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G.R. No. 260374 (*Fr. Christian B. Buenafe, Fides M. Lim, Ma. Edeliza P. Hernandez, et al. v. Commission on Elections, et al.*)

G.R. No. 260426 (*Bonifacio Parabuac Ilagan, et al. v. Commission on Elections, et al.*)

Promulgated:

June 28, 2022

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SEPARATE CONCURRING OPINION

**DIMAAMPAO, J.:**

At the center of judicial crosshairs are legal issues that have piqued the nation's attention and anticipation: (1) whether Ferdinand R. Marcos, Jr. (Marcos, Jr.) is qualified to run for the presidency; and (2) whether his certificate of candidacy (COC) should be canceled or denied due course. The Court writes *finis* to these questions under a solemn duty to apply what the rule of law indelibly expresses, while giving due regard to the sacred and sovereign will of the Filipino people, from whom all governmental authority emanates.

G.R. No. 260374 (Buenafe Petition) has its provenance in a petition to cancel or deny due course Marcos, Jr.'s COC based on Section 78,<sup>1</sup> in relation to Section 74,<sup>2</sup> Article IX of Batas Pambansa Blg. 881 or the Omnibus Election Code (OEC) filed before the Commission on Elections (Comelec). The Buenafe Petition claimed that Marcos, Jr. committed false material representation when he stated in his COC that he is eligible to run for president

<sup>1</sup> SECTION 78. Petition to deny due course to or cancel a certificate of candidacy. -- A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any **material representation contained therein as required under Section 74 hereof is false**. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. (Emphases added.)

<sup>2</sup> SECTION 74. Contents of certificate of candidacy. -- The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is **eligible for said office**; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.  
x x x (Emphases added.)



although he had a prior conviction carrying with it the accessory penalty of perpetual disqualification from holding any public office and to participate in any election.

On the other hand, G.R. No. 260426 (Ilagan Petition) is an offshoot of the petition to disqualify Marcos, Jr. under Section 12<sup>3</sup> of the OEC. The Ilagan Petition averred that Marcos, Jr. was convicted of a crime involving moral turpitude.

Both petitions anchor their basis for disqualification and cancellation of COC on the same set of criminal cases involving Marcos, Jr. for violation of the National Internal Revenue Code of 1977 (1977 NIRC), as amended. The Regional Trial Court (RTC) of Quezon City convicted<sup>4</sup> him of failure to file income tax returns for the years 1982, 1983, 1984, and 1985. The RTC also convicted him of tax evasion for the same taxable years. On appeal, however, the Court of Appeals (CA) acquitted<sup>5</sup> Marcos, Jr. of tax evasion. The CA affirmed his conviction for failure to file income tax returns, albeit

<sup>3</sup> SECTION 12. Disqualifications. – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.  
x x x x (Emphases added).

<sup>4</sup> WHEREFORE, the Court finds accused Ferdinand Romualdez Marcos II guilty beyond reasonable doubt [of violation of] the National Internal Revenue Code of 1977, as amended, and sentences him as follows:

1. To serve imprisonment of six (6) months and pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212, and Q-92-29217 for failure to file income tax returns for the years 1982, 1983, and 1984;
2. To serve imprisonment of six (6) months and pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29216, Q-92-29215, and Q-92-29214 for failure to pay income taxes for the years 1982, 1983, and 1984;
3. To serve imprisonment of three (3) years and pay a fine of P30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for the year 1985; and
4. To serve imprisonment of three (3) years and pay a fine of P30,000.00 in Criminal Case No. Q-91-24390 for failure to pay income tax for the year 1985; and
5. To pay the Bureau of Internal Revenue the taxes due, including such other penalties, interests, and surcharges.

SO ORDERED.

<sup>5</sup> WHEREFORE, the Decision of the trial court is hereby MODIFIED as follows:

1. ACQUITTING the accused-appellant of the charges for violation of Section 50 of the NIRC for non-payment of deficiency taxes for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-02-29216, Q-92-29215, Q-92-29214, and Q-91-24390; and FINDING him guilty beyond reasonable doubt of violation of Section 45 of the NIRC for failure to file income tax returns for the taxable years 1982 to 1985 in Criminal Cases Nos. Q-91-24391, Q-92-29212, Q-92-29213, and Q-92-29217;
2. Ordering the appellant to pay to the BIR the deficiency income taxes with interest at the legal rate until fully paid;
3. Ordering the appellant to pay a fine of P2,000.00 for each charge in Criminal Cases Nos. Q-92-29213, Q-92-29212 and Q-92-29217 for failure to file income tax returns for the years 1982, 1983, and 1984; and the fine of P30,000.00 in Criminal Case No. Q-91-24391 for failure to file income tax return for 1985, with surcharges.

SO ORDERED.



modifying his penalty. Later, the decision of the CA became final and executory.

With these factual *milieux*, the Comelec denied both the Buenafe and Ilagan Petitions. Unfazed, petitioners brought the present cases to the Court ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Comelec.

After a judicious review, the *ponencia* sustains the Comelec Ruling and dismisses the consolidated petitions.

The *ponencia* holds that the failure to file income tax returns may or may not be a crime involving moral turpitude.<sup>6</sup> While it acknowledges that tax evasion is a crime involving moral turpitude, the *ponencia* clarifies that the failure to file income tax return—for which Marcos, Jr. was convicted—does not always amount to tax evasion.<sup>7</sup>

I concur with the *ponencia*. However, I humbly proffer my disquisition on the issue.

Concededly, tax evasion is a broad legal concept. Yet, this broad conceptual framework supports the thesis that *failure to file income tax returns may or may not amount to tax evasion*.

As enunciated in the *ponencia*, tax evasion connotes fraud through the use of pretenses and forbidden devices to lessen or defeat taxes. Thus, tax evasion integrates three factors: (a) the end to be achieved, *i.e.*, the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (b) an accompanying state of mind, which is described as being “evil,” in “bad faith,” “willful,” or “deliberate and not accidental”; and (c) a course of action or failure of action that is unlawful.<sup>8</sup>

Black’s law dictionary defines tax evasion as: “*The willful attempt to defeat or circumvent the tax law in order to illegally reduce one’s tax liability.*” From this definition, the elements of tax evasion could be dissected as follows: *one*, the act must be willful or intentional; *two*, the mode used must be illegal; and *three*, the end to be achieved is the reduction of one’s tax liability.

Under the first element of tax evasion, the ultimate objective is to defeat or reduce *illegally* the payment of taxes. In order to achieve this ultimate objective, taxpayers resort to all sorts of strategies, means, methods, and schemes—including non-filing of income tax returns.

An income tax return is a sworn statement or declaration in which the taxpayer discloses the nature and extent of his tax liability by formally making

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<sup>6</sup> *Ponencia*, p. 39.

<sup>7</sup> *Id.* at 46.

<sup>8</sup> See *CIR v. Toda*, G.R. No. 147188, 14 September 2004.

a report of his income and allowable deductions for the taxable year.<sup>9</sup> In our current tax system, the Philippines adheres to the *pay-as-you-file* basis, which means that the taxpayers assess themselves, file their returns, and pay the taxes as shown in their returns upon filing thereof.

Necessarily, taxpayers are required to declare their true incomes at any given taxable year. Some taxpayers, however, abuse the system by not filing their income tax returns, at all, of course at the expense of risking themselves to civil and criminal liabilities. This willful exploitation of the *pay-as-you-file* system **could metastasize into a criminal intent to defeat or evade** payment of taxes by: (1) **willfully** mis-declaring or stating inaccurate figures in the income tax return, even under the pain of perjury, *i.e.*, filing a **fraudulent return** or (2) **willfully** not filing an income tax return. Both may be used as modes of committing tax evasion.

Hence, it is a mistake to treat non-filing of income tax returns and tax evasion *separately, independently, and mutually exclusive* from each other. Rather, non-filing of income tax returns and tax evasion are inextricably linked as the former may proximately cause the latter.

The non-filing of income tax returns morphs into tax evasion when the element of *willfulness* comes into play. This next query leaps to the eye: *when is non-filing of income tax return willful?*

A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently.<sup>10</sup> Thus, to be considered willful, the taxpayers must not only have full knowledge of the consequence of the non-filing of income tax returns, but they also do so with the stubborn purpose to defeat the law and escape the payment of taxes altogether.

Moreover, willfulness may be determined through, among others, the contemporaneous and subsequent acts of taxpayers, their level of discernment, their educational attainment, the frequency of their non-filing of income tax returns, the amount of income concealed, and such other considerations peculiar to each and every case. No factor from the foregoing can singularly establish tax evasion. In the ultimate analysis, willful intent to evade taxes is a question of fact that would depend on the totality of the circumstances surrounding the case.

In the case before Us, I agree that Marcos, Jr.'s non-filing of income tax returns for the years 1982, 1983, 1984, and 1985 does not amount to tax evasion. The totality of circumstances at bench fails to establish the **element of willfulness**. However, I take exception in absolutely adhering to the myopic

<sup>9</sup> De Leon, H.S. & De Leon, Jr., H. M. The National Internal Revenue Code Annotated Volume 1. (2015). Rex Publishing, Inc. p. 605.

<sup>10</sup> Black, Henry Campbell, BLACK'S LAW DICTIONARY, Revised Fourth Edition, St. Paul, Minn., West Publishing Co., 1968, p. 1773.

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view espoused in *Republic v. Marcos, II*<sup>11</sup> that non-filing of income tax returns is not a crime involving moral turpitude *sans* explanation of why or how it was so.

As aptly observed by the *ponencia*, in the years 1982 through 1985, Marcos, Jr. was the Governor of Ilocos Norte. Thus, he was **an employee<sup>12</sup> of the provincial government**. Essentially, the provincial government was his withholding agent. Section 94 of the 1977 NIRC provides:

SECTION 94. *Return and payment in case of Government employees.* — If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, **the return of the amount deducted and withheld upon any wages shall be made by the officer or employee having control of the payment of such wages, or by any officer or employee duly designated for that purpose.** (Emphases supplied.)

Now, is it apposite to say that the provincial government willfully and deliberately failed to withhold the corresponding taxes from Marcos, Jr.'s income? It most certainly is not. The government will never deny itself of its very own lifeblood, unless it is ready to meet its untimely death.

Whence, Marcos, Jr.'s non-filing of income tax returns had no badge of willful and deliberate intent to defeat our tax laws. Corollarily, such failure is not tantamount to evasion of taxes.

*A final word.* The case now before Us is the perfect opportunity for the Court to dispel the cobwebs of doubt surrounding the nature of non-filing of income tax returns and its relation to tax evasion, and to refute any postulations which may arise from the mind of a circumspect citizen that “*no evil can ever come from failing to file tax return.*”

**ACCORDINGLY**, I vote to DISMISS the Petitions.

**JAPAR B. DIMAAMPAO**  
*Associate Justice*

<sup>11</sup> See G.R. Nos. 130371 and 130855, 4 August 2009.

<sup>12</sup> (c) Employee. — The term “employee” refers to any individual who is the recipient of wages and includes an officer, employee, or elected official of the Government of the Philippines or any political subdivision, agency or instrumentality thereof. The term “employee” also includes an officer of a corporation. (National Internal Revenue Code of 1977, Presidential Decree No. 1158, 3 June 1977).