



Republic of the Philippines
Supreme Court
Manila

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

G.R. Nos. 208310-11

-versus-

JOEL C. MENDEZ,
Respondent.

X-----X

JOEL C. MENDEZ,
Petitioner,

G.R. No. 208662

Present:

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

GESMUNDO, *Chief Justice*,
LEONEN,*
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, JJ.

Promulgated:

March 28, 2023

X-----X

* On official leave.

DECISION**M. LOPEZ, J.:**

Is an assessment for deficiency taxes a prerequisite for collection of the taxpayer-accused's civil liability for unpaid taxes in the criminal prosecution for tax law violations? This is the central issue in these consolidated Petitions for Review¹ assailing the Court of Tax Appeals (CTA) *En Banc's* Decision² dated December 11, 2012 and Resolution,³ dated July 8, 2013 in C.T.A. EB Crim. Nos. 014 and 015, which affirmed the CTA Division's Decision⁴ dated January 5, 2011 and Resolution,⁵ dated May 27, 2011 in CTA Crim. Case Nos. O-013 and O-015. The assailed issuances found Joel C. Mendez (Joel) guilty beyond reasonable doubt for violating Section 255 of the 1997 National Internal Revenue Code, as amended (Tax Code),⁶ for failure to file income tax return (ITR) for the taxable year 2002 and for failure to supply correct and accurate information in the ITR for the taxable year 2003.

ANTECEDENTS

In two separate Amended Informations,⁷ Joel was charged with the crime of Violation of Section 255 of the Tax Code, as follows:

**[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",

¹ *Rollo* (G.R. No. 208310-11), pp. 11-26; and *rollo* (G.R. No. 208662), Vol. 1, pp. 76-113.

² *Rollo* (G.R. No. 208310-11), pp. 34-74; and *rollo* (G.R. No. 208662), Vol. 1, pp. 9-49, docketed as C.T.A. EB CRIM. NO. 014 (C.T.A. CRIM. CASE NOS. O-013 & O-015); and C.T.A. EB CRIM. NO. 015 (C.T.A. CRIM. CASE NOS. O-013 & O-015). Penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla. Associate Justice Caesar A. Casanova maintained his Dissenting Opinion in the January 5, 2011 Decision, and Associate Justice Amelia R. Cotangco-Manalastas, on leave.

³ *Rollo* (G.R. No. 208310-11), pp. 77-83; and *rollo* (G.R. No. 208662), Vol. 1, pp. 50-56. Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban. Presiding Justice Roman G. Del Rosario wrote Concurring and Dissenting Opinion, and Associate Justice Caesar A. Casanova maintained his Dissenting Opinion in the January 5, 2011 Decision.

⁴ *Rollo* (G.R. No. 208662), Vol. 1, pp. 114-165. Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justice Cielito N. Mindaro-Grulla. Associate Justice Caesar A. Casanova wrote Dissenting Opinion.

⁵ *Id.* at 198-213. Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justice Cielito N. Mindaro-Grulla. Associate Justice Caesar A. Casanova wrote Concurring and Dissenting Opinion.

⁶ Republic Act No. 8424, also cited as TAX REFORM ACT OF 1997. Approved on December 11, 1997.

⁷ The CTA Division granted the prosecution's separate Motions to Amend Information with Leave of Court in CTA Crim. Case Nos. O-013 and O-015 on August 11, 2006 and August 8, 2006, respectively. See CTA *rollo* (CTA Crim. Case No. O-013), Vol. 1, pp. 394-398 and CTA *rollo* (CTA Crim. Case No. O-015), pp. 268-271. The Informations were originally filed on October 10, 2005, See CTA *rollo* (CTA Crim. Case No. O-013), Vol. 1, pp. 1-3; and CTA *rollo* (CTA Crim. Case No. O-015), pp. 1-3.

“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 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.⁸ (Underscoring in the original)

[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.

CONTRARY TO LAW.⁹ (Underscoring in the original)

When arraigned, Joel pleaded not guilty to the charges. The cases were consolidated upon agreement of the parties. Thereafter, trial ensued.

The evidence for the prosecution revealed that acting on a confidential letter-complaint against Joel for alleged non-issuance of official receipts for services rendered, the Bureau of Internal Revenue (BIR) issued a Letter of Authority¹⁰ (LoA) to examine Joel’s books of accounts and other accounting records for taxable years 2001, 2002, and 2003. Joel’s failure to comply with the First Letter-Notice,¹¹ the Second Letter-Notice,¹² and the Final Request¹³ to produce records and documents prompted the BIR to resort to third-party information and best obtainable evidence.

⁸ CTA *rollo* (CTA Crim. Case No. O-013), Vol. 1 of IV, p. 401.

⁹ CTA *rollo* (CTA Criminal Case No. O-015), pp. 281–282.

¹⁰ CTA *rollo* (CTA Crim. Case No. O-013), Vol. II, p. 1441.

¹¹ *Id.* at 1446.

¹² *Id.* at 1447.

¹³ *Id.* at 1448.

The investigation showed that Joel is a single proprietor doing business under several trade names and addresses.¹⁴ Further, the prosecution found that Joel was engaged in the practice of profession through Weigh Less Center, Co., a partnership registered with the Securities and Exchange Commission on September 23, 1996, for the purpose of conducting a medical program aimed at assisting clients in losing weight and in maintaining their ideal body weight afterward. In addition, Joel had several businesses registered under his name before the Department of Trade and Industry (DTI). He spent large sums of money advertising his clinics and paying rent, purchased various vehicles since 1996, and had frequent travels abroad.¹⁵

Verification of tax records from the BIR Integrated Tax System (BIR-ITS) revealed that Joel did not file his Annual ITR for 2001 and 2002. For 2003, Joel filed his Annual ITR with the Revenue District Office (RDO) of Calasiao, Pangasinan.¹⁶ The BIR-ITS, however, showed that Joel's registered principal place of business is No. 31-B Roces Avenue, Quezon City.¹⁷

The prosecution used the net worth and expenditures method and determined that Joel had unreported income of ₱1,089,439.08 for 2001 and ₱1,522,152.14 for 2002. For 2003, the prosecution considered the filing of the ITR with RDO-Calasiao irregular. Joel should have filed a consolidated ITR with RDO-South Quezon City and reported his income from all sources or business operations in and outside Metro Manila. Instead, he declared a net loss of ₱38,893.91.¹⁸

For the defense, Joel testified that he is a doctor by profession and runs several clinics under the banner of Mendez Medical Group. He contended that he did not personally receive the LoA and became aware of its existence in February 2005 when BIR representatives came to his office asking for records and documents. Joel claimed that his accountant Richard Bianan (Richard) deliberately concealed the notices from him. Furthermore, the clinics became operational only in March 2003.¹⁹

¹⁴ See *rollo* (G.R. No. 208662), Vol. 1, p. 119.

Trade Name	Registered Address	Revenue District Office	Registration Date
Mendez Body and Face Salon and Spa	No. 31-B A. Roces Avenue, Quezon City	RDO No. 39-South Quezon City	May 6, 2002
Mendez Body and Face Salon and Spa	B-3, 3/F New Farmers Plaza, Cubao, Quezon City	RDO No. 40-Cubao	October 24, 2003
Mendez Body and Face Skin Clinic	The Plaza Building, Greenbelt, Ayala Center, Makati City	RDO No. 47-East Makati	April 30, 2004
Weigh Less Center	SM City, San Fernando, Pampanga	RDO No. 21-San Fernando, Pampanga	January 17, 2003
Mendez Weighless Center	2/F CSI Mall, Lucao District, Dagupan City	RDO No. 4-Calasiao, Pangasinan	May 16, 2003

¹⁵ *Rollo* (G.R. No. 208662), Vol. 1, pp. 121–125.

¹⁶ *Id.* at 119–120.

¹⁷ *Id.* at 120, 536–537.

¹⁸ See *CTA rollo* (CTA Crim. Case No. O-013), Vol. II, pp. 1613–1626.

¹⁹ *Rollo* (G.R. No. 208662), Vol. 1, pp. 127–129.

The Ruling of the Court of Tax Appeals

In its Decision²⁰ dated January 5, 2011, the CTA Division found Joel guilty of all the charges. The CTA Division held that the notices were deemed received by Joel since he authorized his accountant to receive documents and notices on his behalf. Even if Richard concealed the notices from him, the BIR is authorized to investigate and assess Joel for deficiency taxes based on third-party information and best obtainable evidence.²¹

The CTA Division considered the totality of evidence submitted by the prosecution sufficient to establish Joel's guilt beyond reasonable doubt for violating Section 255 of the Tax Code.²²

In **CTA Crim. Case No. O-013**, the CTA Division found that, *first*, Joel is the sole proprietor of Mendez Body and Face Salon and Spa. In 2002, Joel spent large sums of money on rent, advertisements, foreign travel, and purchased many vehicles. The CTA Division concluded that the amount Joel used for such purchases and expenditures came from his income earned from the practice of his profession through the operation of his clinics. Thus, Joel must file ITR and report his income made during the taxable year 2002. *Second*, Joel's registered principal place of business is at No. 31-B Roces Avenue, Quezon City, which is within the jurisdiction of RDO-South Quezon City. The prosecution proved no record of ITR filed for the taxable year 2002 with RDO-South Quezon City. *Third*, Joel's denial of earning substantial income despite his purchases and expenditures signified the attempt to conceal his income by not filing his ITR. Also, Joel's habitual failure to file his ITR for taxable years 2001 and 2002 showed his willfulness not to file a return. Accordingly, Joel is guilty of willful failure to file or make a return for the taxable year 2002, violating Section 255 of the Tax Code.²³

As regards **CTA Crim. Case No. O-015**, the CTA Division found that Joel willfully failed to supply correct and accurate information in his ITR for the taxable year 2003. The prosecution established that Joel had several clinics under the trade names Weigh Less Center, Mendez Body and Face Salon and Spa, and Mendez Body and Face Skin Clinic, and he had businesses registered with the DTI. However, only the income earned from his clinic in Calasiao, Pangasinan, was declared in his ITR for the taxable year 2003. Joel even indicated that he suffered a net loss that year. The CTA Division ruled that Joel knew he had an obligation to declare and file his ITR. In fact, Joel filed an ITR with the RDO-Calasiao, but he did not report his income earned from other clinics. Joel cannot blame his accountant Richard, who allegedly embezzled the money intended as payment for his tax obligations. The CTA Division noted that Richard took clinic inventories, business and mayor's permit fees, and withholding tax remittances for the year 2004, but there was no proof that Richard misappropriated or misused the supposed income tax

²⁰ *Id.* at 114-165.

²¹ *Id.* at 155-162.

²² *Id.* at 158.

²³ *Id.* at 138-156.

payments for 2003. Besides, Joel's failure to inquire from his accountant about the filing of ITR for his other branches is "willful blindness."²⁴

In so far as Joel's civil liability for deficiency taxes for the taxable years 2002 and 2003 is concerned, the CTA Division held that the prosecution's computation using the net worth method and the expenditures method could not be the basis for Joel's liability. While an assessment for deficiency tax is not necessary before there can be a criminal prosecution for violation of tax laws, there must first be a final assessment issued by the Commissioner of Internal Revenue (CIR) under Section 205²⁵ of the Tax Code before the taxpayer can be held civilly liable for deficiency taxes. Lastly, the CTA Division imposed a fine of ₱10,000.00 for each criminal violation.²⁶

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. In Criminal Case No. O-013, finding the accused Joel Cortez Mendez **GUILTY** beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and is hereby **SENTENCED** to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is **ORDERED TO PAY** a fine in the amount of [₱]10,000.00, 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; and
2. In Criminal Case No. O-015, finding the accused Joel Cortez Mendez **GUILTY** beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, and is hereby **SENTENCED** to suffer an indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is **ORDERED TO PAY** a fine in the amount of [₱]10,000.00, 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.

SO ORDERED.²⁷ (Emphasis in the original)

²⁴ *Id.* at 147–158.

²⁵ 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:

x x x x

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.

²⁶ *Id.* at 158–164.

²⁷ *Rollo* (G.R. No. 208662), Vol. 1, pp. 164–165.

Associate Justice Caesar A. Casanova dissented,²⁸ opining that the CTA does not have jurisdiction over the criminal cases because the amounts of the taxes alleged in the Amended Informations are mere estimates. Accordingly, it cannot be determined with certainty which court will have jurisdiction. Even assuming that the CTA has jurisdiction, the prosecution failed to prove Joel's guilt beyond reasonable doubt.²⁹

Both parties sought reconsideration of the January 5, 2011 Decision.

Joel raised for the first time in his Motion for Reconsideration³⁰ the lack of jurisdiction of the CTA. He averred that the Amended Informations did not clearly state the amount of deficiency taxes. For its part, the prosecution argued that an assessment is unnecessary before civil liability for unpaid taxes may be imposed. Section 222 (a) of the Tax Code allows a proceeding in court for the collection of deficiency tax even without prior assessment in case the return filed is false or fraudulent or in case there is a failure to file a return. Joel failed to file his ITR for 2002 and filed a fraudulent return for 2003.³¹

The CTA Division denied the parties' Motions for Reconsideration on May 27, 2011.³² The CTA held that the Amended Informations sufficiently alleged the amount due from the accused. Besides, Joel is already estopped from assailing the CTA's jurisdiction. He participated in all proceedings without questioning the court's jurisdiction. The CTA reiterated that although an assessment is not required to prosecute the criminal case, the CIR's final determination on the accused's tax liability is necessary for the tax court to rule on the civil liability. Thus:

WHEREFORE, finding no reversible error committed by this Court in the assailed Decision promulgated on January 5, 2011, the accused's *Motion for Reconsideration* and plaintiff's *Motion for Partial Reconsideration* are hereby **DENIED** for lack of merit.

SO ORDERED.³³ (Emphasis in the original)

Unsatisfied with the denial of their motions, both parties filed their respective Petitions for Review before the CTA *En Banc*.

On December 11, 2012, the CTA *En Banc* rendered the assailed Decision³⁴ that affirmed Joel's conviction for violation of Section 255 of the Tax Code and the non-imposition of deficiency taxes against the accused, to wit:

²⁸ *Id.* at 166–197.

²⁹ *Id.* at 166–197.

³⁰ CTA *rollo* (CTA Crim. Case No. O-013), Vol. 4, pp. 2661–2687.

³¹ *Id.* at 2690–2699.

³² *Id.* at 2766–2781.

³³ *Id.* at 2781.

³⁴ *Rollo* (G.R. No. 208310-11), pp. 34–74; and *rollo* (G.R. No. 208662), Vol. 1, pp. 9–49.

WHEREFORE, premises considered, both Petitions for Review, docketed as C.T.A. EB Crim. Nos. 014 and 015, are hereby **DISMISSED** for lack of merit. Accordingly, the assailed Decision, dated January 5, 2011 and Resolution, dated May 27, 2011 of the Second Division are hereby **AFFIRMED** without pronouncement as to costs.

SO ORDERED.³⁵ (Emphasis in the original)

The CTA *En Banc* denied the parties' Motions for Reconsideration on July 8, 2013.³⁶

Hence, the present Petitions for Review before this Court.

The Present Petitions

In **G.R. Nos. 208310-11**, the Office of the Solicitor General (OSG), on behalf of the People, argues that the computation of deficiency taxes by the Revenue Officer pursuant to an LoA may be the basis for the imposition of civil liability upon the taxpayer. In the present case, the BIR Revenue Officers computed Joel's liability for deficiency income tax in the amounts of ₱1,522,152.14 and ₱2,107,023.65 for 2002 and 2003, respectively.

In his Comment,³⁷ Joel counter-argues that consistent with Section 205 of the Tax Code, the assessment procedures must be complied with before being held liable for deficiency taxes. The OSG filed a Reply³⁸ reiterating the arguments raised in its Petition.

In **G.R. No. 208662**, Joel essentially reiterated the issues and arguments raised in his Petition for Review before the CTA *En Banc*.³⁹ He insists that the tax court had no jurisdiction over the criminal cases because the amounts stated in the Amended Informations are mere estimates. The CTA has original jurisdiction over a criminal case only when the principal amount of tax is at least ₱1,000,000.00; otherwise, the original jurisdiction is with the regular courts, and the jurisdiction of the CTA shall be appellate. Also, *subpoena duces tecum* is mandatory before the BIR may resort to third-party information and best obtainable evidence to afford the accused due process. Lastly, the prosecution failed to prove his guilt beyond reasonable doubt. He did not willfully evade to file his ITR, supply correct and accurate information in his ITR, and pay his tax obligations.

³⁵ *Rollo* (G.R. No. 208310-11), *id.* at 73; and *rollo* (G.R. No. 208662), *id.* at 48.

³⁶ *Rollo* (G.R. No. 208310-11), pp. 77-83; and *rollo* (G.R. No. 208662), Vol. 1, pp. 50-56. The dispositive portion of the Resolution reads:

WHEREFORE, the Motion for Partial Reconsideration dated January 22, 2013 filed by the Prosecution, and the Motion for Reconsideration dated February 19, 2013 filed by accused Joel C. Mendez, are hereby **DENIED**, for lack of merit.

SO ORDERED. *Id.* at 82 and 55, respectively. (Emphasis in the original)

³⁷ *Rollo* (G.R. No. 208310-11), pp. 102-106.

³⁸ *Id.* at 133-142.

³⁹ *Rollo* (G.R. No. 208662), Vol. 1, pp. 76-113.

In its Comment,⁴⁰ the OSG posits that Joel is barred by estoppel in raising the defense of lack of jurisdiction for the first time on appeal. At any rate, the allegations in the Complaint sufficiently show that the amount claimed is at least ₱1,000,000.00, and therefore, the CTA had jurisdiction. Moreover, the issuance of *subpoena duces tecum* is not a prerequisite under the law. Lastly, the prosecution proved Joel's guilt for violating Section 255 of the Tax Code beyond reasonable doubt.

In his Reply,⁴¹ Joel insists that he did not willfully fail to file his ITR for the year 2002 and merely relied on his accountant to file his tax returns. Joel proffers that he "will be in a better position to contribute something good to the country if he is allowed to pay a fine only (no imprisonment) in case of conviction. It is definitely not good to mix him with the hardened criminals in prison especially since the alleged crimes are not as atrocious as those in the Revised Penal Code."⁴² Besides, the BIR encourages taxpayers to settle their civil liabilities out of court.

ISSUES

The issues may be summarized as follows:

1. Whether the CTA has jurisdiction over the criminal cases against the accused Joel?
2. Whether the prosecution proved Joel's guilt for violating Section 255 of the Tax Code beyond reasonable doubt?
3. Whether Joel is liable for deficiency income tax for taxable years 2002 and 2003?

RULING

We deny Joel's Petition in G.R. No. 208662 for lack of merit. His contentions are a mere rehash of the arguments which were raised and already considered by the CTA. Accordingly, we affirm Joel's conviction for violating Section 255 of the Tax Code, for his failure to file ITR for the year 2002 and supply correct and accurate information in the ITR for the year 2003.

On the other hand, we find the OSG's Petition in G.R. Nos. 208310-11 partly meritorious.

Estoppel does not apply.

⁴⁰ *Id.*, Vol. 4, at 2327-2352.

⁴¹ *Id.* at 2371-2382.

⁴² *Id.* at 2379.

At the onset, we hold that Joel may question the jurisdiction of the CTA over the two criminal cases. Contrary to the finding of the CTA Division,⁴³ the “unquestionably accepted” rule that the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or silence applies.⁴⁴ In *Figueroa v. People*,⁴⁵ the Court clarified that the principle of estoppel espoused in *Tijam v. Sibonghanoy*⁴⁶ should be “applied rarely – only from necessity, and only in extraordinary circumstances[;]” otherwise, “the doctrine of estoppel may be a most effective weapon for the accomplishment of injustice.”⁴⁷ Thus:

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.*⁴⁸
(Italics in the original)

Joel cannot be considered estopped in assailing the jurisdiction of the CTA. He timely raised the issue of jurisdiction in his Motion for Reconsideration of the CTA Division’s Decision. No extraordinary long period of time had yet elapsed for laches to attach.

The CTA has jurisdiction over the two criminal cases.

Before Republic Act (RA) No. 9282,⁴⁹ the CTA, a court of special jurisdiction, only exercised appellate jurisdiction over tax cases.⁵⁰ The tax court had no jurisdiction to hear and decide criminal cases for tax law

⁴³ CTA rollo (CTA Crim. Case No. O-013), Vol. 4, p. 2775.

⁴⁴ See *Villagracia v. Fifth (5th) Shari’a District Court*, 734 Phil. 239, 260–261 (2014), quoted in *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division*, G.R. No. 239464, May 10, 2021.

⁴⁵ 580 Phil. 58 (2008).

⁴⁶ 131 Phil. 556 (1968).

⁴⁷ *Figueroa v. People*, *supra* note 45 at 77.

⁴⁸ *Id.*

⁴⁹ 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. Approved on March 30, 2004.

⁵⁰ See Section 7, Republic Act No. 1125, AN ACT CREATING THE COURT OF TAX APPEALS. Approved on June 16, 1954.

SECTION 7. *Jurisdiction.* — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.

- (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;
- (2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and
- (3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

violations. Criminal prosecution for such offenses was then within the cognizance of the regular courts.⁵¹ But on **April 23, 2004**,⁵² RA No. 9282 conferred original and appellate jurisdiction over criminal cases to the CTA Division as follows:

SEC. 7. Jurisdiction. — The CTA shall exercise:

x x x x

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 ([P]1,000,000.00) 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.**

2. **Exclusive appellate jurisdiction in criminal offenses:**

- a. Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their [respective] 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)

A reading of the foregoing provision shows that criminal offenses arising from violations of tax laws may involve an underlying tax claim or none at all. Notably, when a tax claim is involved, the law requires that “the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall **at all times be simultaneously**

⁵¹ See *Ungab v. Judge Cusi, Jr.*, 186 Phil. 604, 610 (1980).

⁵² Section 19 of Republic Act No. 9282, provides that Republic Act No. 9282 shall take effect after fifteen (15) days following its publication in at least two (2) newspapers of general circulation. See <https://cta.judiciary.gov.ph/> (last accessed: January 10, 2023).



instituted with, and jointly determined in the same proceeding[s] 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.”⁵³

Thus, for criminal offenses **with an attendant claim amounting to ₱1,000,000.00 or more**, exclusive original jurisdiction is vested with the CTA Division. Whereas, when the tax claim is **below ₱1,000,000.00 or there is no specified amount or no attendant claim**, as when the offense is only punishable by a fine and/or imprisonment,⁵⁴ original jurisdiction is vested with the regular courts. In this regard, Batas Pambansa (BP) Blg. 129 vests Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts (first-level courts) with jurisdiction over claims which do not exceed ₱300,000.00 for those filed outside Metro Manila or ₱400,000.00 for those filed within Metro Manila.⁵⁵ On the other hand, Regional Trial Courts (RTC) are vested with jurisdiction over claims that exceed ₱300,000.00 for those filed outside Metro Manila or ₱400,000.00 for those filed within Metro Manila.⁵⁶ In these cases, the CTA merely exercises appellate jurisdiction.⁵⁷

⁵³ RA No. 9282, Sec. 7(b)(1). *Emphasis supplied.*

⁵⁴ See Sections 256 to 278 of the Tax Code.

⁵⁵ BP Blg. 129, as amended by RA No. 7691, Sec. 32. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases. — Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

x x x x

- (2) Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: Provided, however, That in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof.

SECTION. 33. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases. — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

x x x x

- (1) Exclusive original jurisdiction over civil actions and probate proceedings, testate and intestate, including the grant of provisional remedies in proper cases, where the value of the personal property, estate, or amount of the demand does not exceed [Three Hundred Thousand Pesos (₱300,000.00)] or, in Metro Manila where such personal property, estate, or amount of the demand does not exceed [Four Hundred Thousand Pesos (₱400,000.00)], exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, the amount of which must be specifically alleged: Provided, That interest, damages of whatever kind, attorney's fees, litigation expenses, and costs shall be included in the determination of the filing fees: Provided, further, That where there are several claims or causes of actions between the same or different parties, embodied in the same complaint, the amount of the demand shall be the totality of the claims in all the causes of action, irrespective of whether the causes of action arose out of the same or different transactions[.]

⁵⁶ BP Blg. 129, as amended by RA No. 7691, Sec. 19. Jurisdiction in civil cases. — The Regional Trial Court shall exercise exclusive jurisdiction:

- (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

x x x x

- (8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds [Three Hundred Thousand Pesos (₱300,000.00)] or, in such other cases in Metro Manila, where the demand exclusive of the abovementioned items exceeds [Four Hundred Thousand Pesos (₱400,000.00)].

⁵⁷ RA No. 9282, Sec. 7. *Jurisdiction.* — the CTA shall exercise:

x x x x

J

Conflict, however, arose as regards the jurisdiction of the CTA and the regular courts with the advent of RA No. 11576,⁵⁸ which increased the threshold values for civil cases falling within the exclusive original jurisdiction of the first and second level courts. Particularly, upon the effectivity of RA No. 11576 on **August 21, 2021**,⁵⁹ exclusive original jurisdiction over civil actions involving claims amounting to **₱2,000,000.00 and below** shall be with the first-level courts.⁶⁰ Those with claims amounting to **more than ₱2,000,000.00** shall be with the RTCs.⁶¹

It would now appear, considering the pertinent provisions of RA No. 9282,⁶² that both the CTA and the regular courts have exclusive and original jurisdiction over criminal offenses entailing tax claims amounting to ₱1,000,000.00 and above⁶³ and purely tax collection cases where the principal amount of claim is also ₱1,000,000.00 and above.⁶⁴ The apparent conflicting provisions of RA No. 9282 and BP Blg. 129, as amended by RA No. 11576, are reconciled as follows:

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

x x x x

(2) Exclusive appellate jurisdiction in criminal offenses:

- 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.

⁵⁸ AN ACT FURTHER EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS "THE JUDICIARY REORGANIZATION ACT OF 1980," AS AMENDED. Approved July 30, 2021.

⁵⁹ See OCA Circular No. 115-2021, "Re: Effectivity of Republic Act No. 11576."

⁶⁰ BP BLG. 129, Sec. 33(1), as amended by RA NO. 11576, Sec. 2.

⁶¹ BP BLG. 129, Sec. 19(8), as amended by RA NO. 11576, Sec. 1.

⁶² RA 9282, Sec. 7. *Jurisdiction*. — The CTA shall exercise:

x x x x

(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 ([₱]1,000,000.00) 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.

x x x x

(c) Jurisdiction over tax collection cases as herein provided:

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 ([₱] 1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court[,] and Regional Trial Court.

⁶³ RA 9282, Sec. 7(b)(1), *supra*.

⁶⁴ RA 9282, Sec. 7(b)(2)(c)(1).

J

- (a) Exclusive original jurisdiction over tax collection cases involving ₱1,000,000.00 or more remains with the CTA;
- (b) Exclusive original jurisdiction over tax collection cases involving less than ₱1,000,000.00 shall be exercised by the proper first-level courts;
- (c) Exclusive appellate jurisdiction over tax collection cases originally decided by the first-level courts shall be exercised by the RTC;
- (d) Exclusive original jurisdiction over criminal offenses or felonies where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is ₱1,000,000.00 or more remains with the CTA;
- (e) Exclusive original jurisdiction over criminal offenses or felonies where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than ₱1,000,000.00 shall be exercised by the proper first-level courts; and
- (f) Exclusive appellate jurisdiction over criminal offenses or felonies originally decided by the first-level courts remains with the RTC.

It must be emphasized, however, that the foregoing clarification shall apply to cases filed upon the effectivity of RA No. 11576 on August 21, 2021 since jurisdiction over the subject matter in criminal cases is determined by the statute in force at the time of commencement of the action.⁶⁵

Here, the criminal cases involved violations of the Tax Code for failure to file ITR for the year 2002 and for failure to supply correct and accurate information in the return for the year 2003. The Informations (Crim. Case No. 0-013 and Crim. Case No. 0-015) were first **filed on November 25, 2005**, and the CTA approved the Amended Informations on August 11 and 8, 2006, respectively.⁶⁶ The Amended Informations stated that Joel's potential liability for deficiency taxes is ₱1,522,152.14 in Crim. Case No. O-013 and ₱2,107,023.65 in Crim. Case No. O-015, *i.e.*, **more than ₱1,000,000.00 in both cases. Clearly, pursuant to RA No. 9282, the statute in force when the criminal actions at bar were instituted,⁶⁷ jurisdiction over the cases is with the CTA Division.**

⁶⁵ *De Villa v. Court of Appeals*, 273 Phil. 89, 94 (1991); *People v. Lagon*, 264 Phil. 7, 12 (1990).

⁶⁶ See CTA *rollo* (CTA Crim. Case No. O-013), Vol. 1, pp. 1-3, 394-398; and CTA *rollo* (CTA Crim. Case No. O-015), pp. 1-3, 268-271.

⁶⁷ Jurisdiction over the subject matter in criminal cases is determined by the statute in force at the time of commencement of the action. See *De Villa v. Court of Appeals*, *supra*, at 94; and *People v. Lagon*, *Supra*, at 12.

The amount in the two Informations sufficiently vest jurisdiction to the CTA.

Joel argues that the amount alleged in the Amended Informations is merely “estimate;” therefore, it is as if there is no specified amount claimed. Hence, the original jurisdiction belonged to the regular courts. Thus, the CTA erroneously took cognizance of the criminal cases against him.

This argument is specious.

Jurisdiction over the subject matter is conferred by law and determined by the allegations in the Complaint or Information.⁶⁸ If the facts set out therein are sufficient to show that the court in which the Complaint or Information is filed has jurisdiction, then the court may validly take cognizance of the case.⁶⁹

A plain reading of the Amended Informations reveals that the prosecution alleged with sufficient clarity that the principal amount of deficiency taxes claimed against the accused is at least ₱1,000,000.00 and that the amount is without penalties, surcharges, and interest, as follows:

CRIMINAL CASE NO. O-013
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 [ITR] with the [BIR] 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.⁷⁰ (Boldfacing supplied; underscoring in the original)

CRIMINAL CASE NO. O-015
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,

⁶⁸ *Nocum v. Tan*, 507 Phil. 620, 626 (2005).

⁶⁹ *Foz, Jr. v. People*, 618 Phil. 120, 130 (2009) [Per J. Peralta, Third Division]; and *United States. v. Jimenez*, 41 Phil. 1, 2 (1920).

⁷⁰ CTA rollo (CTA Crim. Case No. O-013), Vol. 1, p. 401.

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 [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.

CONTRARY TO LAW.⁷¹ (Boldfacing supplied; underscoring in the original)

The employment of the term “estimated” in the Amended Informations did not divest the CTA of jurisdiction.

In the first place, Joel was indicted for criminal violation of Section 255 of the Tax Code. As a matter of course, a finding of probable cause is required to file criminal Information for violation of the Tax Code.⁷² Probable cause is defined as such facts that are sufficient to engender a well-founded belief that a crime has been committed, that the accused is probably guilty thereof and that he should be held for trial. The determination of probable cause does not require actual or absolute certainty or clear and convincing evidence of guilt. Instead, it needs only to rest on reasonable belief or probability that, more likely than not, a crime has been committed by the accused.⁷³ In other words, **probable cause to indict a taxpayer for a criminal offense under tax laws does not mean that the complaint or information states with particularity the exact amount or precise computation of deficiency tax.** In fact, a formal assessment is not required before the institution of the criminal complaint.⁷⁴ It is enough that the prosecution was able to show that a tax is due from him.⁷⁵ The reason is that a criminal complaint is instituted not to demand deficiency payment but to penalize the taxpayer for violation of the Tax Code.⁷⁶ In *Bureau of Internal Revenue v. Court of Appeals*:⁷⁷

The CA, however, found no probable cause to indict respondent spouses for tax evasion. It agreed with Acting Justice Secretary Devanadera that **petitioner failed to make “a categorical finding of the exact amount of tax due from [respondent spouses]”** and “to show sufficient proof of a likely source of [respondent spouses’] income that enabled them to purchase the real and personal properties adverted to x x x.”

⁷¹ CTA rollo (CTA Crim. Case No. O-015), pp. 281–282.

⁷² *Bureau of Internal Revenue v. Court of Appeals*, 747 Phil. 772, 790 (2014).

⁷³ *Chan v. Formaran III*, 572 Phil. 118, 132 (2008).

⁷⁴ *See Adamson v. Court of Appeals*, 606 Phil. 10, 30–31 (2009).

⁷⁵ *See Bureau of Internal Revenue v. Court of Appeals*, *supra*, at 786, citing *Commissioner of Internal Revenue v. Court of Appeals*, 327 Phil. 1 (1996).

⁷⁶ *Commissioner of Internal Revenue v. PASCOR Realty & Development Corporation*, 368 Phil. 714, 727 (1999).

⁷⁷ *Supra*.

We find otherwise.

The amount of tax due from respondent spouses was specifically alleged in the Complaint-Affidavit. The computation, as well as the method used in determining the tax liability, was also clearly explained. The revenue officers likewise showed that the underdeclaration exceeded 30% of the reported or declared income.

The revenue officers also identified the likely source of the unreported or undeclared income in their Reply-Affidavit x x x:

x x x x

In view of the foregoing, **we are convinced that there is probable cause to indict respondent spouses** for tax evasion as petitioner was able to show that a tax is due from them. Probable cause, for purposes of filing a criminal information, is defined as such facts that are sufficient to engender a well-founded belief that a crime has been committed, that the accused is probably guilty thereof, and that he should be held for trial. It bears stressing that **the determination of probable cause does not require actual or absolute certainty, nor clear and convincing evidence of guilt; it only requires reasonable belief or probability that more likely than not a crime has been committed by the accused.**⁷⁸ (Emphasis supplied; citations omitted)

Secondly, the use of estimates sprung from Joel's noncompliance with the First Letter-Notice,⁷⁹ the Second Letter-Notice,⁸⁰ and the Final Request⁸¹ from the BIR to produce records and documents. Since the prosecution could not determine exactly the amount of Joel's liability for deficiency taxes, "best efforts [were] made to get as close as possible to the exact amount."⁸² They resorted to third-party information and best obtainable evidence, which use is sanctioned under Section 6 (B)⁸³ of the Tax Code.⁸⁴ Associate Justice Rodil V. Zalameda points out that the "use of estimates or approximations is founded on necessity. If [w]e disallow the use of estimates, [w]e would effectively be rewarding the very same taxpayers who suppressed evidence or otherwise forced the hand of the government to use estimates in the first place."⁸⁵

⁷⁸ *Id.* at 788-790.

⁷⁹ CTA *rollo* (CTA Crim. Case No. O-013), Vol. II, p. 1446.

⁸⁰ *Id.* at 1447.

⁸¹ *Id.* at 1448.

⁸² Associate Justice Ramon Paul L. Hernando's Reflections, p. 3. See also Associate Justice Alfredo Benjamin S. Caguioa's Reflections, p. 5.

⁸³ SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

(B) Failure to Submit Required Returns, Statements, Reports and other Documents. — **When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming 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 erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.**

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. (Emphasis supplied)

⁸⁴ See Associate Justice Rodil V. Zalameda's Reflections, pp. 18-19; and Associate Justice Jhosep Y. Lopez' Reflections, pp. 11-13.

⁸⁵ See Associate Justice Rodil V. Zalameda's Reflections, p. 19.

Thirdly, and most importantly, Joel was sufficiently informed of the charge against him including the amount of deficiency taxes that enabled him to prepare for his defense and evidence based on the information. We emphasize,

[t]he test in determining whether the [I]nformation validly charges an offense is whether the material facts alleged in the [C]omplaint or [I]nformation will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered. To repeat, the purpose of the law in requiring this is to enable the accused to suitably prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.⁸⁶ (Citations omitted)

To iterate, the Amended Informations stated that Joel's potential liability for deficiency taxes is ₱1,522,152.14 in 2002 and ₱2,107,023.65 in 2003. The prosecution determined the amounts based on original and/or certified true copies of contracts, receipts, and certifications from third parties showing the expenses he incurred for 2002 and 2003.⁸⁷ The Amended Informations have the factual averments that constitute the elements of the crimes as well as the amounts that vest jurisdiction to the CTA.

Considering the court's jurisdiction, therefore, it is of no consequence that the amount of taxes later proved to be due from Joel is less or more, than that alleged in the Information. The court will not be deprived of its acquired jurisdiction. In this regard, Associate Justice Alfredo Benjamin S. Caguioa stresses that "[o]nce 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."⁸⁸ Chief Justice Alexander G. Gesmundo adds: "as long as the allegations in the information constitute the elements of the offense charged, then the court shall have jurisdiction over the offense, even if it was subsequently determined during trial that the [*sic*] some of the allegations were not established. This is the embodiment of the doctrine of adherence of jurisdiction, which reinforces the principle that the jurisdiction of a court, whether in criminal or civil cases, once attached cannot be ousted by subsequent happenings or events, although of a character that would have prevented jurisdiction from attaching in the first instance, and it retains jurisdiction until it finally disposes of the case."⁸⁹

Issuance of subpoena duces tecum is not mandatory in determining the taxpayer's correct tax liability.

⁸⁶ *People v. Solar*, 858 Phil. 884, 927 (2019). See also *People v. Lab-ao*, 424 Phil. 482, 497 (2002).

⁸⁷ See CTA rollo (CTA Crim. Case No. O-013), Vol. II, pp. 1783-1789.

⁸⁸ See Associate Justice Alfredo Benjamin S. Caguioa's Reflections, p. 2.

⁸⁹ See Chief Justice Alexander G. Gesmundo's Reflections, p. 8.

The CTA Division, and affirmed by the *En banc*, aptly held that the issuance of *subpoena duces tecum* is not mandatory before the BIR may resort to third-party information and best obtainable evidence. The issuance of *subpoena* is merely one of the powers⁹⁰ that the CIR may exercise in assessing or ascertaining the tax due from the taxpayer.⁹¹ Section 6 of the Tax Code allows the CIR to make assessments based on best evidence obtainable in case of failure of the taxpayer to submit the required returns, statements, reports, and other documents. The “best evidence” includes the accounting records of the taxpayer who is the subject of the assessment process, the accounting records of other taxpayers engaged in the same line of business, data, record, paper, document, or any evidence gathered by internal revenue officers from other taxpayers who had personal transactions or from whom the subject taxpayer received any income; and record, data, document, and information secured from government offices or agencies.⁹²

In the present case, Joel failed to comply with the three-letter notices to produce records and documents for taxable years 2001, 2002, and 2003. As a result, the BIR promptly resorted to third-party information and best evidence obtainable to ascertain Joel’s correct tax liability.

***The prosecution established Joel’s guilt
beyond reasonable doubt.***

Section 255 of the Tax Code reads:

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 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 ([P]10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. (Emphasis supplied)

To successfully prosecute a violation of Section 255, it must be shown that: (1) the taxpayer is required to pay any tax, make or file a return, keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; (2) the taxpayer failed to do so; and (3) the act is willful. All the elements are present here.

⁹⁰ See Section 5 of the Tax Code.

⁹¹ See *Commissioner of Internal Revenue v. Hon. Gonzalez*, 647 Phil. 462, 481–482 (2010).

⁹² *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, 494 Phil. 306, 327–331 (2005).

A) CTA Crim. Case No. O-013

In **CTA Crim. Case No. O-013 – willful failure to file ITR for the taxable year 2002**, the prosecution proved that *first*, Joel is a Filipino citizen engaged in business and the practice of profession required to file a return on income derived from all sources.⁹³ On this point, we affirm the prosecution's use of the expenditures method in identifying Joel's likely source of undeclared or unreported income. In *Bureau of Internal Revenue v. Court of Appeals*,⁹⁴ the Court held that:

[T]he government is allowed to resort to all evidence or resources available to determine a taxpayer's income and to use methods to reconstruct his income. A method commonly used by the government is the expenditure method, which is a method of reconstructing a taxpayer's income by deducting the aggregate yearly expenditures from the declared yearly income. **The theory of this method is that when the amount of the money that a taxpayer spends during a given year exceeds his reported or declared income and the source of such money is unexplained, it may be inferred that such expenditures represent unreported or undeclared income.**⁹⁵ (Emphasis supplied; citations omitted)

Of course, the taxpayer may justify that the expenses were sourced from other funds, such as personal wealth, donations, borrowings or loans, and other income.⁹⁶

Here, the prosecution proved that Joel spent a large amount of money on rentals and advertisements, purchases of vehicles, and foreign travel in 2002. The Contract of Lease⁹⁷ dated July 12, 2001, for a 220-square meter health clinic and gallery at No. 31-G A. Roces Avenue, Quezon City, showed a monthly rental of ₱27,000.00 for the period of August 15, 2001, to August 24, 2007. Joel and his witness, lessor Ma. Lita D. Gregorio never disputed the payment of rentals.⁹⁸ They merely claimed that the clinic's operation was suspended in 2002 because of a lack of building permit.⁹⁹ Moreover, Joel did not contest the prosecution's claim that he spent ₱1,385,108.78 for advertisement placements with *PhilStar Daily, Inc.* and ₱1,702,871.41 with *Philippine Daily Inquirer*, that Joel acquired several vehicles, and he had frequent travels abroad. Joel's failure to account for the source of his expenditures leads us to conclude that the monies spent were derived from undisclosed income from the operation of his business and the practice of his profession in 2002.

⁹³ See Section 51 (A) (1) (a), (4) (1); and Section 74 of the Tax Code.

⁹⁴ *Bureau of Internal Revenue v. Court of Appeals*, 747 Phil. 772 (2014).

⁹⁵ *Id.* at 787.

⁹⁶ See *Bureau of Internal Revenue v. Court of Appeals*, *supra*, at 782--783.

⁹⁷ CTA rollo (CTA Crim. Case No. O-013), Vol. II, pp. 1465–1469.

⁹⁸ See rollo (G.R. No. 208662), Vol. I, p. 142.

⁹⁹ See rollo, *id.* at 140-142, 188.

Second, Joel did not file ITR for the taxable year 2002 with the RDO of his legal residence or principal place of business on or before April 15, 2003.¹⁰⁰ To be sure, Joel never denied the non-filing of his Annual ITR.

Third, the non-filing of ITR was willful. The term “willful” is defined in the Ninth Edition of Black’s Law Dictionary as voluntary and intentional, but not necessarily malicious, *viz.*:¹⁰¹

The word “Wilful” or “Wilfully” when used in the definition of a crime, it has been said time and again, means **only intentionally or purposely as distinguished from accidentally or negligently and does not require any actual impropriety**; while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless there is a bad purpose or evil intent. *Rollin M. Perkins & Ronald N. Boyce, Criminal Law 875-76 (3d ed. 1982)*.

Almost all of the cases under [Bankruptcy Code § 523(a)(6)] deal with the definition of the two words “willful” and “malicious.” Initially one might think that willful and malicious mean the same thing. If they did, Congress should have used one word and not both. Most courts feel compelled to find some different meaning for each of them. *David G. Epstein, et al., Bankruptcy § 7-30, at 531 (1993)*. (Emphasis supplied)

In the United States (US) Supreme Court case of *Cheek v. United States*,¹⁰² the word **willfully** as used in the federal criminal tax statutes, was construed as **voluntary, intentional violation of a known legal duty**. In that case, Cheek was charged with violation of Section 7203 of the Internal Revenue Code for willfully failing to file income tax returns and Section 7201 for willfully attempting to evade his income taxes. The US Supreme Court held:

Willfulness, as construed by our prior decisions in criminal tax cases, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty. We deal first with the case where the issue is whether the defendant knew of the duty purportedly imposed by the provision of the statute or regulation he is accused of violating, a case in which there is no claim that the provision at issue is invalid. In such a case, if the Government proves actual knowledge of the pertinent legal duty, the prosecution, without more, has satisfied the knowledge component of the willfulness requirement. But carrying this burden requires negating a defendant’s claim of ignorance of the law or a claim that, because of a

¹⁰⁰ See Sections 51 (B) and (C) (1), Tax Code.
SECTION 51. *Individual Return*. —

x x x x

(B) Where to File. — Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner.

(C) When to File. —

(1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.

¹⁰¹ See BLACK’S LAW DICTIONARY, 2009 ed., p. 1737.

¹⁰² 498 U.S. 192 (1991).

misunderstanding of the law, he had a good-faith belief that he was not violating any of the provisions of the tax laws. This is so because one cannot be aware that the law imposes a duty upon him and yet be ignorant of it, misunderstand the law, or believe that the duty does not exist. In the end, the issue is whether, based on all the evidence, the Government has proved that the defendant was aware of the duty at issue, which cannot be true if the jury credits a good-faith misunderstanding and belief submission, whether or not the claimed belief or misunderstanding is objectively reasonable.

In this case, if Cheek asserted that he truly believed that the Internal Revenue Code did not purport to treat wages as income, and the jury believed him, the Government would not have carried its burden to prove willfulness, however unreasonable a court might deem such a belief. Of course, in deciding whether to credit Cheek's good-faith belief claim, the jury would be free to consider any admissible evidence from any source showing that Cheek was aware of his duty to file a return and to treat wages as income, including evidence showing his awareness of the relevant provisions of the Code or regulations, of court decisions rejecting his interpretation of the tax law, of authoritative rulings of the Internal Revenue Service, or of any contents of the personal income tax return forms and accompanying instructions that made it plain that wages should be returned as income.

The prosecution must prove that the taxpayer knew his legal duty to file an ITR, yet, the taxpayer knowingly, voluntarily, and intentionally neglected to do so. It must be stressed that the willful neglect to file the required tax return cannot be presumed.¹⁰³ It must be established fully as a fact and cannot be attributed to a mere inadvertent or negligent act.

We are convinced that Joel was aware of his obligation to file ITR, and he consciously and voluntarily refused to comply with his duty to make the return. In the *First* place, Joel is a doctor by profession and a businessman. As the CTA aptly held, Joel ought to know and understand, as he should, all the matters concerning his practice and business. The legal presumption is that a person takes ordinary care of his concerns.¹⁰⁴ *Secondly*, the Roces Avenue branch was registered with RDO-South Quezon City on May 6, 2002, under the trade name "Mendez Body and Face Salon and Spa."¹⁰⁵ Under Section 51 (A)(2)(a)¹⁰⁶ of the Tax Code, a Filipino citizen engaged in business or practice of profession within the Philippines shall file an ITR, **regardless** of the amount of gross income earned. Thus, the non-operation or suspension of operation of the Roces branch is inconsequential. Joel should have filed his

¹⁰³ *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, 799 Phil. 391, 415 (2016); *Commissioner of Internal Revenue v. Air India*, 241 Phil. 689, 697-698 (1988); and *see Aznar v. Court of Appeals*, 157 Phil. 510, 534-535 (1974).

¹⁰⁴ *See* Section 3 (d), Rule 131, Rules of Court.

¹⁰⁵ *Rollo* (G.R. No. 208662), Vol. 1, pp. 120 & 536-537.

¹⁰⁶ SECTION 51. *Individual Return.* —

(A) *Requirements.* —

x x x x

(2) The following individuals shall not be required to file an income tax return:

(a) An individual whose gross income does not exceed his total personal and additional exemptions for dependents under Section 35: *Provided*, That a **citizen of the Philippines** and any alien individual **engaged in business or practice of profession within the Philippines shall file an income tax return, regardless of the amount of gross income.**] (*Emphasis supplied*)

Annual ITR, even only reporting the expenses incurred during the year. Lastly, it cannot escape our attention that the BIR issued an LoA to examine Joel's books of accounts and accounting records, which was followed by three-letter notices to produce records and documents. As a result, Joel was made aware of a possible tax violation. Joel's failure to take any action on the letter requests is simply an indication of his conscious and intentional refusal to comply with his obligation under the tax laws.

All things considered, the Court holds that Joel knew he should file his Annual ITR, but he deliberately failed to do so. The prosecution sufficiently proved Joel's guilt beyond reasonable doubt of violating Section 255 of the Tax Code for willful failure to file or make his Annual ITR for the taxable year 2002.

B) CTA Crim. Case No. O-015

Likewise, we sustain Joel's conviction in **CTA Crim. Case No. O-015 – willful failure to supply correct and accurate information in the ITR for the taxable year 2003**. All the elements of the crime are present.

First, Joel is an individual required by law to file a return and declare all his income derived from all sources in the taxable year 2003.¹⁰⁷ He filed an ITR with the RDO of Calasiao, Pangasinan.¹⁰⁸ However, the income he earned from the operation of his clinics in Mendez Body and Face Salon and Spa-Roces Avenue Branch, Mendez Body and Face Salon and Spa-Cubao Branch, and Weigh Less Center-San Fernando, Pampanga Branch,¹⁰⁹ were not reported.

Second, Joel cannot pass the blame to his accountant Richard. The CTA found that Richard merely took clinic inventories, monies allotted for payment of business and mayor's permit fees, and withholding tax remittances. There was no evidence that Richard misappropriated the money supposedly intended for the payment of income tax.

Joel's failure to inquire and ensure that the ITR filed with RDO-Calasiao reported all income earned from other branches constitutes **willful blindness**. Black's Law Dictionary defines **willful blindness** as the "[d]eliberate avoidance of knowledge of a crime, [especially] by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable."¹¹⁰ In the US Supreme Court case of *Global-Tech Appliances, Inc. v. SEB S.A.*,¹¹¹ the doctrine of willful blindness was elucidated in this wise:

¹⁰⁷ See Sections 51 (A) (1) (a), (4) (a); and 74 of the Tax Code.

¹⁰⁸ *Rollo* (G.R. No. 208662), Vol. 1, pp. 119–120.

¹⁰⁹ *Id.* at 119.

¹¹⁰ See BLACK'S LAW DICTIONARY, 2009 ed., p. 1737.

¹¹¹ Decided on May 31, 2011, 563 U.S. 754 (2011).

The doctrine of willful blindness is well established in criminal law. Many criminal statutes require proof that a defendant acted knowingly or willfully, and courts applying the doctrine have held that defendants cannot escape the reach of these statutes by deliberately shielding themselves from clear evidence of critical facts that are strongly suggested by the circumstances. The traditional rationale for the doctrine is that defendants who behave in this manner are just as culpable as those who have actual knowledge. Edwards, *The Criminal Degrees of Knowledge*, 17 Mod. L. Rev. 294, 302 (1954) (hereinafter Edwards) (observing on the basis of English authorities that “up to the present day, no real doubt has been cast on the proposition that [willful blindness] is as culpable as actual knowledge”). It is also said that persons who know enough to blind themselves to direct proof of critical facts in effect have actual knowledge of those facts. See [*United States v. Jewell*], 532 F. 2d 697, 700 (CA9 976) (*En Banc*).

This Court’s opinion more than a century ago in [*Spurr v. United States*], 174 U. S. 728 (1899), while not using the term “willful blindness,” endorsed a similar concept. The case involved a criminal statute that prohibited a bank officer from “willfully” certifying a check drawn against insufficient funds. We said that a willful violation would occur “if the [bank] officer purposely keeps himself in ignorance of whether the drawer has money in the bank.” *Id.*, at 735. Following our decision in *Spurr*, several federal prosecutions in the first half of the 20th century invoked the doctrine of willful blindness. Later, a 1962 proposed draft of the Model Penal Code, which has since become official, attempted to incorporate the doctrine by defining “knowledge of the existence of a particular fact” to include a situation in which “a person is aware of a high probability of [the fact’s] existence, unless he actually believes that it does not exist.” ALI, Model Penal Code §2.02(7) (Proposed Official Draft 1962). Our Court has used the Code’s definition as a guide in analyzing whether certain statutory presumptions of knowledge comported with due process. See *Turner v. United States*, 396 U. S. 398, 416–417 (1970); *Leary v. United States*, 395 U. S. 6, 46–47, and n. 93 (1969). And every Court of Appeals—with the possible exception of the District of Columbia Circuit, see n. 9, *infra*—has fully embraced willful blindness, applying the doctrine to a wide range of criminal statutes.

Joel knew that he had two clinics in Quezon City and one in Pampanga, all registered with the BIR in 2003. However, he did not ascertain whether the income reported in the ITR filed with RDO-Calasiao correctly and accurately contained all his earnings for 2003. We reiterate, as a medical doctor and a businessman, Joel is not only presumed to take ordinary care of his concerns¹¹² but is expected to comply with the usual undertaking of his business profession. Thus, he is guilty of violating Section 255 of the Tax Code for willful failure to supply correct and accurate information in his ITR for the taxable year 2003.

Regarding the penalty, we affirm the indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and the fine of ₱10,000.00

¹¹² See Section 3 (d), Rule 131, Rules of Court.

with subsidiary imprisonment in case of non-payment, imposed by the CTA for each offense, consistent with Sections 255¹¹³ and 280¹¹⁴ of the Tax Code.

The CIR's final Decision on the disputed assessment is not a condition precedent to the imposition of civil liability for taxes in the criminal action for violation of the tax laws.

The Court has ruled that a precise computation and final determination of a deficiency tax is not required before one is prosecuted for criminal violation of the Tax Code.¹¹⁵ The prosecution needs only to establish probable cause to indict the taxpayer. The reason is that the crime is committed by the mere conduct of the taxpayer and not because he had delinquent taxes. As held in *Ungab v. Judge Cusi, Jr.*:¹¹⁶

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

¹¹³ 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 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.** *Emphasis supplied.*

¹¹⁴ SECTION 280. *Subsidiary Penalty.* — If the person convicted for violation of any of the provisions of this Code has no property with which to meet the fine imposed upon him by the court, or is unable to pay such fine, he shall be subject to a subsidiary personal liability at the rate of one (1) day for each Eight pesos and fifty centavos (P8.50) subject to the rules established in Article 39 of the REVISED PENAL CODE.

N.B. Republic Act No. 10159, AN ACT AMENDING ARTICLE 39 OF ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, approved on April 10, 2012, amended Article 39 of the REVISED PENAL CODE, to read as follows:

Article 39. *Subsidiary Penalty.* — If the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each amount equivalent to the highest minimum wage rate prevailing in the Philippines at the time of the rendition of judgment of conviction by the trial court, subject to the following rules:

1. If the principal penalty imposed be *prison correctional* or *arresto* and fine, he shall remain under confinement until his fine referred in the preceding paragraph is satisfied, but his subsidiary imprisonment shall not exceed one-third of the term of the sentence, and in no case shall it continue for more than one year, and no fraction or part of a day shall be counted against the prisoner.

2. When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months, if the culprit shall have been prosecuted for a grave or less grave felony, and shall not exceed fifteen days, if for a light felony.

3. When the principal penalty imposed is higher than *prison correctional*, no subsidiary imprisonment shall be imposed upon the culprit.

4. If the principal penalty imposed is not to be executed by confinement in a penal institution, but such penalty is of fixed duration, the convict, during the period of time established in the preceding rules, shall continue to suffer the same deprivations as those of which the principal penalty consists.

5. The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him from the fine in case his financial circumstances should improve.

¹¹⁵ *Ungab v. Judge Cusi, Jr.*, *supra* note 51, cited in *Adamson v. Court of Appeals*, *supra* note 74.

¹¹⁶ *Id.* See also *Adamson v. Court of Appeals*, *id.* at 31, citing *Ungab v. Judge Cusi, Jr.*, *id.*, which quoted Mertens Law of Federal Income Taxation, Vol. 10, Sec. 55A. 05, p. 21.

error and promptly to assess has no connections with the commission of the crime.¹¹⁷ (Citation omitted)

In *Commissioner of Internal Revenue v. PASCOR Realty & Development Corporation*,¹¹⁸ we explained the difference between a criminal prosecution and 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. 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.¹¹⁹

Although an assessment is dispensed with in the prosecution for tax law violation, Section 205 of the Tax Code provides that “[t]he 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 [CIR].”

Here, the CTA refused to impose civil liability for deficiency taxes on Joel despite the finding of guilt in the criminal case because the CIR did not issue a final assessment for deficiency taxes. It ruled that the computation of the revenue officers using the net worth and expenditures method could not be the basis for Joel’s liability. The CTA held that there must be a final determination of deficiency issued by the CIR pursuant to Section 205 of the Tax Code.

We do not agree.

The Court takes notice that in various tax-related criminal actions filed before the CTA, the CTA ruled on the innocence or guilt of the accused, but without a finding for the taxpayer-accused’s civil liability for taxes in the criminal case because of the absence of a formal assessment issued by the CIR. Given the rule that a criminal prosecution for tax violation need not be preceded by a valid assessment, the question to be resolved now is **whether a final assessment is a prerequisite to a judgment for civil liability for unpaid taxes in the same criminal action.** The Court definitively settles this question once and for all.

a. Government’s remedies for the collection of delinquent taxes

¹¹⁷ *Id.* at 610–611.

¹¹⁸ *Supra* note 76.

¹¹⁹ *Id.*

The government's right to collect delinquent tax through civil action has long existed in the National Internal Revenue Code of 1939¹²⁰ (1939 Tax Code). Section 316 of the 1939 Tax Code, the precursor provision of the present Section 205¹²¹ of the Tax Code, states that:

SECTION 316. Civil 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 judicial action.** Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes. (Emphasis supplied)

In *People v. Arnault*,¹²² the Court implicitly declared that collection by judicial action does not include the collection in a criminal proceeding for two reasons: *first*, there is no legal sanction for imposing civil indemnity for taxes in a criminal proceeding for violation of the tax laws, and *second*, the principle of civil liability under the Penal Code is different from the income tax laws.

Article 100 of the Revised Penal Code provides that every person criminally liable for a felony is also civilly liable. x x x. However, the principle and the philosophy underlying the civil liability of one violating a punishable act under the Penal Code are wholly different from one incurring criminal liability under the Internal Revenue Code. Under the Penal Code[,] the offender incurs civil liability because of his criminal act. In other words, the civil obligation flows from and is created by the criminal liability. Under the Income Tax Law, however, it is the reverse. A person convicted incurs criminal obligation because of failure to fulfill his civil obligation. The civil obligation to pay tax precedes the criminal liability. This lack of similarity or analogy between criminal liability under the Revised Penal Code and the criminal liability under the Income Tax Law is another reason for not imposing the payment of civil indemnity in case of a violation of the Income Tax Law.

We therefore hold that unless expressly provided by law, conviction for failure or neglect to pay a tax does not include payment of indemnity to

¹²⁰ Commonwealth Act No. 466, AN ACT TO REVISE, AMEND AND CODIFY THE INTERNAL REVENUE LAWS OF THE PHILIPPINES, then known as the "NATIONAL INTERNAL REVENUE CODE," July 15, 1939.

¹²¹ 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 ([P]100).

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.

¹²² 92 Phil. 252 (1952).

the State in the amount of the tax not paid x x x. In this connection, and to avoid any doubt, we may say that the Government is free to avail itself of the civil remedies provided by the Internal Revenue Code to collect the tax herein involved.¹²³

The Court reiterated these principles in *People v. Tierra*,¹²⁴ *Republic v. Patanao*,¹²⁵ and *Lim, Sr. v. Court of Appeals*.¹²⁶ These rulings are consistent with Section 308¹²⁷ of the 1939 Tax Code allowing recovery of taxes or the enforcement of any fine, penalty, or forfeiture under the Code in a civil action.

In 1972, Sections 308 and 316 were amended to include criminal action as a mode of collecting delinquent taxes.¹²⁸ Further, the amendment allowed a finding for the payment of delinquent taxes in the same criminal tax case.¹²⁹

SECTION 308. Form and mode of proceeding in actions arising under this Code. — Civil and **criminal actions** and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by the provincial or city fiscal, or the Solicitor-General, or by the legal officers of the Bureau of Legal Internal Revenue deputized by the Secretary of Justice, but no civil and **criminal actions for the recovery of taxes or the enforcement of any fine, penalty, or forfeiture** under this Code shall be begun without the approval of the Commissioner of Internal Revenue.

¹²³ *Id.* at 261–262.

¹²⁴ 120 Phil. 1461 (1964).

¹²⁵ 127 Phil. 105 (1967).

¹²⁶ 268 Phil. 680 (1990).

¹²⁷ SECTION 308. *Form and Mode of Proceeding in Actions Arising Under this Code*. — **Civil actions and proceedings** instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by the provincial or city fiscal, or the Solicitor-General, or by any person designated by the latter; but no **civil action for the recovery of taxes or the enforcement of any fine, penalty, or forfeiture under this Code** shall be begun without the approval of the Collector of Internal Revenue. (*Emphasis supplied*)

¹²⁸ Presidential Decree No. 69, entitled “AMENDING CERTAIN SECTIONS OF NATIONAL INTERNAL REVENUE CODE,” January 1, 1973.

¹²⁹ *N.B.* In *Lim*, the Court implicitly declared that the conviction for criminal violation of the Tax Code may include an order for payment of unpaid taxes **after the amendment in the 1973 Tax Code**, *viz.*:

The petition, however, is impressed with merit insofar as it assails the inclusion in the judgment of the payment of deficiency taxes in Criminal Cases Nos. 1788-1789. The trial court had absolutely no jurisdiction in sentencing the Lim couple to indemnify the Government for the taxes unpaid. The lower court erred in applying Presidential Decree No. 69 [1973 Tax Code], particularly Section 316 thereof, which provides that “judgment in the criminal case shall not only impose the penalty but shall order payment of the taxes subject of the criminal case”, because that decree took effect only on January 1, 1973 where as the criminal cases subject of this appeal were instituted on June 23, 1970. Save in the two specific instances, Presidential Decree No. 69 has no retroactive application.

In the case of *People vs. Tierra*, we reiterated the ruling in *People vs. Arnault*, that there is no legal sanction for the imposition of payment of the civil indemnity to the Government in a criminal proceeding for violation of income tax laws. x x x.

Under the cited *Tierra* and *Arnault* cases, it is clear that criminal conviction for a violation of any penal provision in the Tax Code does not amount at the same time to a decision for the payment of the unpaid taxes inasmuch as there is no specific provision in the Tax Code to that effect.

Considering that **under Section 316 of the Tax Code prior to its amendment the trial could not order the payment of the unpaid taxes as part of the sentence**, the question of whether or not the supervening death of petitioner Emilio E. Lim, Sr. has extinguished his tax liability need not concern us. x x x. (*Emphasis supplied*)

SECTION 316. 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.

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 of Internal Revenue.

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 improvement thereon. (Emphasis supplied)

When the Tax Code was re-codified in 1977 under Presidential Decree No. 1158 (1977 Tax Code),¹³⁰ Sections 308 and 316 were moved to 294¹³¹ and 302,¹³² respectively. There were slight modifications, but the substance was retained.

By the subsequent amendment in 1997,¹³³ Sections 308 and 316 were renumbered but remain unchanged to the present Sections 220 and 205, respectively:

¹³⁰ NATIONAL INTERNAL REVENUE CODE OF 1977, June 3, 1977.

¹³¹ SECTION 294. *Form and mode of proceeding in actions arising under this Code.* — Civil and **criminal actions** and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by the provincial or city fiscal, or the Solicitor General, or by the legal officers of the Bureau of Internal Revenue deputized by the Secretary of Justice, but no civil and **criminal actions for the recovery of taxes or the enforcement of any fine, penalty, or forfeiture** under this Code shall be begun without the approval of the Commissioner. (Emphasis supplied)

¹³² SECTION 302. *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.

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)

¹³³ Republic Act No. 8424, AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, effective January 1, 1998.

Section 220. *Form and Mode of Proceeding in Actions Arising under this Code.* — Civil and **criminal actions** and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or **criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture** under this Code shall be filed in court without the approval of the Commissioner.

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 ([P100.00]).

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)

With the amendment of the 1939 Tax Code, the government's power to enforce the collection of delinquent taxes was no longer limited to summary administrative remedies of distraint and/or levy and a civil suit for collection. Instead, **the tax law now expressly allows the institution of criminal action as a mode of collecting unpaid taxes.**¹³⁴

At this juncture, we clarify that the order for payment of unpaid taxes in the criminal case for violation of tax laws is not to enforce the taxpayer's civil liability *ex delicto* as contemplated under the Penal Code and explained by this Court in *Arnault* and related cases. The obligation of the taxpayer to pay the tax is an obligation created by law; it is not a mere consequence of the felonious acts charged in the Information, nor is it a civil liability arising from the crime that could be extinguished by his acquittal in the criminal charge.¹³⁵

¹³⁴ See *Lim, Sr. v. Court of Appeals*, *supra* note 126, at 686 (1990).

¹³⁵ See *Republic v. Patanao*, *supra* note 125, at 108–109 (1967); *People v. Tierra*, *supra* note 124, at 1465–1467; *Castro v. Collector of Internal Revenue*, 114 Phil. 1032, 1043–1044; *People v. Arnault*, *supra* note 122 at 261–262.

Instead, the finding of liability for unpaid taxes in the criminal tax case is a consequence of the government's exercise of its remedy to collect taxes in the same action to prosecute a criminal offense under the tax laws.

b. Delinquency as a pre-condition to collection

In the 1939 Tax Code, and even with the inclusion of criminal action as a mode of collection in the 1973, 1977, and present Tax Code, the law requires *delinquency* before the government can collect unpaid taxes. However, the concept of *delinquency* as a pre-requisite to collection in Section 316¹³⁶ of the 1939 Tax Code,¹³⁷ the precursor provision of the present Section 205, has acquired a different meaning since its amendment.

Before RA No. 2343¹³⁸ and the creation of the CTA in 1954,¹³⁹ the then Collector of Internal Revenue was not required to issue his final decision on the disputed assessment before collecting delinquent taxes; the only requisite is that he must first assess within the period fixed by law. The reason is:

[I]t is upon taxation that the government chiefly relies to obtain the means to carry on its operations, and it is of the utmost importance that the modes adopted to enforce collection of taxes levied should be summary and interfered with as little as possible. No government could exist if all litigants were permitted to delay the collection of its taxes. x x x. Collection or payment of the tax was not made to wait until after the Collector of Internal Revenue has resolved all issues raised by the taxpayer against an assessment.¹⁴⁰

Thus, the taxpayer should first pay the assessment and thereafter bring an action in court for its recovery.¹⁴¹ Should he fail, he is considered *delinquent*, and the Collector may go to court to collect the delinquency.¹⁴²

RA Nos. 2343 and 1125 changed the rule. RA No. 2343 introduced the new concept of "delinquency interest" in addition to the "deficiency interest."

¹³⁶ SECTION 316. Civil 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 judicial action**. Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes. *Emphasis supplied.*

x x x x

¹³⁷ Commonwealth Act No. 466, AN ACT TO REVISE, AMEND AND CODIFY THE INTERNAL REVENUE LAWS OF THE PHILIPPINES," then known as the "NATIONAL INTERNAL REVENUE CODE. Effective July 15, 1939.

¹³⁸ AN ACT TO AMEND CERTAIN SECTIONS OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED SIXTY-SIX, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES. Approved. June 20, 1959.

¹³⁹ Republic Act No. 1125, AN ACT CREATING THE COURT OF TAX APPEALS. Approved on June 16, 1954.

¹⁴⁰ *Republic v. Lim Tian Teng Sons & Co., Inc.*, 123 Phil. 400, 407 (1966).

¹⁴¹ *Id.*

¹⁴² *Id.*

The “interest in case of delinquency” in Section 51 (e)¹⁴³ of the 1939 Tax Code imposed on the unpaid tax from the time it became due until payment became the “deficiency interest” in RA No. 2343, which is imposed from the due date to the date of assessment of the deficiency.¹⁴⁴ Moreover, the failure to pay the deficiency tax and interest within 30 days from notice and demand from the CIR shall be subject to “delinquency interest.”¹⁴⁵ The new concept of interest on deficiency and delinquent tax is the compensation of the government for being unable to proceed with the collection immediately after assessment.¹⁴⁶ These new concepts were carried over in the subsequent recodification and amendments of the 1939 Tax Code in the 1973,¹⁴⁷ 1977,¹⁴⁸ and the present Tax Codes.¹⁴⁹

Moreover, the “assessed tax” may be collected within three¹⁵⁰ (or five¹⁵¹) years from the date the assessment notice had been released, mailed,

¹⁴³ SECTION 51. Assessment and Payment of Income Tax. — x x x.

(e) Surcharge and interest in case of delinquency. — To any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) for the payment of the same, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum a month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

¹⁴⁴ See Section 51 (d), RA No. 2343.

SECTION 51. *Payment and assessment of income tax.* — x x x.

(d) *Interest on deficiency.* — Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as a part of the tax, at the rate of six *per centum per annum* from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding. (*Emphasis supplied*)

¹⁴⁵ See Section 51 (e) (2), RA No. 2343.

SECTION 51. *Payment and assessment of income tax.* — x x x.

(e) *Additions to the tax in case of nonpayment.* — x x x.

(2) *Deficiency.* — Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any addition to the taxes provided for in section seventy-two of this Code is not paid in full within thirty days from the date of notice and demand from the Commissioner of Internal Revenue, there shall be collected upon the unpaid amount, as part of the tax, interest at the rate of one *per centum* a month from the date of such notice and demand until it is paid: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding. (*Emphasis supplied*)

¹⁴⁶ Recalde, A TREATISE ON TAX PRINCIPLES AND REMEDIES, 2016 ed., pp. 380–381. See also *Central Azucarera Don Pedro v. Court of Tax Appeals*, 126 Phil. 685, 695 (1967).

¹⁴⁷ See Section 51 (e) (2), Presidential Decree No. 69, AMENDING CERTAIN SECTIONS OF THE NATIONAL INTERNAL REVENUE CODE, effective January 1, 1973.

¹⁴⁸ See Section 51 (e) (2), Presidential Decree No. 1158, entitled “NATIONAL INTERNAL REVENUE CODE OF 1977,” June 3, 1977.

¹⁴⁹ Section 249 (C), Tax Code.

SECTION 249. Interest. —

(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.

¹⁵⁰ See *BPI v. Commissioner of Internal Revenue*, 571 Phil. 535, 542–543 (2008), cited in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, 738 Phil. 335, 356 (2014). See also *Commissioner of Internal Revenue v. Court of Tax Appeals*, G.R. No. 258947, March 29, 2022.

¹⁵¹ In case of false or fraudulent returns with intent to evade tax or failure to file a return with an assessment. See Section 332 (c), 1939 Tax Code and 1973 Tax Code; Section 319 (c), 1977 Tax Code as amended

or sent to the taxpayer. In *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*,¹⁵² the Court explained the concept of a “tax liability” that triggers the CTA’s appellate jurisdiction:

As may be gleaned from this provision [Section 11], the provisional remedy of a Suspension Order contemplates the existence of — and thus, has for its object — a “tax liability”; as such, for the said order to issue, **it is required that a tax assessment or an adverse decision, ruling, or inaction effectively mandating the payment of taxes had already been issued against the taxpayer.** Conversely, without any such tax assessment, decision, ruling or inaction, an order to suspend the collection of taxes under Section 11 of the CTA Law should not be issued since there is effectively no “tax liability” as of yet. In fact, the necessity of an existing “tax liability” in order to avail of a Section 11 Suspension Order is bolstered by the requirement of a surety bond which must be “double the amount.” Without such “tax liability,” there is no definite amount to which the required surety bond would be based on as equally required by Section 11.

x x x x

[T]he wording of Section 11 of the CTA Law is clear in requiring the existence of a “tax liability” before a Suspension Order may be availed of. However, more than just proof of an issued assessment, the said assessment must be properly assailed and elevated to the CTA for it to acquire jurisdiction to issue any and all kind of ancillary remedies in favor of the taxpayer, *e.g.*, a Suspension Order. **This is a necessary consequence of the CTA’s jurisdiction as outlined in Section 7 of the CTA Law. The CTA only has appellate jurisdiction over the CIR or COC’s decision or inaction on disputed assessments, or original and appellate jurisdiction in tax collection cases for final and executory assessments. In other words, the object of the CTA’s appellate jurisdiction should be a final assessment coupled with a formal demand to pay the taxes by the government and not a mere preliminary assessment, or worse, an inchoate future assessment. With no such final assessment and formal demand, there is no proper object of an appeal and, hence, there is nothing to trigger the CTA’s appellate jurisdiction.** x x x. (Boldfacing supplied; citations omitted)

Accordingly, in civil suits for collection, a tax becomes delinquent only *after* the CIR issued its final decision on the disputed assessment and the taxpayer failed to pay on the due date appearing in the decision. That being said, it is only after delinquency that the government may exercise its right to collect by civil action under Section 205 of the Tax Code. Section 7(c) of RA No. 9282 gives the CTA original jurisdiction in tax collection cases for final and executory assessments of ₱1,000,000.00 or more.¹⁵³

by Batas Pambansa Blg. 700 entitled AN ACT AMENDING SECTIONS 318 AND 319 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, SO AS TO REDUCE THE PERIOD OF LIMITATION FOR ASSESSMENT OF INTERNAL REVENUE TAXES FROM FIVE (5) TO THREE (3) YEARS, approved: April 5, 1984; and Section 222, present Tax Code.

¹⁵² G.R. Nos. 210501, 211294 & 212490, March 15, 2021.

¹⁵³ SECTION 7. *Jurisdiction.* — The CTA shall exercise:

x x x x

(c) Jurisdiction over tax collection cases as herein provided:

(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**

In criminal cases, the government's right to collect presupposes the existence of a formal assessment issued by the CIR or his duly authorized representative. Section 205 states that "[t]he 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.*" Therefore, absent a formal assessment, the judgment in the criminal tax case shall not include a finding for civil liability for unpaid taxes against the accused. Of course, the BIR may opt to file a separate tax collection suit independent of the criminal action. Section 205 of the Tax Code is explicit: collection of delinquent taxes by civil or criminal action *may be pursued simultaneously* at the discretion of the CIR.

c. The concept of delinquency in Section 205 does not apply in case of (1) false return, (2) fraudulent return with the intent to evade the tax, and (3) willful neglect to file the return

The rule requiring a decision on the disputed assessment under Section 205 should not be confused with the government's remedy to *collect without assessment* under Section 222 (a) of the Tax Code, which reads:

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 supplied)

The foregoing provision has long existed in the 1939,¹⁵⁴ 1973,¹⁵⁵ and 1977¹⁵⁶ Tax Codes. Indeed, the tax laws expressly allowed the institution of

million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.

(2) Exclusive appellate jurisdiction in tax collection cases:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective 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 collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, in their respective jurisdiction. *Emphasis supplied.*

¹⁵⁴ SECTION 332. *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 a failure to file a return, the tax may be assessed, or a **proceeding in court for 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. *Emphasis supplied.*

¹⁵⁵ SECTION 332. *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 a failure to file a return, the tax may be assessed, or a **proceeding in court for 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 the collection thereof. *Emphasis supplied.*

¹⁵⁶ As amended by Batas Pambansa Blg. 700.

court proceedings, **whether by civil or criminal action**,¹⁵⁷ for the **collection of tax without assessment** in three cases: (1) the taxpayer filed a false return; (2) the taxpayer filed a fraudulent return with the intent to evade taxes; and (3) in case of willful neglect to file a return.¹⁵⁸ Nevertheless, **the government must prove by competent evidence (other than an assessment) the amount on which the civil liability for unpaid taxes may be based.**

d. Institution of civil action to collect taxes in the same criminal action for violation of the tax laws

As previously intimated, before the law expanded the jurisdiction of the CTA in RA No. 9282, the government was not required to collect taxes in the same criminal action for violation of the tax laws.¹⁵⁹ In 2004, Congress enacted RA No. 9282, expanding the jurisdiction of the CTA. Section 7 (b)(1) of RA No. 9282, in relation to Section 11, Rule 9 of the Revised Rules of the Court of Tax Appeals, reads:

[Section 7(b)(1), RA No. 9282]

SEC. 7. *Jurisdiction.* — The CTA shall exercise:

x x x x

(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 ([P]1,000,000.00) 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)

[Section 11, Rule 9, Revised Rules of the Court of Tax Appeals]

SECTION 319. *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 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 the collection thereof. (Emphasis supplied)

¹⁵⁷ See Section 308, 1939 Tax Code; Section 308, 1973 Tax Code; Section 294, 1977 Tax Code; and Section 220, present Tax Code.

¹⁵⁸ See *Commissioner of Internal Revenue v. Filipinas Shell Petroleum Corporation*, 835 Phil. 875, 911–913 (2018).

¹⁵⁹ Section 205 of the Tax Code provides that “[e]ither of these remedies [distrain, levy, civil action, criminal action] or both **simultaneously may be pursued** in the discretion of the authorities charged with the collection of such taxes[.]”

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)

Indeed, the institution of the criminal action **shall** carry with it the corresponding civil action for taxes and penalties. We have repeatedly held that the use of “shall” in a statute connotes the mandatory nature of the requirements and denotes an imperative obligation.¹⁶⁰ Its use rendered the provision mandatory. Therefore, **the government cannot file a civil suit for tax collection independently from the related criminal case.** Simply, the filing of a complaint for an offense that involves liability for unpaid taxes, such as willful neglect to file a return and pay the tax,¹⁶¹ willful failure to supply correct information in the return,¹⁶² and willful failure to withhold, account for or remit withholding taxes,¹⁶³ automatically carries with it the filing of a collection case for deficiency taxes.¹⁶⁴

It may be asked: **since the civil action for collection is deemed instituted in the criminal tax case, is a final decision of the CIR on the disputed assessment still required for the BIR to collect delinquent tax in the same criminal case pursuant to Section 205?**

We answer in the **negative.**

Section 17¹⁶⁵ of RA No. 9282 is a general repealing clause as it fails to identify or designate the laws or rules intended to be repealed. As such, the presumption against implied repeals will be applied. It must be noted that repeals by implication are not favored in our jurisdiction. The legislature is presumed to know the existing laws so that if repeal is intended, the proper step is to express it.¹⁶⁶ The failure to add a specific repealing clause indicates that the intent was not to repeal any existing law unless there is a showing that

¹⁶⁰ *Power Sector Assets and Liabilities Management Corporation v. Commissioner of Internal Revenue*, 815 Phil 966, 993–994 (2017); *Enriquez v. Enriquez*, 505 Phil. 193, 199 (2005); *Gov. Mandanas v. Hon. Romulo*, 473 Phil. 806, 833–834 (2004). See also *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 186–187 (2010).

¹⁶¹ Section 255, Tax Code.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ This rule does not apply to tax evasion cases under Section 254 of the Tax Code, as amended by RA No. 10963 (TRAIN Law), which allows a civil suit for collection of taxes notwithstanding the conviction or acquittal of the taxpayer in the tax evasion case.

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 with a fine of not less than Five hundred thousand pesos ([P]500,000) but not more than Ten million pesos ([P]10,000,000), and imprisonment of not less than six (6) years but not more than ten (10) 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.* (Emphasis supplied)

¹⁶⁵ SECTION 17. *Repealing Clause.* — All laws, executive orders, executive issuances or letter of instructions, or any part thereof, inconsistent with or contrary to the provisions of this Act are hereby deemed repealed, amended or modified accordingly.

¹⁶⁶ *Iloilo Palay and Corn Planters Association, Inc. v. Hon. Feliciano*, 121 Phil. 358, 361–362 (1965).

J

a plain, unavoidable, and irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.¹⁶⁷

There is an implied repeal of Section 205 of the Tax Code (1) requiring a prior finding of delinquency¹⁶⁸ for the government to exercise its remedy to collect in a criminal action and (2) allowing a separate civil suit for collection and criminal action¹⁶⁹ by Section 7 (b)(1) of RA No. 9282.

To begin with, Section 205 of the Tax Code specifically prescribes the “civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency x x x by criminal action.” Further, “[t]he 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.” Next, Section 205 gives the CIR discretion to pursue the civil and criminal action simultaneously. On the other hand, the clear import of Section 7 (b)(1) of RA No. 9282 is to treat the criminal action as a collection case for unpaid taxes relative to the criminal case. Verily, both provisions cover the institution of a collection case for delinquent taxes in a criminal case.

There is a substantial inconsistency between the terms of the two laws. Section 205 requires delinquency, meaning the taxpayer must have failed to pay the assessed tax within the period stated in the **notice and demand**. On the other hand, RA No. 9282 mandates “the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action.” However, a **formal assessment is not required** in the prosecution of criminal cases for violation of tax laws. Therefore, by requiring the simultaneous institution of the criminal case for violation of the tax laws and the civil case for collection of taxes and penalties relative to the criminal case in the same proceeding with the CTA, **Congress dispensed with the requirement of delinquency as a pre-condition to collection**. In other words, while Section 205 of the Tax Code mandates a final decision of the CIR on the disputed assessment so that “[t]he 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 [CIR]*,” Section 7 (b)(1) of RA No. 9282 impliedly repealed the same by allowing the government to collect from the taxpayer its tax liabilities without the formal assessment.

The Court finds the foregoing construction consistent with the intent of the legislature to curtail the “needless delays in the final disposition of tax

¹⁶⁷ See *Bank of Commerce v. Planters Development Bank*, 695 Phil. 627, 650 (2012), cited in *First Philippine Holdings Corporation v. Securities and Exchange Commission*, G.R. No. 206673, July 28, 2020, 944 SCRA 79, 93.

¹⁶⁸ Section 205 provides that “[t]he civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be: x x x by criminal action.”

¹⁶⁹ Section 205 (b) provides that “[e]ither of these remedies [levy, distraint, civil action, or criminal action] or both **simultaneously** may be pursued in the discretion of the authorities charged with the collection of such taxes[.]”

cases” as jurisdiction over criminal cases involving violations of the tax laws and the corresponding civil aspect cases are lodged with different courts. More importantly, putting the collection of revenue and enforcement of tax laws in one court will improve the revenue performance of the government. It will “boost tax collection and administration.”¹⁷⁰ The Explanatory Note of Hon. Aleta C. Suarez on the passage of House Bill No. 854 is elucidating:

Taxes are the lifeblood of the nation and their prompt and effective collection is necessary to sustain the multifarious activities of the government. Through the payment of taxes, the government machinery is made effective in the delivery of basic public services.

Presently, the jurisdiction over criminal cases involving violations of the tax laws and customs laws is lodged with the regular courts, while the civil aspect of these cases is with the Court of Tax Appeals, thus resulting into needless delays in the final disposition of cases. Moreover, this delay is further prolonged by the appeal of the cases cognizable by the Court of Tax Appeals to the Court of Appeals.

x x x x

The vesting of the jurisdiction over both the civil and criminal aspects of a tax case in one court will likewise effectively enhance and maximize the development of jurisprudence and judicial precedence on tax matters which is of vital importance to revenue administration. The same may not be achieved if another court exercises criminal jurisdiction as in the current set up.

It is observed that Section 7(b)(1) of RA No. 9282 and Section 11, Rule 9 of Revised Rules of the Court of Tax Appeals (RRCTA) contemplate a scenario **where no civil suit for collection has yet been instituted at the time of filing the criminal action**. In case the civil action was filed before the institution of the criminal action, or the government filed an answer to the taxpayer’s petition for review before the CTA,¹⁷¹ the civil action (or the resolution of the taxpayer’s petition) shall be suspended before judgment on the merits, and shall last until final judgment is rendered in the criminal action. However, before judgment on the merits is rendered in the civil action, it may be consolidated with the criminal action. Section 2, Rule 111 of the Rules of Court, which applies suppletory to the RRCTA,¹⁷² reads:

SECTION 2. *When separate civil action is suspended.* — x x x.

If the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever stage it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the criminal action. Nevertheless, before judgment on the merits is rendered in the civil action, the same may, upon motion of the offended party, be consolidated with the criminal action in the court

¹⁷⁰ Committee on Justice, March 4, 2003, p. 11.

¹⁷¹ A judicial action for collection may be initiated by filing an answer to the taxpayer’s petition for review wherein payment of the tax is prayed for. See *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, G.R. No. 258947, March 29, 2022; *Palanca v. Commissioner of Internal Revenue*, 114 Phil. 203, 206–207 (1962).

¹⁷² Section 3, Rule 1, Revised Rules of the Court of Tax Appeals.

8

trying the criminal action. In case of consolidation, the evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action without prejudice to the right of the prosecution to cross-examine the witnesses presented by the offended party in the criminal case and of the parties to present additional evidence. The consolidated criminal and civil actions shall be tried and decided jointly.

During the pendency of the criminal action, the running of the period of prescription of the civil action which cannot be instituted separately or whose proceeding has been suspended shall be tolled.

X X X X.

Therefore, **the government is not precluded from assessing the taxpayer for deficiency taxes in accordance with Section 228 of the Tax Code** – the issuance of Preliminary and Final Assessment Notices, allowing the taxpayer to respond to the notices and contest the assessment, and the issuance of the final notice and demand – *while the criminal case is pending*. It may then introduce in evidence the taxpayer-accused's liability for unpaid taxes as finally determined by the CIR in the same criminal case. The taxpayer, on the other hand, may avail itself of the remedies outlined in the law to prevent the assessment from becoming final and executory – file its protest to the Final Assessment Notice within 30 days from receipt and thereafter appeal to the CTA within 30 days the decision or inaction of the CIR on the disputed assessment. The Court recognized this in *Gaw, Jr. v. Commissioner of Internal Revenue*,¹⁷³ viz.:


Under Sections 254 and 255 of the 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.

While the tax evasion case is pending, the BIR is not precluded from issuing a final decision on a disputed assessment, such as what happened in this case. In order to prevent the assessment from becoming final, executory and demandable, Section 9 of R.A. No. 9282 allows the taxpayer to file with the CTA, a Petition for Review within 30 days from receipt of the decision or the inaction of the respondent.

The tax evasion case filed by the government against the erring taxpayer has, for its purpose, the imposition of criminal liability on the latter. While the Petition for Review filed by the petitioner was aimed to question the FDDA and to prevent it from becoming final. The stark difference between them is glaringly apparent. As such, the Petition for Review *Ad Cautelam* is not deemed instituted with the criminal case for tax evasion.

X X X X

¹⁷³ 836 Phil. 773 (2018).



[W]hat is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.¹⁷⁴ (Emphasis supplied; citation omitted)

Accordingly, the CTA erroneously refused to make a determination on the civil liability for unpaid taxes on the part of accused Joel on the ground of lack of a formal assessment duly issued by the CIR. Under RA No. 9282, a formal assessment is no longer a condition precedent to the imposition of civil liability for unpaid taxes relative to the criminal tax case.

Guidelines in the prosecution of criminal actions for violation of tax laws.

For the guidance of the bench and bar, the following rules shall govern the prosecution of criminal tax law violations and the corresponding civil liability for unpaid taxes:

(1) When a criminal action for violation of the tax laws is filed, a prior assessment is not required. Neither a final assessment is a precondition to *collection* of delinquent taxes in the criminal tax case. The criminal action is deemed a collection case. Therefore, the government must prove two things: *one*, the guilt of the accused by proof beyond reasonable doubt, and *two*, the accused's civil liability for taxes by competent evidence (other than an assessment).

(2) If *before* the institution of the criminal action, the government filed (1) a civil suit for collection, or (2) an answer to the taxpayer's petition for review before the CTA, the civil action or the resolution of the taxpayer's petition for review shall be suspended before judgment on the merits until final judgment is rendered in the criminal action. However, before judgment on the merits is rendered in the civil action, it may be consolidated with the criminal action. In such a case, the judgment in the criminal action shall include a finding of the accused's civil liability for unpaid taxes relative to the criminal case.

As applied to the case.

The prosecution filed a criminal case for tax violation against Joel. The civil action for collection of deficiency taxes is deemed instituted; hence, a formal assessment issued by the CIR is not required for the imposition of civil liability for unpaid taxes.

The finding of deficiency taxes should have been done at the level of the CTA Division. The Court cannot determine Joel's civil liability for taxes and penalties in this petition. Well-settled is the rule that the Court is not a

¹⁷⁴ *Id.* at 790-792.

include a finding of the accused's civil liability for unpaid taxes relative to the criminal case.

As applied to the case.

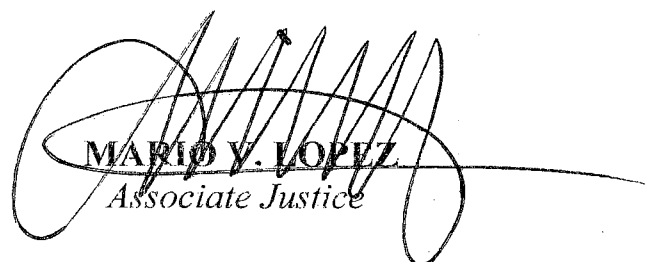
The prosecution filed a criminal case for tax violation against Joel. The civil action for collection of deficiency taxes is deemed instituted; hence, a formal assessment issued by the CIR is not required for the imposition of civil liability for unpaid taxes.

The finding of deficiency taxes should have been done at the level of the CTA Division. The Court cannot determine Joel's civil liability for taxes and penalties in this petition. Well-settled is the rule that the Court is not a trier of facts. Hence, the proper remedy is to remand the case to the Court in Division to determine the civil liability of the accused Joel in CTA Crim. Case No. O-013 for willful failure to file or make a return for the taxable year 2002 and in CTA Crim. Case No. O-015 for willful failure to supply correct and accurate information in the return for the taxable year 2003.

ACCORDINGLY, the Petition for Review on *Certiorari* filed by Joel C. Mendez in G.R. No. 208662 is **DENIED** for lack of merit. Joel C. Mendez is **GUILTY** of the crimes of violation of Section 255 of the 1997 National Internal Revenue Code, as amended, for willful failure to file Income Tax Return for the taxable year 2002 in CTA Crim. Case No. O-013, and for willful failure to supply correct and accurate information in the Income Tax Return for the taxable year 2003 in CTA Crim. Case No. O-015. He is sentenced to suffer the indeterminate penalty of one (1) year, as minimum, to two (2) years, as maximum, and is ordered to pay a fine of ₱10,000.00, with subsidiary imprisonment in case he has no property to pay the fine, for each of the criminal offenses.

The Petition for Review filed by the People of the Philippines in G.R. Nos. 208310-11 is **PARTLY GRANTED**. The Court of Tax Appeals *En Banc*'s Decision dated December 11, 2012, and Resolution dated July 8, 2013 in C.T.A. EB Crim. Nos. 014 and 015 are **AFFIRMED with MODIFICATIONS**. CTA Crim. Case No. O-013 and CTA Crim. Case No. O-015 are **REMANDED** to the Court of Tax Appeals in Division to determine Joel C. Mendez's civil liability for taxes and penalties, in accordance with this Decision. The Court of Tax Appeals in Division is **DIRECTED** to conduct the proceedings with reasonable dispatch.

SO ORDERED.


MARIO Y. LOPEZ
Associate Justice

WE CONCUR:

*See concurring
opinion*

[Signature]
ALEXANDER G. GESMUNDO
Chief Justice

*See Concurring
Opinion*

On official leave
MARVIC M.V.F. LEONEN
Senior Associate Justice

[Signature]
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

[Signature]
RAMON PAUL L. HERNANDO
Associate Justice

[Signature]
AMY C. LAZARO-JAVIER
Associate Justice

[Signature]
HENRI JEAN PAUL B. INTING
Associate Justice

*please see
Separate Concurring
Opinion*
[Signature]
RODIL V. ZALAMEDA
Associate Justice

[Signature]
SAMUEL H. GAERLAN
Associate Justice

[Signature]
RICARDO R. ROSARIO
Associate Justice

[Signature]
JHOSEF Y. LOPEZ
Associate Justice

[Signature]
JAFAR B. DIMAAMPAO
Associate Justice

[Signature]
JOSE MIDAS P. MARQUEZ
Associate Justice

[Signature]
ANTONIO T. KHO, JR.
Associate Justice

[Signature]
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice