



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

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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).

- (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).

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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.

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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.

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

As applied to the case.

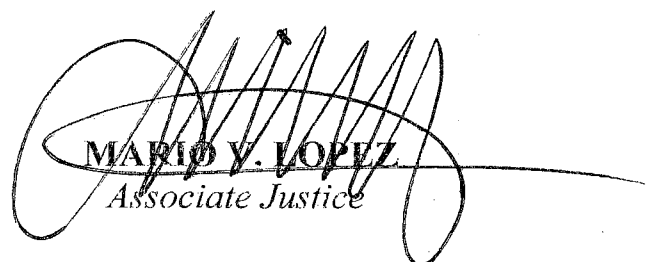
The prosecution filed a criminal case for tax violation against Joel. The civil action for collection of deficiency taxes is deemed instituted; hence, a formal assessment issued by the CIR is not required for the imposition of civil liability for unpaid taxes.

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

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RAMON PAUL L. HERNANDO
Associate Justice

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AMY C. LAZARO-JAVIER
Associate Justice

[Signature]
HENRI JEAN PAUL B. INTING
Associate Justice

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

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SAMUEL H. GAERLAN
Associate Justice

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RICARDO R. ROSARIO
Associate Justice

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JHOSEF Y. LOPEZ
Associate Justice

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JAFAR B. DIMAAMPAO
Associate Justice

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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

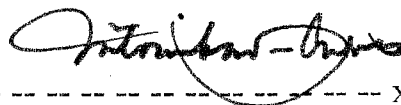
EN BANC

G.R. Nos. 208310-11 – (*People of the Philippines, petitioner vs. Joel C. Mendez, respondent*).

G.R. No. 208662 – (*Joel C. Mendez, petitioner vs. People of the Philippines, respondent*).

Promulgated:

March 28, 2023



X ----- X

Concurring Opinion

GESMUNDO, C.J.:

I fully concur with the *ponencia*. Nevertheless, I write this Opinion to emphasize that the Court of Tax Appeals (CTA) has jurisdiction over Criminal Case Nos. 0-013 and 0-015 based on the amounts alleged in the Informations.

Factual antecedents

In 2006, Joel C. Mendez (*Joel*) was charged in two separate Informations with violation of Section 255 of the National Internal Revenue Code¹ (*NIRC*), particularly for (1) not filing his 2022 Income Tax Return (*ITR*) in the “*estimated amount of ₱1,522,152.14;*” and (2) willfully failing to supply correct and accurate information in his 2003 *ITR*, to the government’s prejudice in the “*estimated amount of ₱2,107,023.65.*”²

¹ Republic Act No. 8424, December 11, 1997. Section 255 thereof states:
Sec. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct the 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 (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (₱10,000) but not more than Twenty thousand pesos (₱20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years. (Underscoring supplied)

² *Ponencia*, pp. 2-3.



In its January 5, 2011 Decision, the CTA Division found Joel guilty of both criminal charges based on the totality of the evidence presented. As to his civil liability, the CTA Division held that a final assessment issued by the Commissioner of Internal Revenue (*CIR*) is required under Sec. 205³ of the NIRC before the taxpayer can be held civilly liable for deficiency taxes.⁴ In his Dissenting Opinion, Justice Casanova opined that the CTA has no jurisdiction over the criminal cases because the amounts alleged in the Informations are mere estimates. Thus, it cannot be ascertained which court has jurisdiction. Both parties moved for reconsideration of the January 5, 2011 Decision of the CTA Division.

In his motion for reconsideration, Joel raised for the first time his argument that the CTA has no jurisdiction over the criminal cases. For its part, the prosecution contended that an assessment is not necessary before the civil liability for unpaid taxes may be imposed, based on Sec. 222(a)⁵ of the NIRC. The CTA Division denied both motions for reconsideration for lack of merit, prompting the parties to file their respective petitions for review before the CTA *En Banc*.

The CTA *En Banc* affirmed Joel's conviction and the non-imposition of deficiency taxes. It also denied the parties' motions for reconsideration. Hence, these petitions.

The issues are summarized as follows:

³ The provision reads thus:

Sec. 205. *Remedies for the Collection of Delinquent Taxes.*— The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be:

(a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts[,] and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; and
(b) By civil or criminal action.

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however,* That the remedies of distraint and levy shall not be availed of where the amount of tax involve[d] is not more than One hundred pesos (₱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. (Emphasis and underscoring supplied)

⁴ *Ponencia*, p. 6. It explained that “[w]hile 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 [CIR] under Section 205 of the [NIRC] before the taxpayer can be held civilly liable for deficiency taxes.”

⁵ The provision reads, thus:

Sec. 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 and underscoring supplied)

Criminal aspect

- (a) whether the CTA has jurisdiction over the criminal cases; and
(b) whether the prosecution proved Joel's guilt beyond reasonable doubt;⁶

Civil aspect

- (c) whether an assessment for deficiency tax is a prerequisite for the collection of civil liability in a criminal prosecution for tax law violations;⁷ and
(d) whether Joel is liable for deficiency income tax for the years 2002 and 2003.⁸

The *ponencia* correctly rules that jurisdiction over the two criminal cases is properly with the CTA.

Jurisdiction is based on the allegations in the Information

Jurisdiction over the subject matter is conferred by law. The CTA's jurisdiction over criminal tax cases is governed by Sec. 7(b)(1) of Republic Act (R.A.) No. 9282,⁹ viz.:

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 (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts** and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously

⁶ *Ponencia*, p. 9.

⁷ *Id.* at 2.

⁸ *Id.* at 2 and 9.

⁹ 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: March 30, 2004).

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. (Emphases and underscoring supplied)

When R.A. No. 11576¹⁰ amended Batas Pambansa Blg. 129 by increasing the general jurisdictional threshold of the second level courts to ₱2,000,000.00, the Court was requested to clarify the amendment's effect on the CTA's jurisdiction under R.A. No. 9282. In a Resolution dated December 6, 2022, in A.M. No. 22-09-13-SC the Court *En Banc* held that, in light of the nature of R.A. No. 9282 as a special law, the exclusive original jurisdiction over *tax collection cases* for amounts ₱1,000,000.00 or more "remains with the CTA."¹¹ The courts' jurisdiction in tax collection cases were harmonized to wit:

- (a) Exclusive original jurisdiction over civil actions involving **tax collection cases for amounts [₱]1,000,000.00** or more shall be exercised by the **Court of Tax Appeals**;
- (b) Exclusive original jurisdiction over civil actions involving tax collection cases for amounts less than ₱1,000,000.00 shall be exercised by the proper Municipal Trial Court or Metropolitan Trial Court; and
- (c) Exclusive appellate jurisdiction over tax collection cases originally decided by the Municipal Trial Court or Metropolitan Trial Court shall remain with the proper Regional Trial Courts.¹² (Emphases supplied)

Based on the foregoing, the CTA retains exclusive original jurisdiction over criminal cases arising from NIRC violations where the principal amount of taxes and fees claimed is ₱1,000,000.00 or more. If the amount is below ₱1,000,000.00 or when there is no specified amount claimed, the CTA's

¹⁰ 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).

Section 1(8) thereof, amending Section 19 of BP 129, provides:

Section 19. *Jurisdiction of the Regional Trial Courts in Civil Cases.* — Regional Trial Courts shall exercise exclusive original jurisdiction:

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 Two million pesos (₱2,000,000.00). (Underscoring supplied)

¹¹ *Re: Request for Clarification relative to Republic Act No. 11576 vis-à-vis Republic Act No. 1125, as amended [CTA Law]*, A.M. No. 22-09-13-SC, December 6, 2022.

¹² *Id.*

jurisdiction is only appellate. The question is: what is the basis for determining jurisdiction?

Elementary is the rule that jurisdiction is determined from the allegations of the complaint or information, and not by the result of proof.¹³ The Court has held, thus:

[I]n order to determine which court has jurisdiction over the action, an examination of the complaint is essential. Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.¹⁴

The jurisdictional facts are those that appear on the face of the complaint or information.¹⁵ "It is a hornbook doctrine that the **court should only look into the facts alleged** in the complaint [or information] to determine whether a suit is within its jurisdiction."¹⁶ "[O]nly these facts can be the basis of the court's competence to take cognizance of a case."¹⁷ One cannot refer to anything not set forth in the complaint or information to ascertain the jurisdiction of the court.¹⁸

In the present case, the two Informations filed before the CTA reflect that the amounts claimed are ₱1,522,152.14 and ₱2,107,023.65, respectively, which are both **undeniably higher than ₱1,000,000.00**, and thus, unquestionably meet the jurisdictional threshold provided in R.A. No. 9282. Following the rule that "**courts should only look into the facts alleged** in the complaint [or information] to determine whether a suit is within its jurisdiction," the CTA can clearly take cognizance of the case.

To expound, this rule that jurisdiction is determined from the allegations in the complaint or information applies in both civil and criminal

¹³ *Navaja v. Hon. De Castro*, 761 Phil. 142, 153 (2015); see *Malabanan v. Republic*, 840 Phil. 333, 339 (2018).

¹⁴ *Padlan v. Spouses Dinglasan*, 707 Phil. 83, 91 (2013).

¹⁵ See *Zacarias v. Anacay*, 744 Phil. 201, 211 (2014).

¹⁶ *Foronda-Crystal v. Son*, 821 Phil. 1033, 1044 (2017).

¹⁷ *Id.*

¹⁸ *Id.*; see also *Regalado v. Vda. de De la Pena*, 822 Phil. 705, 715 (2017).

actions. No adequate reason has been put forward why a contrary rule should be applied in tax-related criminal cases.

1. *Civil actions*

To illustrate, there are civil actions where the governing statute specifies monetary values to delineate between the jurisdictions of the first level courts and the second level courts. Pertinently, Sec. 19 of the Judiciary Reorganization Act, as amended by R.A. No. 11576,¹⁹ sets the jurisdictional thresholds based on either the *assessed value* of the property involved, the *amount demanded or claimed*, or the *gross value* of the estate, depending on the nature of the case.

In ascertaining the assessed value of the property involved for the purpose of establishing jurisdiction over an action, case law²⁰ elucidates, thus:

To determine the assessed value, which would in turn determine the court with appropriate jurisdiction, an examination of the allegations in the complaint is necessary. It is a hornbook doctrine that the court should only look into the facts alleged in the complaint to determine whether a suit is within its jurisdiction. According to the case of *Spouses Cruz v. Spouses Cruz, et al.*, only these facts can be the basis of the court's competence to take cognizance of a case, and that **one cannot advert to anything not set forth in the complaint**, such as evidence adduced at the trial, to determine the nature of the action thereby initiated.²¹ (Emphases and underscoring supplied, citation omitted)

Applying the same principle in an action for damages, the Court, in *Spouses Pajares v. Remarkable Laundry and Dry Cleaning*,²² merely checked

¹⁹ The provision states:

Section 19. *Jurisdiction of the Regional Trial Courts in Civil Cases.* — Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value exceeds Four hundred thousand pesos (P400,000.00), except for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, and Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts;

(3) In all actions in admiralty and maritime jurisdiction where the demand or claims exceeds Two million pesos (P2,000,000.00);

(4) In all matters of probate, both estate and intestate, where the gross value of the estate exceeds Two million pesos (P2,000,000.00);

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 Two million pesos (P2,000,000.00). (Underscoring supplied).

²⁰ See *Foronda-Crystal v. Son*, supra.

²¹ Id. at 1044.

²² 806 Phil. 39 (2017).

the total amount of damages claimed as stated in the complaint to determine if the Regional Trial Court (*RTC*) has jurisdiction over the action.

Similarly, in probate proceedings where jurisdiction is conferred on the second level or first level court depending on the gross value of the estate, case law²³ states that the value “must be alleged in the complaint or petition to be filed.” No proof of such gross value of the estate needs to be attached to the complaint or petition before jurisdiction is considered vested.

2. *Criminal actions*

As regards criminal actions, in a theft case, jurisdiction is vested on the *RTC* when the imposable penalty for the value of the stolen items as stated in the information exceeds six years.²⁴ Thus, prior to the *RPC* amendment, the *RTC* has jurisdiction when the information states that the stolen property’s value exceeds ₱12,000.00,²⁵ for which the imposable penalty is *prision mayor* or exceeds six years.²⁶ It bears stressing that once jurisdiction is vested by such allegations, it remains vested irrespective of whether the plaintiff is entitled to recover the claims asserted.²⁷ Jurisdiction continues until the case is finally determined²⁸ even if proof later presented shows that the stolen items actually have lower values.

In *Escobal v. Justice Garchitorena*,²⁹ it was emphasized that the jurisdiction of the court over criminal cases is determined by the allegations in the information or the complaint and the statute in effect at the time of the commencement of the action, unless such statute provides for a retroactive application thereof. The jurisdictional requirements must be alleged in the

²³ *Frianela v. Banayad, Jr.*, 611 Phil. 765, 772 (2009).

²⁴ Section 20 of Batas Pambansa Blg. 129 states that the “Regional Trial Courts shall exercise exclusive original jurisdiction in **all criminal cases not within the exclusive jurisdiction of any court, tribunal or body**” while Section 32(2) thereof, as amended by Republic Act No. 7691, states that the first level courts shall exercise “[e]xclusive original jurisdiction over all offenses **punishable with imprisonment not exceeding six (6) years**[.]” see also *People v. Mejares*, 823 Phil. 459, 475 (2018); Pursuant to Article 309 of the Revised Penal Code, as revised by Republic Act No. 10951, approved on August 29, 2017, if the value of the property stolen exceeds ₱1,200,000.00, the imposable penalty is *prision mayor* which exceeds 6 years. Thus, jurisdiction is with the second level court. (Emphases supplied)

²⁵ With the enactment of Republic Act No. 10951 which amended Batas Pambansa Blg. 129, the ₱12,000.00 has been increased to ₱1,200,000.00 (See An Act Adjusting the Amount or The Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, otherwise known as “The Revised Penal Code,” as Amended.)

²⁶ Article 27 of the Revised Penal Code states that the duration of the penalty of *prision mayor* is “from six years and one day to twelve years[.]” (Underscoring supplied)

²⁷ See *De Vera v. Spouses Santiago*, 761 Phil. 90, 101 (2015).

²⁸ See *Aruego, Jr. v. Court of Appeals*, 325 Phil. 191, 201 (1996).

²⁹ 466 Phil. 625 (2004).

information. Such jurisdiction of the court acquired at the inception of the case continues until the case is terminated.³⁰

Consequently, in *BSB Group, Inc. v. Go*,³¹ it was emphasized that given this perspective that the allegations in the information determine whether the court has jurisdiction over the offense charged, the Court ruled that the subject matter of the action is to be determined from the indictment that charges the accused with the offense, and not from the evidence sought by the prosecution to be admitted into the records.³²

In other words, 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 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 which would have prevented jurisdiction from attaching in the first instance, and it retains jurisdiction until it finally disposes of the case.³³

Pertinently, in *Viray v. People*,³⁴ the accused therein was charged before the RTC for stealing jewelry and gadgets “with a total value of ₱297,800.00,” and thereafter, was found guilty of committing the crime. As for the penalty, the Court held that the prosecution failed to prove during trial the value of the stolen items, and thus, the penalty imposed on him was only for ₱5.00.³⁵ Notably, the RTC did not lose jurisdiction even if the proven value of the stolen item was below ₱12,000.00. To emphasize, the amount indicated in the information determines in which court jurisdiction lies.

In *People v. Dator*,³⁶ the accused therein was charged before the RTC with an offense punishable as qualified theft. The information indicated that the stolen lumber was valued at ₱23,500.00, which was an estimated amount appearing on the official transmittal letter of the Department of Natural Resources addressed to the provincial prosecutor. The Court held that such letter cannot serve as basis for the value of the lumber because it is hearsay and was not formally offered in evidence. It bears stressing that the RTC retained jurisdiction to decide the case even though the estimated value

³⁰ Id. at 635.

³¹ 626 Phil. 501 (2010).

³² Id. at 516.

³³ *Aruego, Jr. v. Court of Appeals*, supra.

³⁴ 720 Phil. 841 (2013).

³⁵ Id. at 854.

³⁶ 398 Phil. 109 (2000).

indicated in the information was not established during trial. Similar rulings have also been made in *Candelaria v. People*³⁷ and *People v. Elizaga*.³⁸

It can be gleaned from these theft cases that the value of the stolen properties as stated in the information need not be exact or even accurate in order to be the basis for the RTC to acquire jurisdiction. Regardless of whether such estimated value is later proven, it will not affect the court's jurisdiction over the case.

In all of these civil and criminal actions which have jurisdictional amounts, the rule has been consistent that the **jurisdiction is determined based only on the allegations** in the complaint, petition, or information. The prosecution need not attach any proof for such amounts.

To my mind, the same rule should be followed in determining whether the CTA has jurisdiction. Thus, when the information for a tax-related criminal case alleges an amount of at least ₱1,000,000.00, the CTA shall be considered as having jurisdiction, as in this case. To emphasize, requiring extrinsic evidence to determine which court has jurisdiction counters the basic rule that jurisdiction is based only on the allegations.

Supposed defects in the Information

During the deliberations, it was proposed that two circumstances exist in the present cases that warrant a finding of lack of jurisdiction on the part of the CTA, namely: (1) the use of the term "estimated" in the Informations and (2) the lack of credible proof or computation of the amount of tax liability.

To my mind, however, these circumstances find no relevance in ascertaining whether the CTA has jurisdiction or can take cognizance of a case.

On the first point, the fact that the prosecutor used the term "estimated" in the Informations, does not divest the CTA of its jurisdiction. In its ordinary use, the term "estimate" means a "rough or approximate calculation."³⁹ To reiterate, the amount alleged in the information determines whether a court has jurisdiction. The statute governing the CTA's jurisdiction does not require that an exact amount be indicated in the information. More so, it does not prohibit the prosecution from specifying an approximate amount therein.

³⁷ 749 Phil. 517 (2014).

³⁸ 86 Phil. 364 (1950).

³⁹ See Merriam-Websters Dictionary <<https://www.merriam-webster.com/dictionary>(visited February 20, 2023)>.

Hence, the averment of an amount of ₱1,000,000.00 or more, even if qualified by the term “estimated,” suffices to vest jurisdiction in the CTA pursuant to R.A. No. 9282.

It is also worth noting that the purpose of the allegations in the information, other than to vest jurisdiction, is to sufficiently inform the accused of the charges against him or her. Here, Joel’s right is adequately protected by indicating the amount of taxes that he supposedly did not pay. This holds true despite the addition of the word “estimate” or any of its permutations (*e.g.*, “more or less”). Establishing the actual amount of tax liability is to be done during the court proceedings, and not upon the filing of the information.

On the second point, it has been substantially explained above that allegations in the information is the basis for determining jurisdiction. No extrinsic proof is required to be submitted by the prosecutor to justify the amount indicated.


Notably, R.A. No. 9282 or the statute governing the CTA’s jurisdiction does not require that credible proof of the stated amount be attached to the information filed before the courts. In fact, requiring such proof runs counter to what has been discussed that one need not refer to anything not set forth in the complaint or information in order to ascertain the jurisdiction of the court.⁴⁰

It was also pointed out during the deliberations that since the amounts stated in the Informations *differ* from those indicated in the supporting documents, there is no sufficient averment of jurisdictional amount. Thus, the CTA has no jurisdiction over the criminal cases. The Informations show that the total amount claimed against Joel for the taxable years 2002 and 2003 is ₱3,629,175.79. The supporting documents, on the other hand, indicate the following amounts: (1) ₱3,169,012.23 in the computation by the revenue officer; and (2) ₱3,379,041.65 in the prosecution’s Resolution recommending the filing of the criminal cases.

To reiterate, those supporting documents do not affect the determination of jurisdiction, which should be based solely on the averments in the information.

Even assuming *arguendo* that credible proof is needed as basis for the jurisdictional amount, it bears repeating that the aforesaid supporting documents (*i.e.*, both the revenue officer’s computation and the Resolution

⁴⁰ See *Foronda-Crystal v. Son*, supra note 16.

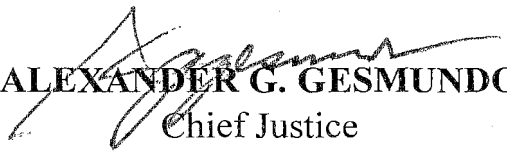


recommending the filing of the criminal cases) evidently show that the amount of taxes being claimed against the accused is, in all instances, more than ₱1,000,000.00; hence, the criminal cases unquestionably fall within the CTA's jurisdiction. The variance in the amounts specified in the supporting documents does not even appear significant as to warrant a ruling that the CTA lacks jurisdiction over the criminal cases.

It is true that the amounts indicated in these documents are not similar, but it is perhaps due to the variance in these numbers that the prosecutor, pursuant to its discretion, decided to employ the term "estimated" in the Informations. Notably, the difference in values in the documents to be presented in evidence is a matter that is considered during trial and not for the purpose of determining the jurisdiction over the subject matter based on the allegation in the complaint or information. Case law even instructs that a precise computation is not required before one can be prosecuted for a tax-related criminal violation.⁴¹ Hence, the difference in these amounts will not deprive the CTA of its jurisdiction over the criminal cases.

To reiterate, there is no doubt that the CTA has jurisdiction because the amounts of taxes claimed, as alleged in the Informations, are more than ₱1,000,000.00. Thus, Joel's petition assailing the CTA's jurisdiction should be denied for lack of merit. I concur with the *ponencia* on all other points.

WHEREFORE, I vote to **DENY** the petition filed by Joel C. Mendez for lack of merit. Moreover, I vote to **PARTLY GRANT** the petition filed by the People of the Philippines.


ALEXANDER G. GESMUNDO
Chief Justice

⁴¹ *Adamson v. Court of Appeals*, 606 Phil. 10, 30-31(2009), citing *Ungab v. Cusi*, 186 Phil. 604, 610 (1980).

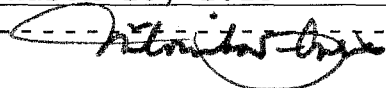
EN BANC

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

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

Promulgated:

March 28, 2023

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CONCURRING OPINION

CAGUIOA, J.:

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

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

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

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

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

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

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



In this case, the applicable law that defines the jurisdiction over criminal offenses arising from violation of the 1997 National Internal Revenue Code,⁴ as amended, (1997 NIRC) and other tax laws is Republic Act No. (RA) 9282.⁵ Section 7(b) thereof provides:

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

....

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

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

(2) Exclusive appellate jurisdiction in criminal offenses:

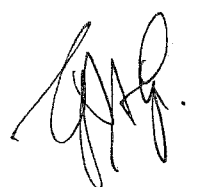
(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respected territorial jurisdiction.

(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. (Emphasis supplied)

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

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

⁵ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS, ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES, March 30, 2004.



Government. This claimed amount of principal taxes and fees, exclusive of penalties charges and interest, must be alleged in the Information to determine which court has jurisdiction over the criminal case. If the Information alleges that the claimed amount of principal taxes and fees, exclusive of penalties, surcharges and interest, is less than one million pesos (₱1,000,000.00) or no claimed amount of principal taxes and fees is specified in the Information, the jurisdiction over said criminal case is with the regular courts. Conversely, if the Information alleges that the claimed amount of principal taxes and fees, exclusive of penalties, surcharges and interest, is one million pesos or more, the jurisdiction to hear and try such criminal case and impose a penalty therefor is exclusively vested with the CTA.

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

[CRIMINAL CASE NO. O-013

(I.S. No. 2005-204)

For: Violation of Section 255, RA No. 8424

Failure to file ITR for taxable year 2002]

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

CONTRARY TO LAW. ...

[CRIMINAL CASE NO. O-015

(I.S. No. 2005-204)

For: Violation of Section 255, RA No. 8424

**Failure to supply correct and accurate information
in the ITR for taxable year 2003]**

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

“Mendez Body and Face Salon and Spa”, and “Mendez Body and Face Skin Clinic” branches, to the damage and prejudice of the Government in the estimated amount of **₱2,107,023.65, exclusive of penalties, surcharges and interest.**

CONTRARY TO LAW.⁶ (Emphasis, italics and underscoring supplied, citations omitted)

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

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

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

⁶ *Ponencia*, pp. 2–3.

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

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

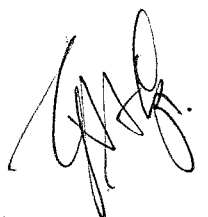
Section 203 of the 1997 NIRC provides the general rule that no proceeding in court for the collection of taxes may be instituted without first issuing an assessment against a taxpayer:

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

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

SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or



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

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

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

SECTION 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

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

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

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

⁷ 186 Phil. 604 (1980).



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

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

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

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

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

The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. **In contrast, the criminal charge need not go through all these.**

⁸ *Id.* at 610–611.

⁹ 368 Phil. 714 (1999).

The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the commissioner has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.¹⁰ (Emphasis, italics and underscoring supplied; citations omitted)

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

The next issue is whether the filing of the criminal complaints against the private respondents by the DOJ is premature for lack of a formal assessment.

Section 269 of the *NIRC* (now Section 222 of the *Tax Reform Act of 1997*) provides:

Sec. 269. Exceptions as to period of limitation of assessment and collection of taxes.—(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court after the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for collection thereof.

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

Thus, the applicability of *Ungab v. Cusi* is evident to the cases at bar. **In this seminal case, this Court ruled that there was no need for precise computation and formal assessment in order for criminal complaints to be filed against him.** It quoted Merte's *Law of Federal Income Taxation*, Vol. 10, Sec. 55A.05, p. 21, thus:

An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. A crime is complete when the violator has knowingly and willfully filed a fraudulent return, with intent to evade and

¹⁰ *Id.* at 726–727.

¹¹ 606 Phil. 10 (2009).

defeat the tax. The perpetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.

This hoary principle still underlies Section 269 and related provisions of the present *Tax Code*.¹² (Emphasis, italics and underscoring supplied; citations omitted)

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

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

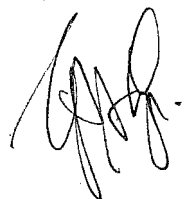
In this case, Mendez was charged with violation of Section 255 of the 1997 NIRC. Said provision is quoted anew:

SECTION 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation,

¹² *Id.* at 30–31.

¹³ 836 Phil. 773 (2018).

¹⁴ *Id.* at 790–791; citation omitted.



at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

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

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

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


First, there is absolutely nothing in RA 9282 which expressly repeals Section 222(a) of the 1997 NIRC. In fact, Section 222 is not even among the provisions of the 1997 NIRC which was expressly repealed or modified by RA 10963¹⁶ or the TRAIN Law. Hence, as I see it, Section 222(a), including its jurisprudential interpretations, remains good law and should be applied to the instant case even with the enactment of RA 9282.

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

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

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

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



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

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

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

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

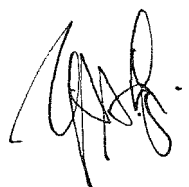
(1) Decisions of the Commissioner of Internal Revenue in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving **disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

....

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

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however,* That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, **the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding**



by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.

....

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

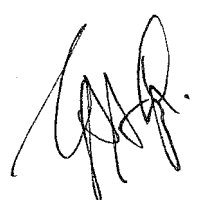
Third, delinquency and the issuance of an assessment are not required in the collection of taxes through the institution of a tax-related criminal action. As discussed, the right of the State to prosecute crimes and punish violators of the law arises once the crime has been completed. In fact, the institution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

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

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

SECTION 249. *Interest.* —

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



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

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

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

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

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

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

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

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

SECTION 205. *Remedies for the Collection of Delinquent Taxes.*

— The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be:

(a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and



(b) By civil or **criminal action**.

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however*, that the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).

The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.

The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon. (Emphasis supplied)

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

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

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

SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

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

¹⁷ Italics supplied.

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

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

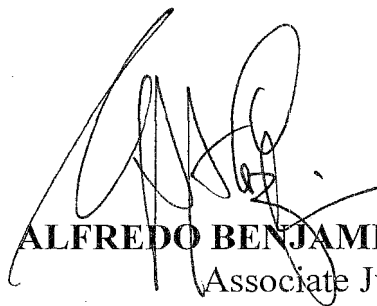
To summarize, the CTA here has jurisdiction over the criminal cases against Mendez — as the material allegations in the Amended Informations have so determined its jurisdiction. The use of the word "estimated" does not render said Informations as "vague" so that one can read them as Informations "where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

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

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

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

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



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

EN BANC

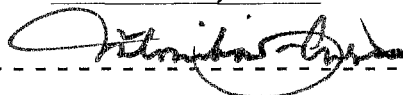
G.R. Nos. 208310-11 – PEOPLE OF THE PHILIPPINES, *petitioner*, v. JOEL C. MENDEZ, *respondent*.

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

Promulgated:

March 28, 2023

x



x


SEPARATE CONCURRING OPINION

ZALAMEDA, J.:

One of the primary objectives in the enactment of Republic Act No. (RA) 9282 is to expand the jurisdiction of the Court of Tax Appeals (CTA). This was viewed as a way to improve administration of revenue laws and avoid needless delays in the final disposition of cases. This being so, one of the significant amendments it introduced was to grant the CTA the exclusive and original jurisdiction over criminal cases deemed to be involving significant amounts of taxes. Thus, in giving life to this law, We must keep these goals in mind, and not depart from them.

The *ponencia* upheld the conviction of Joel C. Mendez (Mendez) for violating Section 255 of the Tax Code, for his failure to file his income tax return (ITR) for the year 2002 and to supply correct and accurate information in the ITR for the year 2003. The *ponencia* likewise affirmed the jurisdiction of the CTA over the two criminal cases. Finally, the *ponencia* remanded the case to the CTA for the determination of Mendez' civil liability for taxes and penalties.

I ultimately concur in the result. The prosecution has established beyond reasonable doubt all the elements of the offenses charged.



This notwithstanding, I am writing this opinion to highlight the issue of jurisdiction of the CTA, particularly in relation to the use of the terms “estimated amounts” in the Amended Informations against Mendez. It is well-settled that in criminal cases, jurisdiction is determined by the allegations in the Information. The prosecution complied with this requirement by alleging that the damage and prejudice is estimated at amounts of ₱1,522,152.14 and ₱2,107,023.65 for taxable years (TY) 2002 and 2003, respectively. Considering that said amounts exceeded the ₱1,000,000.00 threshold of the CTA’s jurisdiction over criminal cases, the CTA has properly taken cognizance of said cases.

To be sure, the words “estimated amount” have not rendered the Amended Information defective, but merely signify that such amounts, which were provided to the last centavos, were determined using third-party information and best evidence obtainable since Mendez did not comply with the requests made by the Bureau of Internal Revenue (BIR) for his accounting records and documents. By analogy, we may also apply certain cases in crimes against property where the values of the properties are estimated based on market value, or by factoring depreciation, sentimental value, or other relevant considerations. The estimated character of these amounts does not automatically render the Information defective. At any rate, the Amended Informations sufficiently apprised Mendez of the charges against him and enabled him to prepare his defense.

I now expound.

1. *The facts reveal that Mendez repeatedly failed to comply with the requests for information by the BIR which led the latter to resort third-party information and best evidence obtainable.*

As culled from the Decision of the CTA in Division, the investigation of the BIR commenced from a confidential letter-complaint against Mendez for alleged non-issuance of official receipts for services rendered. After an initial investigation and recommendation, the BIR issued Letter of Authority (LOA) No. 2001-00002438 dated 8 November 2004, for the examination of his books of accounts and other accounting records for the periods covering TY 2001, 2002, and 2003. Said LOA, together with the First Letter-Notice, was received on 10 November 2004 by Cherry Perez, who allegedly represented herself as Mendez’s authorized representative. However, Mendez failed to comply with the LOA and the First Letter-Notice, requiring

him to submit his accounting records. The Second Letter-Notice and Final Request for presentation and/or production of the required documents were issued and received on 24 November 2004 and 11 January 2005, respectively. Again, Mendez did not heed the BIR's requests.¹

For failure of Mendez to present or produce the needed records and documents for examination despite several notices, the investigation proceeded based on third-party information and best evidence obtainable. The BIR verified data and information from the BIR Integrated Tax System (BIR-ITS), different government agencies and private offices and entities.² The prosecution thus established the following matters based on the gathered information:

First, Mendez has been engaged in the practice of his profession since 1996 through Weigh Less Center, Co., which was registered as a partnership on 23 September 1996, for the purpose of conducting a medical program aimed at assisting clients to lose weight and to maintain ideal body weight afterwards. Notably, however, as early as 1993, Mendez had been making several investments for his businesses. The following records were obtained from the SEC:

A. SEC Registration No. A1996-06633 of Weigh Less Center, Co., dated September 23, 1996, together with Articles of Partnership of Weigh Less Center Co., dated September 10, 1996;

B. SEC Registration No. AP093-001258 of Sabili Mendez Medical Services, Co., dated August 11, 1993, together with Articles of Partnership of Sabili Mendez Medical Services Co., dated August 3, 1993;

C. SEC Registration No. AP093-001258 of Mendez Medical Services Co., (formerly Sabili Mendez Medical Services Co.) dated August 8, 1996, together with Articles of Partnership of Mendez Medical Services Co., dated June 5, 1996;

D. SEC Registration No. AP096-00270 of Dr. Mendez Industrial and Lying-In Clinic Ltd. Co., dated February 6, 1996, together with Articles of Partnership of Dr. Mendez Industrial and Lying-In Clinic Ltd. Co., January 23, 1996;

E. SEC Registration No. AS094-000937 of Primehealth Card Services, Incorporated, dated February 1, 1994, together with Articles of Incorporation of Primehealth Card Services, Incorporated, dated January 13, 1994;

¹ *Rollo* (G.R. 208310-11), pp. 38-39.

² *Id.* at 39.

F. SEC Registration No. AP096-00909 of Oro Cup, Co., dated May 2, 1996, together with Articles of Partnership of Oro Cup, Co., dated April 22, 1996;

G. SEC Registration No. AP096-00 184 of Oro Glass and Aluminum Supply Ltd. Co., dated January 26, 1996, together with Articles of Partnership of Oro Glass and Aluminum Supply Ltd. Co., dated January 25, 1996;

H. SEC Registration No. AP096-00294 of The Millenium Network Ltd. Co., dated February 7, 1996, together with Articles of Partnership of The Millenium Network Ltd. Co., dated February 5, 1996; and

I. SEC Registration No. A200111706 of The Big and Small Art Co., dated August 8, 2001, together with Articles of Partnership of The Big and Small Art Co., dated May 24, 2001.

This is also corroborated by the testimony of Atty. Grace Belarmino-Cruz, Revenue Officer of the BIR's National Investigation Division. When her team conducted an ocular inspection of the different branches of the Weigh Less Center, particularly, the Mendez Medical Group Weigh Less Center located at the Plaza Building, Greenbelt, Ayala Center, Makati City, they noticed a colored poster containing the phrase "Since 1996 Dr. Joel Mendez."³

Second, Mendez had been operating as a single proprietor and doing business for TY 2001, 2002, and 2003 under the following trade names and addresses:

1. Mendez Body and Face Salon and Spa- 31-B A. Roces Avenue, Quezon City, registered with RDO No. 39-South Quezon City on May 6, 2002;

2. Mendez Body and Face Salon and Spa - B-3, 3F New Farmers Plaza, Cubao, Quezon City, registered with RDO No. 40-Cubao on October 24, 2003;

3. Mendez Body and Face Clinic - The Plaza Building, Greenbelt, Ayala Center, Makati City, registered with RDO No. 47- East Makati on April 30, 2004;

4. Weigh Less Center- SM City, San Fernando, Pampanga, registered with RDO No. 21-San Fernando, Pampanga on January 17, 2003; and

5. Mendez Weighless Center - 2/F CSI Mall, Lucao District, Dagupan City, registered with RDO No. 4-Calasiao, Pangasinan on May 16, 2003.

³ Id. at 41-43.

Based on the information from the Department of Trade and Industry (DTI), Mendez has businesses registered under his name as owner on 26 May 2003, 31 July 2003, and 17 September 2003.⁴

Third, Mendez was earning income from TY 2001 to 2003 through operation of the different branches of his clinic, as proven by certified true copies of the various advertisement placements made by Mendez in different major publications, specifically, those evidencing: (a) 60 advertisements he placed with the Philippine Star from 16 April 2001 to 31 October 2001; (b) 235 advertisements from January to 18 December 2002; and (c) 96 advertisements from 6 January 2003 to 17 December 2003.

The prosecution also presented several lease contracts with the name of Mendez as the lessee, including:

A. Lease contract between Mendez and The Plaza, Inc. for the lease of its premises in The Plaza Building, Greenbelt, Ayala Center, Makati, Metro Manila, with a lease period from 1 September 2003 to 31 December 2005, entered by and between the parties on 17 July 2003;

B. Lease contract between Mendez and SM Prime Holdings, Inc., for Mendez's rental of the lessor's premises in SM City Pampanga with a lease period from 15 October 2002 until 30 April 2004; and

C. Lease contract between Mendez and Ma. Lita Gregorio, covering a whole building located at A. Roces Ave., Quezon City, with a total floor area of 220 square meters, more or less, for a monthly rental of ₱27,000.00, for his health clinic and art gallery. Said lease pertained to the period of "August 15, 2001 to August 14, 2007."

Mendez also made significant expenditures in the form of: (a) various vehicles purchased by Mendez in 1996, 2000, 2001, and 2003, based on information from the Land Transportation Office; and (b) Mendez's 41 travels from 1995-2000, 5 foreign travels in 2001, 5 foreign travels in 2002, and 22 foreign travels in 2003, based on information from the Bureau of Immigration.⁵

Fourth, for TY 2001 and 2002, Mendez did not file his income tax returns, as proven by various certifications from Revenue District Office (RDO) Nos. 39 (South Quezon City), 40 (Cubao), and 21 (San Fernando, Pampanga). For TY 2003, Mendez filed his ITR with RDO No. 4 (Calasiao, Pangasinan), for his Mendez Weigh Less Center located at CSI City Mall,

⁴ Id. at 39-40.

⁵ Id. at 44-46.

Lucao District, Dagupan City despite the existence of his principal place of business at 31 Roces Avenue, Quezon City.⁶

The prosecution also presented the Computation of Expenditures under the Contract of Lease dated 12 July 2001, Computation of Expenditures under the Contract of Lease dated 18 July 2003, and Computation of Deficiency Tax for 31 December 2002 and 31 December 2003, for the purpose of proving the expenditures of Mendez, that he was earning income from his Weigh Less Center branches for the years 2002 and 2003, and the deficiency income tax liability of Mendez based on the best evidence obtainable.⁷

Both the CTA in Division and *En Banc* gave credence to the testimonial and documentary evidence adduced by the prosecution and found Mendez guilty beyond reasonable doubt of violation of Section 555 of the Tax Code, as amended, in both Criminal Case Nos. O-013 and O-015.

II. The Amended Informations are valid despite the use of estimates. Thus, the CTA properly acquired jurisdiction over the present cases.

The Information is an essential document in criminal proceedings. It relates to the constitutional right of the accused to be informed of the nature and cause of the accusation against him.⁸ The sufficiency of the Information apprises the accused of the charges against him or her, and in turn, this should allow the accused to properly prepare his or her defense, and ultimately, ensure the protection of the accused's substantive rights.

Under Section 2, Rule 110 of the Rules of Criminal Procedure, an Information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court. Furthermore, Section 6 of the same rule provides that an Information is considered sufficient if it states: (1) the name of the accused; (2) the designation of the offense given by the statute; (3) the acts or omissions complained of as constituting the offense; (4) the name of the offended party; (5) the approximate date of the commission of the offense; and (6) the place where the offense was committed.

⁶ Id. at 40-41.

⁷ Id. at 46.

⁸ Sec. 14(2), Art. III, 1987 Constitution.

Concomitantly, since the Information embodies the material allegations constitutive of the crime charged against Mendez, this means that it is also important in the determination of the jurisdiction over the crime.

It is settled that jurisdiction over the subject matter or offense is conferred by law and in the manner prescribed by law.⁹ As applied in a criminal case, jurisdiction is determined by the allegations in the Complaint or Information and not by the result of proof.¹⁰ In sum, jurisdiction over a crime is determined by the applicable law, and the allegations in the Complaint or Information.

On this note, it must be reiterated that jurisdiction cannot be lost through waiver or estoppel. It can be raised at any time in the proceedings, whether during trial or on appeal. A court that does not have jurisdiction over the subject matter of a case will not acquire jurisdiction because of estoppel. It is only when the exceptional circumstances in *Tijam v. Sibonghanoy*¹¹ are present that a waiver or an estoppel in questioning jurisdiction may be appreciated.¹² To underscore, the instant case is not on all fours with *Tijam v. Sibonghanoy*. Thus, Mendez may indeed question the jurisdiction of the CTA over the case.

In this case, RA 9282 which amended RA 1125, or the CTA Law, the original jurisdiction of the CTA to include criminal offenses arising from violations of tax laws where the principal amount of tax, exclusive of charges and penalties is one million pesos (₱1,000,000.00) or more, thus:

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

⁹ *Villa Gomez v. People*, G.R. No. 216824, 10 November 2020; Citations omitted.

¹⁰ *Id.*

¹¹ 131 Phil. 556 (1968).

¹² *Amoguis v. Ballado*, 839 Phil. 1, 5 (2018).

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.

Applying the foregoing discussion, to determine jurisdiction over the crimes charged against Mendez, reference of the law conferring jurisdiction should be related to the allegations in the Amended Informations in this case.

Mendez argues that the CTA does not have jurisdiction over the criminal cases because the prosecution failed to allege with sufficient clarity and exactness the principal amount of taxes claimed against Mendez in the Amended Informations.¹³

The *ponencia* adjudged that the employment of the term “estimated” in the Amended Informations did not divest the CTA of jurisdiction. It explained that 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.¹⁴ The *ponencia* further underscored that the use of estimates sprung from Mendez’s noncompliance with the requests from the BIR to produce records and documents.¹⁵ In any case, Mendez was sufficiently informed of the charge against him including the amount of deficiency taxes.¹⁶

I agree and further explain.

The words “estimated amount” did not render the foregoing Amended Informations defective. A reading of the same shows that the material facts constituting the crimes charged against Mendez were clearly alleged. The phrase, “estimated amount,” can be taken to mean that such amounts which were provided to the last centavos – ₱1,522,152.14 and ₱2,107,023.65 – were determined using third-party information since Mendez did not respond to the letters of the BIR. Reference to third-party information had to be done given the circumstances of the case. In this case, it was inevitable that estimation of Mendez’s tax liability on the basis of the information from third parties and the best evidence obtainable had to be resorted to. This process is valid and reasonable, and even recognized under the Tax Code, thus:

¹³ *Ponencia*, p. 7.

¹⁴ *Id.* at 16-17.

¹⁵ *Id.* at 17.

¹⁶ *Id.*

SEC. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons. - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

X X X X

(B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the **Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information** such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members; xxx

X X X X

SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -

X X X X

(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.)

Thus, the "estimation" only reflected the fact that the BIR had to resort to third-party information and the best evidence obtainable which, though it may not reflect the exact tax liability of Mendez, could lead to a reasonable assessment of the same. This is to differentiate it from a mere guesswork of the amount of tax liability.

Moreover, Mendez's substantive rights were likewise not impaired in this case. The Amended Informations sufficiently allege the material facts constituting the offenses charged against him. In fact, Mendez did not immediately raise this issue as something which prevented him from properly pleading, or preparing for his defense. It is also notable that Mendez questioned the estimated amounts only in his motion for reconsideration.

In any case, as previously mentioned, jurisdiction is determined on the basis of the allegations of the Complaint or Information, and not the proof. The rigid interpretation of the requirement of exactitude in crimes where values and amounts are involved, could have dire repercussions in the prosecution thereof.

In crimes against property, there are certain cases where the values of the properties are estimated¹⁷ based on market value, or by factoring depreciation, sentimental value, or other relevant considerations. In certain instances, exact amounts cannot be provided objectively. This, however, does not prevent someone from pursuing legal action. The estimated character of the amounts likewise does not automatically render the Information defective. In fact, there are estimates which are allowed in our jurisdiction subject to the proof of the reasonableness of the values claimed during trial. In these types of cases, the allegations in the Complaint or Information become the basis for the determination of jurisdiction. Such that even after trial, when the amount actually proved is below the amount alleged, the court will not dismiss the said case, but instead find the accused liable for a lower penalty.

The same principle should be followed in this case. Such that, even if later on determined that the amount of tax is below the jurisdictional threshold of the CTA, the latter will still have jurisdiction to impose the penalty. It should also be noted that in this case, the threshold amount of ₱1,000,000.00 was only intended to distinguish jurisdiction between the CTA and the regular courts so as to limit direct resort to CTA. In other words, it was intended as a matter of expediency. Unlike in some crimes against property, the amount of tax liability does not have any effect in the penalty imposed under the offenses charged in this case. Thus, the same flexibility in crimes involving property should all the more apply in the crimes involved in this case.

¹⁷ See *People v. Mejares*, 823 Phil. 459, 473 (2018).

III. Reasonable estimates based on third-party information and best evidence obtainable are sufficient for the purpose of determining the principal amount of taxes in an Information.

Mathematical exactness is not a requirement of law. Section 222 (a) of the Tax Code allows criminal prosecution even *without an assessment*. As discussed above, Section 5 (B) of the Tax Code permits reference to data gathered from third parties. Moreover, Section 6 (B) of the Tax Code authorizes the Commissioner of Internal Revenue (CIR) to assess the proper tax based on best evidence obtainable, which the law explicitly recognized as *prima facie* correct and sufficient for all legal purposes.

The first paragraph of Section 6 (B) of the Tax Code describes a *report*, while the second paragraph a *return*, its non-filing, error, falsity, or fraud, may give rise to an assessment based on best evidence obtainable, “which shall be *prima facie* correct and sufficient for all legal purposes.” The first paragraph was taken from Section 15,¹⁸ while the second paragraph from Section 51¹⁹ of the 1939 Tax Code. They both contemplate a scenario where a taxpayer: (a) failed or refused to file; or (b) filed a fraudulent, false, incomplete, or erroneous, report or return. Presently, there is hardly any distinction between the two paragraphs, since all internal revenue taxes are generally collected through the self-assessment scheme.²⁰

To be sure, the rationale for the CIR’s authority to use best evidence obtainable is clear. In the absence of the accounting records of a taxpayer, his or her tax liability may be determined by estimation. The CIR is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold

¹⁸ Sec. 15. Power of Collector of Internal Revenue to Make Assessments. – When a report required by law as a basis for the assessment of any national internal revenue law shall not be forthcoming within the time fixed by law or regulation, or when there is reason to believe that any such report is false, incomplete, or erroneous, the Collector of Internal Revenue shall assess the proper tax on the best evidence obtainable.

¹⁹ Sec. 51. Assessment and Payment of Income Tax. – x x x x
(e) Refusal or neglect to make returns; fraudulent returns, etc. – In cases of refusal or neglect to make a return and in cases of erroneous, false, or fraudulent returns, the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this code or by existing law, or require the necessary corrections to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or corporation immediately upon notification of the amount of such assessment.

²⁰ Eric R. Recalde, *A Treatise on Tax Principles and Remedies* (2016), pp. 124-125.



otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof.²¹

Indeed, it is the duty of the CIR to investigate any circumstance which led him or her to believe that the taxpayer had taxable income larger than reported. Necessarily, this inquiry would have to be outside of the taxpayer's books because these most likely support the tax return, as filed. Thus, the CIR may take the sworn statement of the taxpayer, testimony of third parties, or examine and *subpoena* third parties' books.²² The CIR may also obtain information from any office or officer of the national and local governments.²³ Based on Section 43 of the Tax Code, the CIR may likewise compute the taxable income using indirect methods,²⁴ such as the net worth method or the expenditures method.²⁵ Verily, the existence of unreported income may be shown by any practicable proof that is available in circumstances of the particular situation.²⁶

In this case, the BIR issued a LOA, together with the First Letter-Notice, to examine Mendez' books of accounts and other accounting records. The BIR also issued the Second Letter-Notice and Final Request. However, Mendez failed to comply with all of these requests to produce records and documents. Thus, the BIR was constrained to resort to third-party information and best evidence obtainable.²⁷

Clearly, the CIR's use of estimates or approximations is founded on necessity. If We disallow the use of estimates, We 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. When using the best evidence obtainable, it is inevitable in many circumstances that the CIR may only come up with reasonable estimates or approximations.

It is evident from the records that the BIR's estimate of Mendez' tax deficiency is a result of a thorough investigative work. The BIR took pains

²¹ *CIR v. Hantex Trading Co., Inc.*, 494 Phil. 306 (2005).

²² *Id.*, citing the US case of *Campbell, Jr. v. Guetersloh*; Section 5 of the Tax Code.

²³ Section 5 of the Tax Code.

²⁴ SEC. 43. *General Rule.* - The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer, but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income. If the taxpayer's annual accounting period is other than a fiscal year, as defined in Section 22(Q), or if the taxpayer has no annual accounting period, or does not keep books, or if the taxpayer is an individual, the taxable income shall be computed on the basis of the calendar year.


²⁵ See *Perez v. Court of Tax Appeals*, G.R. No. L-10507, 30 May 1958.

²⁶ *CIR v. Hantex Trading Co, Inc.*, supra note 21.

²⁷ *Ponencia*, p. 3.

in diligently gathering evidence from various government agencies, private companies transacting with Mendez, as well as published articles and advertisements, and in examining the voluminous documents before preparing its computation. Besides, even in tax collection cases where a final decision on disputed assessment is required prior to the filing of the civil action with the CTA, the amount of tax obligation may still be reduced or adjusted based on the evidence adduced during trial. This, notwithstanding, will not divest CTA of its jurisdiction over the case.

In fine, I agree that Mendez is guilty of the crimes charged. I ultimately concur in the result reached by the *ponencia*, but wish to underscore that the use of estimated values does not render an Information defective.



RODIL V. ZALAMEDA
Associate Justice