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The Judy Ann Doctrine

ACTRESS Judy Ann Santos-Agoncillo was acquitted from the tax-evasion case filed against her by the Bureau of Internal Revenue (BIR).

In a 46-page decision, the Third Division of the Tax Court dismissed the criminal aspect of the case, but ordered Santos to pay her income-tax deficiency plus 20-percent per-annum interests, amounting to P3.418 million.

Being a popular celebrity that she is, the news of her "victory" spread like wildfire via all possible channels for news and gossip. The entertainment industry considers the event as something to celebrate.

People in the "tax industry," on the other hand, have different reactions to the matter. The decision caused quite a stir and triggered amusing discussions among tax practitioners. It seems to have modified or perhaps, even defied, some established rules that have been there for Heaven-knows-how-long.

Let us trace the beginnings of the tax-evasion case against "Juday."

Then-BIR Commissioner Guillermo L. Parayno Jr. wrote a letter addressed to then-Secretary of Justice Raul M. Gonzales, recommending the possible filing of a case against Santos for substantial underdeclaration of her income for 2002. Pursuant to the said letter, an information was filed with the CTA First Division in November 2005, seeking the conviction of the actress for willful attempt to evade taxes.

In her motion to quash the information, Santos argued that, among other things, she had been denied due process when similar charges against Regine Velasquez were dismissed for the reason that her tax liability could not be fully and readily determined. In 2008 the CTA dismissed the argument, ruling that Santos and Velasquez are not similarly situated so as to call for the application of the equal-protection clause. The trial proceeded and eventually led to the CTA decision dated January 16, 2013.

The BIR anchored its case against Santos on Sections 254 and 255 of the National Internal Revenue Code, as amended, which impose criminal liability for willful failure to supply correct and accurate information on tax returns, and failure to pay the correct tax due. In relation thereto, Section 248 (B) of the Tax Code provides that a substantial underdeclaration of taxable income constitutes prima facie case of false or fraudulent return. Failure to report income in an amount exceeding 30 percent of that declared per return constitutes substantial underdeclaration, for which 50-percent surcharge is being imposed, in addition to interest and other penalties.

The Tax Code is clear on the presumption of fraud in case of substantial underdeclaration of income. In the case of Santos, however, the Tax Court seems to have put a distinction between substantial underdeclaration, which amounts to fraud, and substantial underdeclaration, which is not considered fraudulent, considering the BIR's claim that Santos's undeclared income in 2002 exceeded 100 percent of the income she declared in her income-tax return (ITR).

The decision also reversed the previous ruling of the CTA, which was upheld by the Supreme Court, in the landmark case of *People v. Gloria Kintanar*, resulting in the first conviction by final judgment for tax evasion in the Philippines. It was in this case that the "doctrine of willful blindness" became part of jurisprudence and a precedent in future tax-evasion cases. Under that doctrine, the taxpayer's deliberate refusal or avoidance to verify the contents of the ITR and other documents and inquire into the authenticity thereof constitutes "willful blindness" on his part. It is by reason of such doctrine that taxpayers can no longer refute the presumption of deliberate failure to pay their correct tax liabilities by simply invoking reliance on mere representations of their accountants or representatives. To be liable, it is enough that the taxpayer knows his obligation to file the required return and has failed to comply thereto in the manner required by law.

If we are to harmonize the ruling in this case and the previous rulings, there is a need to draw a clear line between the opposite doctrines so that in future cases, there won't be too much confusion in determining if the taxpayer willfully evaded his tax liabilities, or if he "only underdeclared his tax liability."

Is the "willful blindness doctrine" still in place? That, we hope to see when the decision in this case attains finality. The commissioner said that the BIR will file a petition for review to insist that the court find Santos criminally liable. So for now, Santos may claim her victory, but only up until the BIR's petition is filed with the court and the next phase of the legal battle starts. And for future tax-evasion cases, this is a precedent-in-progress.

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