EN BANC

G.R. Nos. 208310-11 — PEOPLE OF THE PHILIPPINES, *petitioner, **versus*** **JOEL C. MENDEZ,** *respondent.*

G.R. No. 208662 — JOEL C. MENDEZ, *petitioner, **versus*** **PEOPLE OF THE PHILIPPINES,** *respondent.*

Promulgated:

March 28, 2023

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CONCURRING OPINION

CAGUIOA, *J.*:

I concur in denying Joel C. Mendez's (Mendez) Petition and partly granting the Petition of the People of the Philippines, through the Office of the Solicitor General (OSG), insofar as Mendez's civil liability for taxes, fees, and penalties are concerned, by remanding the case to the Court of Tax Appeals (CTA) to determine and compute Mendez's tax liability based on the evidence on record submitted during trial.

I write this Concurring Opinion to emphasize the following relevant principles: (1) criminal jurisdiction is determined by the material allegations of the Information; and (2) a formal assessment or a final notice of demand is not required before a criminal action may be instituted against a taxpayer for violation of the provisions of the Tax Code and collection of the latter's deficiency taxes, fees and penalties.

The material allegations in the Amended Informations are sufficient to vest the CTA with the jurisdiction to hear and decide the criminal cases against Mendez.

Criminal jurisdiction is defined as the authority of a tribunal to hear and try a particular offense and impose the punishment for it.[1] It is conferred by law and is solely determined by the material allegations of the Information.[2] Once jurisdiction is vested by the material allegations in the Information, it remains vested irrespective of whether the plaintiff is entitled to recover all or some of the claims asserted therein.[3]

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[1] *People v. Mariano*, 163 Phil. 625, 630 (1976).

[2] *See Uy v. Court of Appeals*, 342 Phil. 329 (1997).

[3] *Gomez v. Montalban*, 572 Phil. 460, 470 (2008).

In this case, the applicable law that defines the jurisdiction over criminal offenses arising from violation of the 1997 National Internal Revenue Code,[4] as amended, (1997 NIRC) and other tax laws is Republic Act No. (RA) 9282.[5] Section 7(b) thereof provides:

> SECTION. 7. *Jurisdiction.* — The CTA shall exercise:
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> ....
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> (b) Jurisdiction over cases involving criminal offenses as herein provided:
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> (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.
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> (2) Exclusive appellate jurisdiction in criminal offenses:
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> (a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respected territorial jurisdiction.
>
> (b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction. (Emphasis supplied)

As can be gleaned from the foregoing, the jurisdiction to hear and decide criminal cases arising from violations of the 1997 NIRC is solely determined by the principal amount of taxes and fees claimed by the

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4 Republic Act No. 8424, December 11, 1997.

5 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS, 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, March 30, 2004.

Government. This claimed amount of principal taxes and fees, exclusive of penalties charges and interest, must be alleged in the Information to determine which court has jurisdiction over the criminal case. If the Information alleges that the claimed amount of principal taxes and fees, exclusive of penalties, surcharges and interest, is less than one million pesos (₱1,000.000.00) or no claimed amount of principal taxes and fees is specified in the Information, the jurisdiction over said criminal case is with the regular courts. Conversely, if the Information alleges that the claimed amount of principal taxes and fees, exclusive of penalties, surcharges and interest, is one million pesos or more, the jurisdiction to hear and try such criminal case and impose a penalty therefor is exclusively vested with the CTA.

In the case at bar, the issue on jurisdiction arose because the Amended Informations used the words "estimated amount" in referring to the amount of taxes and fees claimed by the Government:

[CRIMINAL CASE NO. O-013
(I.S. No. 2005-204)
For: Violation of Section 255, RA No. 8424
Failure to file ITR for taxable year 2002]

That on or about the 15th day of April 2003, at Quezon City, and within the jurisdiction of this Honorable Court, the above-named accused, a duly registered taxpayer, and sole proprietor of "Weigh Less Center", "Mendez Body and Face Salon and Spa", and "Mendez Body and Face Skin Clinic", with principal office at No. 31 Roces Avenue, Quezon City, and with several branches in Quezon City, Makati City, San Fernando, Pampanga and Dagupan City, did then and there, willfully, unlawfully and feloniously fail to file his income tax return (ITR) with the Bureau of Internal Revenue for the taxable year 2002, to the damage and prejudice of the Government in the *estimated amount* of **₱1,522,152.14, exclusive of penalties, surcharges[,] and interest**.

CONTRARY TO LAW. ...

[CRIMINAL CASE NO. O-015
(I.S. No. 2005-204)
For: Violation of Section 255, RA No. 8424
Failure to supply correct and accurate information in the ITR for taxable year 2003]

That on or about the 15th day of April 2004, at Dagupan City, and within the jurisdiction of this Honorable Court, the above-named accused, a duly registered taxpayer, and sole proprietor of "Weigh Less Center", "Mendez Body and Face Salon and Spa", and "Mendez Body and Face Skin Clinic", with several branches in Quezon City, Makati City, San Fernando, Pampanga and Dagupan City, engaged in the business of cosmetic surgery and dermatology, willfully, unlawfully and feloniously, did then and there, fail to supply correct and accurate information in his income tax return (ITR) for taxable year 2003 filed in the Revenue District of Calasiao, Pangasinan, by making it appear under oath that his income for taxable year 2003 was derived mainly from his branch in Dagupan City, and failing to declare his consolidated income from his other "Weigh Less Center",

> "Mendez Body and Face Salon and Spa", and "Mendez Body and Face Skin Clinic" branches, to the damage and prejudice of the Government in the *estimated amount* of **₱2,107,023.65, exclusive of penalties, surcharges and interest**.
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> CONTRARY TO LAW.[6] (Emphasis, italics and underscoring supplied, citations omitted)

However, it must be noted that the Amended Informations also specifically indicated, in numerical values, the respective amounts of the claimed principal taxes and fees, exclusive of penalties, surcharges and interest: ₱1,522,152.14 in Criminal Case No. O-013 (for taxable year 2002) and ₱2,107,023.65 in Criminal Case No. O-015 (for taxable year 2003), which **considerably exceed** the CTA's one-million-peso jurisdictional threshold. As such, the CTA was correct in taking cognizance and exercising jurisdiction over the said criminal cases.

Significantly, the use of the word "estimated" by the Amended Informations did not, to use the language of Section 7 quoted above, render them as Informations "where there is no specified amount claimed" or Informations with insufficient allegation on the amount of principal taxes and fees. Without question, the Amended Informations here specified, in plain numerical values, the respective amounts of the claimed principal taxes and fees, exclusive of penalties, surcharges and interest, to be ₱1,522,152.14 in Criminal Case No. O-013 (for taxable year 2002) and ₱2,107,023.65 in Criminal Case No. O-015 (for taxable year 2003) — amounts that, as emphasized earlier, significantly exceed the CTA's jurisdictional threshold. To determine jurisdiction based on the use of the word "estimated" begs the following questions: If the same Amended Informations were filed before the Regional Trial Court (RTC), can the RTC exercise jurisdiction over these criminal cases considering that the amounts claimed are clearly more than its jurisdictional threshold? As well, if the word "estimated" is removed from the Amended Informations, and refiled before the CTA, will the CTA now have jurisdiction over these criminal cases? In fact, consistent with the principle that jurisdiction once vested remains with the court until the termination of the case, the Commissioner of Internal Revenue (CIR) can even allege in the Amended Informations that the total amount claimed against Mendez is hundreds of millions of pesos, and the CTA will therefore have the original jurisdiction over the criminal cases. There is absolutely nothing wrong with this even if what is later proven is only less than the one-million-peso threshold. Simply put, the use of the word "estimated" will not, as it surely cannot, detract from a court's exercise of jurisdiction.

With more reason does the use of the word "estimated" lose any significance when we consider that Mendez here purposely did not file his tax returns, thus compelling the CIR to rely on other means to arrive at the indicated amount of Mendez's principal taxes and fees. To repeat, what

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[6] *Ponencia*, pp. 2–3.

ultimately determines a court's power and capacity to hear and decide a criminal case are the material jurisdictional allegations in the Information — which are the specified amounts of principal taxes and fees that are claimed, exclusive of penalties, surcharges, and interest. Jurisdiction once vested with the court cannot be ousted by the fact that the amount claimed was not proven during trial. This means that what is controlling in determining which court has jurisdiction over the two criminal cases is the amount of principal taxes and fees alleged in the Amended Informations and not the computations made by the Bureau of Internal Revenue (BIR) officers. In other words, regardless of the documentary evidence presented by the parties as to the amount of principal taxes and fees, the fact remains that the material allegations in the Amended Informations vested upon the CTA the jurisdiction over the criminal cases. And this jurisdiction remains with the CTA regardless if the amount claimed by the Government turns out to be less than ₱1,000,000.00. Notably, whether based on the computations of the BIR officers or the allegations in the Amended Informations — the principal amount of taxes and fees are all way beyond the CTA's jurisdictional threshold.

An assessment or a final notice and demand issued by the CIR is not required before a criminal case may be instituted before the courts.

Section 203 of the 1997 NIRC provides the general rule that no proceeding in court for the collection of taxes may be instituted without first issuing an assessment against a taxpayer:

> 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. (Emphasis supplied)

However, in the very text of Section 203 is the exception: Section 222(a) on cases of false or fraudulent returns or failure to file a required return, which grants the State the option to directly file a case in court for the collection of taxes even without an assessment:

> SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
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> **(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. (Emphasis, underscoring and italics supplied)

Taxpayers who fall under Section 222 necessarily violate Sections 254 and 255 of the 1997 NIRC, which respectfully provide:

> SECTION 254. *Attempt to Evade or Defeat Tax.* — Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (P30,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: *Provided*, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.
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> SECTION 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.

Reading Sections 254 and 255 together with Section 222(a) means that the State is granted the authority to either issue an assessment for such taxes due **OR** to directly institute a criminal case against a taxpayer even in the absence of an assessment when there are violations of Sections 254 and 255.

Indeed, jurisprudence as far back as 1980 already explained that the right of the State to prosecute a criminal offense for violation of tax laws cannot be preconditioned on the issuance of a final and executory assessment from the CIR. The rationale for this was explained by the Court in *Ungab v. Judge Cusi, Jr.*[7] (*Ungab*) — because the crime is completed once a taxpayer commits the acts constituting the offense. Hence, there is no need for a precise computation and formal assessment for criminal complaints to be filed against a taxpayer, to wit:

> "The contention is made, **and is here rejected**, that an assessment of the deficiency tax due is necessary before the taxpayer can be prosecuted criminally for the charges preferred. The crime is complete when the violator has, as in this case, knowingly and willfully filed fraudulent returns with intent to evade and defeat a part or all of the tax."

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7 186 Phil. 604 (1980).

"An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat the tax. **The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime**."[8] (Emphasis and underscoring supplied, citations omitted)

Relevantly, in the 1999 case of *CIR v. Pascor Realty & Development Corp.*[9] (*Pascor Realty*), the Court, interpreting Sections 222 and 255 of the 1997 NIRC, in relation to its ruling in *Ungab*, held:

Additional Issues: *Assessment Not Necessary Before Filing of Criminal Complaint*

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.**

Private respondents insist that Section 222 should be read in relation to Section 255 of the NIRC, which penalizes failure to file a return. They add that a tax assessment should precede a criminal indictment. **We disagree. To reiterate, said Section 222 states that an assessment is not necessary before a criminal charge can be filed.** This is the general rule. Private respondents failed to show that they are entitled to an exception. Moreover, **the criminal charge need only be supported by a *prima facie* showing of failure to file a required return. This fact need not be proven by an assessment.**

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 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.**

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8 *Id.* at 610–611.

9 368 Phil. 714 (1999).

> **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.**[10] (Emphasis, italics and underscoring supplied; citations omitted)

Additionally, in the 2009 case of *Adamson, et al. v. CA, et al.*[11] (*Adamson*), the Court echoed anew its ruling in *Ungab* and stressed that the principle laid down therein — that a criminal case may be instituted without an assessment — still applies to the provisions of the 1997 NIRC:

> 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:
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> > Sec. 269. *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 after the collection of such tax may be begun without assessment, at any time within ten 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 collection thereof.
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> The law is clear. When fraudulent tax returns are involved as in the cases at bar, **a proceeding in court after 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.
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> Thus, the applicability of ***Ungab v. Cusi*** is evident to the cases at bar. **In this seminal case, this Court ruled that there was no need for precise computation and formal assessment in order for criminal complaints to be filed against him.** It quoted Merte's Law of Federal Income Taxation, Vol. 10, Sec. 55A.05, p. 21, thus:
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> > An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return, with intent to evade and

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10 *Id.* at 726–727.

11 606 Phil. 10 (2009).

> defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.
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> **This hoary principle still underlies Section 269 and related provisions of the present *Tax Code*.**[12] (Emphasis, italics and underscoring supplied; citations omitted)

The most recent pronouncement on this issue was just in 2018, in *Gaw v. CIR*,[13] where the Court said that "[u]nder Sections 254 and 255 of the [1997] NIRC, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. The crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. It is therefore not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper."[14]

Proceeding from the foregoing established and long-running jurisprudence, the doctrine of *stare decisis* dictates that the filing of a criminal case against a taxpayer for violation of penal provisions of the Tax Code should be treated distinctly from the Government's remedy of assessing a taxpayer for such taxes. As emphasized in *Pascor Realty*, the CIR has ***the discretion*** to either issue an assessment against the taxpayer **or** file a criminal case for violation of Sections 254 or 255 of the Tax Code. Hence, the State's right to proceed with a criminal case is not subject to, and is in fact separate from, the issuance of a final and executory assessment. *Ungab* teaches that for criminal cases violating tax laws, it is enough that the case is supported by *prima facie* evidence of the acts constituting the offense — which, in this case, pertains to the taxpayer's willful failure to file the required return. *Adamson*, in turn, highlighted that this principle remains applicable to the existing Tax Code, and that a criminal charge need not go through the procedure for the issuance of an assessment.

In this case, Mendez was charged with violation of Section 255 of the 1997 NIRC. Said provision is quoted anew:

> SECTION 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,

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12 *Id.* at 30–31.
13 836 Phil. 773 (2018).
14 *Id.* at 790–791; citation omitted.

> 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.

The crime committed by Mendez was consummated when he willfully failed to file his returns for taxable years 2002 and 2003 as specifically alleged in the Amended Informations. As such, the State had the right to already directly file a criminal case against him for violating the afore-quoted provision upon discovery of his failure to file his tax returns. **Thus, to require a final and executory assessment before a criminal case may be filed against the accused is to effectively add another element of the crime not contemplated by the penal statute.**

This "additional requirement" also frustrates the inherent right of the State to prosecute and punish the violators of the law.[15] It would be egregiously wrong to require the CIR to first issue an assessment against the taxpayer and go through the entire process of the same being protested under Section 228 of the 1997 NIRC, until a final notice and demand for the payment of the assessed taxes is reached, before a criminal case for violation of the Tax Code may be instituted against a taxpayer. To be sure, **the crime being punished in this case is the taxpayer's willful and deliberate failure to file a return, and not his failure to pay the assessed deficiency taxes**.

I take this opportunity to likewise discuss that Section 222(a) of the 1997 NIRC and its related jurisprudence are not repealed by RA 9282 for the following reasons:

First, there is absolutely nothing in RA 9282 which expressly repeals Section 222(a) of the 1997 NIRC. In fact, Section 222 is not even among the provisions of the 1997 NIRC which was expressly repealed or modified by RA 10963[16] or the TRAIN Law. Hence, as I see it, Section 222(a), including its jurisprudential interpretations, remains good law and should be applied to the instant case even with the enactment of RA 9282.

Second, it cannot also be argued that RA 9282 impliedly repealed Section 222(a) of the 1997 NIRC because the latter is neither inconsistent nor incompatible with RA 9282.

That RA 9282 included a jurisdictional threshold for criminal offenses does not mean that a final and executory assessment or a final notice and demand from the CIR is now required for criminal prosecution against a taxpayer. To be sure, as opposed to Sections 7(a)(1), 7(a)(2), and 7(c) of RA 9282, which define the jurisdiction of the CTA over decisions or inaction of the CIR in cases involving disputed assessments, and the jurisdiction of the CTA over tax collection involving final and executory assessment, Section

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[15] *Allado v. Judge Diokno*, 302 Phil. 213, 238 (1994).

[16] TAX REFORM FOR ACCELERATION AND INCLUSION, December 19, 2017.

7(b)(1) on the jurisdiction of the CTA and the lower courts over criminal offenses does not even mention any need for a final and executory assessment or a final notice and demand from the CIR. What it simply mandates is that the Information indicate the amount of the principal taxes and fees, exclusive of surcharges, penalties, and interest, claimed by the Government against the taxpayer. **This difference in the language of Sections 7(a)(1), 7(a)(2), and 7(c) with Section 7(b)(1) is *precisely* an acknowledgement by the Legislature that filing a criminal case is distinct and separate from the Government's administrative remedies of assessing the taxpayer and enforcing the assessment through a civil suit for the collection of the same.** Otherwise stated, the distinct wording of Section 7(b)(1) reinforces the State's right, under Section 222(a) and its prevailing interpretation, to file a criminal case even without an assessment.

For reference, Sections 7(a)(1), 7(a)(2), 7(b)(1), and 7(c) of RA 9282 are quoted below:

> SECTION. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
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> . . . .
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> (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.**
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> . . . .
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> c) Jurisdiction over tax collection cases as herein provided:
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> (1) Exclusive original jurisdiction in tax collection cases involving **final and executory assessments** for taxes, fees, charges and penalties: *Provided, however*, That collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court. (Emphasis supplied)

Third, delinquency and the issuance of an assessment are not required in the collection of taxes through the institution of a tax-related criminal action. As discussed, the right of the State to prosecute crimes and punish violators of the law arises once the crime has been completed. In fact, the institution of a criminal action only requires a prior determination of probable cause by the Department of Justice. Again, at the risk of belaboring the point: **the crime being punished in this case is Mendez's willful and deliberate failure to file a return, and not his failure to pay the assessed deficiency taxes**.

In addition, Section 7(b)(1) of RA 9282 clearly states that the criminal action and the civil liability shall be simultaneously instituted with, and ***jointly determined*** in the same proceeding by the CTA, which signals, in an unequivocal manner, that the accused's tax liability is not required to be first determined to be delinquent or based on a final and executory assessment. If the civil liability deemed instituted in a criminal action should be based on a final and executory assessment, then the CTA would have no authority or discretion to "determine," based on evidence presented during trial, the tax liability of the accused. The court's duty to impose civil liability would simply be ministerial.

Moreover, tax delinquency does not arise only from a taxpayer failing to pay the assessed deficiency taxes. A tax is also considered delinquent when the taxpayer fails to file a return required to be filed and consequently the taxes due thereon, as in this case. Section 249 of the 1997 NIRC, provides:

> SECTION 249. *Interest.* —
>
> (A) *In General.* — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum*, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) *Deficiency Interest.* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) *Delinquency Interest.* — In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax. (Emphasis supplied)

Again, it bears to emphasize that the jurisdiction of the CTA under Sections 7(a)(1) and 7(a)(2) relating to disputed assessments, and Section 7(c) on civil collection arising from final and executory assessments are separate and distinct from Section 7(b)(1) on the jurisdiction over criminal offenses. Consequently, what triggers the courts' jurisdiction in Sections 7(a)(1), 7(a)(2), and 7(c) should similarly trigger the court's jurisdiction over criminal offenses.

Furthermore, while Section 7(b)(1) of RA 9282 mandates the simultaneous institution, hearing and resolution of the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties, this is not inconsistent with the right of the State, under Section 222(a), to directly file a criminal case in court without an assessment. In other words, the State has unfettered discretion to immediately institute a criminal action under Section 222(a), but when it does so, then the recovery of civil liability for taxes and penalties is deemed likewise instituted. This only means that the State cannot, through the CIR, file or continue with any separate civil case.

In fact, this principle is nothing new. Section 205 of the 1997 NIRC expressly recognizes that the filing of a criminal case against a taxpayer is a way to collect delinquency taxes, to wit:

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)

Moreover, Section 253(a) of the 1997 NIRC provides that "[a]ny person convicted of a crime penalized by [the 1997 NIRC] shall, *in addition to being liable for the payment of the tax*, be subject to the penalties imposed [t]herein."[17] Thus, even prior to RA 9282, the 1997 NIRC already confirmed that a criminal case includes the determination of the taxes due from the taxpayer. When the State files a criminal case against the taxpayer, the collection of the taxes due from him or her will necessarily be included in the ruling of the court. In other words, the criminal case becomes a collection suit.

This principle does not contravene or render nugatory the State's right, under Section 222(a), to institute a criminal case without an assessment. Because despite the language of Sections 205 and 253(a) — that the criminal action includes the collection of tax liability — still, the State is granted the discretion, under Section 222(a), to either assess the taxpayer or directly file a proceeding in court without an assessment. If at all, what Section 7(b)(1) of RA 9282 did was simply to affirm and clarify that a criminal proceeding necessarily includes the collection of tax liability.

For ease of reference, Section 222(a) is quoted anew:

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**. (Emphasis, underscoring and italics supplied)

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[17] Italics supplied.

As discussed, for cases falling under Section 222(a), the CIR is granted the discretion to either assess the taxpayer or institute a proceeding in court without an assessment. It appears, however, that the proceeding referred to in Section 222(a) may either be a civil or criminal action, which may be simultaneously or separately instituted. Thus, as I see it, what Section 7(b)(1) of RA 9282 simply did in relation to the State's discretion under Section 222(a) to file a proceeding in court without an assessment, is to clarify that such proceeding necessarily refers to a criminal action with the corresponding civil collection deemed instituted therein.

Again, it should be emphasized that a criminal action may be instituted without prior assessment. When the CIR opts to institute a taxpayer's criminal prosecution, tax collection is regarded as incidental to or a mere consequence of the criminal case. Further, considering the well-entrenched rule that implied repeals are not favored,[18] it is best to construe the phrase "as finally decided by the [CIR]" under Section 205 of the 1997 NIRC as not limited to a formal assessment. Consequently, apart from presenting proof, beyond reasonable doubt, of the guilt of the accused, the CIR is required to present evidence establishing the taxpayer's civil liability. **The evidence, however, is not limited to a formal assessment. The CIR can present any other documentary proof clearly showing the amount of tax liability of the accused.** If the CIR fails to prove the same, then no civil liability may be awarded by the court in the same criminal case for insufficiency of evidence.

To summarize, the CTA here has jurisdiction over the criminal cases against Mendez — as the material allegations in the Amended Informations have so determined its jurisdiction. The use of the word "estimated" does not render said Informations as "vague" so that one can read them as Informations "where there is no specified amount claimed." The authority to hear and decide a case is, as it should be, based on the specific amount indicated in the Information, which in this case, is way beyond the jurisdictional threshold of the CTA. And that jurisdiction continues even if it is proved during trial that the amounts involved fall below the threshold.

Further, the State is expressly granted the authority, under Section 222(a) of the 1997 NIRC, to institute a criminal action against a taxpayer for failing to file a required return, even without an assessment. This is because the crime is completed once the taxpayer willfully fails to file the return; and the filing of a criminal case is distinct and separate from the State's authority to issue a tax assessment against a taxpayer and enforce the same in a collection suit.

RA 9282 did not repeal or render nugatory the State's discretion under Section 222(a). RA 9282 simply provided jurisdictional thresholds and clarified that when a criminal case is filed against the taxpayer, the civil suit for the collection of taxes is deemed instituted. The CTA is granted the

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[18] *Arula v. Brig. Gen. Espino, et al.*, 138 Phil. 570, 590 (1969).

jurisdiction to jointly determine the guilt and the tax liability of the accused. In fact, this is a principle recognized even under the 1997 NIRC.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice