accused-respondents, rely on their bare allegations, unsubstantiated by evidence. They also rely on the failure of the accused-respondents to submit requested documents.

Fraud is a question of fact that cannot be presumed, it must be alleged and proved by clear and convincing evidence. For the 10-year period to apply, it is incumbent on the part of the People to prove the existence of fraud, which they failed to do. As observed by the CTA Division, as adopted by the CTA *En Banc*, “no allegation of fraud can be traced on the face of the above-captioned criminal informations.”³⁸ There being no fraud, the ten-year period cannot apply to accused-respondents. It is the three-year period that governs, as the People failed to overturn the presumption of innocence in favor of the accused-respondents.

The BIR failed to make a valid assessment upon accused-respondents within the period of limitations prescribed by law, which is an indispensable requisite for a charge of tax evasion to prosper. To echo the ruling of the CTA *En Banc*, a void assessment bears no fruit. Hence, the dismissal of the cases against the accused-respondents is in order.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision, dated May 28, 2015, and Resolution, dated January 5, 2016, of the Court of Tax Appeals *En Banc*, in CTA EB Criminal Case No. 029, are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:

Mis-DC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *JB 3/10/23*

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³⁸ *Id.* at 74.

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