Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

FIRST DIVISION[i]

MARGARITA SALONGA SALANDANAN, CRISANTO DUCUSIN PALABAY MARIO FLORES BEN, DANILO AUSTRIA CONSUMIDO, GIL FERNANDO DERILO, RAOUL HAFALLA TIVIDAD, NIDA MALLARE, GATCHALLAN, AND NOMER CALULOT KUAN, *Petitioners,*	**SPA NO. 21-235 (DC)**
-versus-	
FERDINAND ROMUALDEZ MARCOS, JR., *Respondent.*	

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N O T I C E

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This Commission
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GREETINGS:

Attached is a copy of the **RESOLUTION** promulgated on 20 April 2022 by the Commission **(FIRST DIVISION)** in the above-entitled case.

Given this 20th day of April 2022, City of Manila, Philippines.

FOR THE DIVISION:

ATTY. GENESIS M. GATDULA
Clerk of the Commission [1]

[1] Former Second Division.

Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

FIRST DIVISION[1]

MARGARITA SALONGA SALANDANAN, CRISANTO DUCUSIN PALABAY, MARIO FLORES BEN, DANILO AUSTRIA CONSUMIDO, GIL FERNANDO DERILO, RAOUL HAFALLA TIVIDAD, NIDA MALLARE GATCHALLAN AND NOMER CALULOT KUAN,
Petitioners,

-versus-

SPA NO. 21-235 (DC)

FERDINAND ROMUALDEZ MARCOS, JR.,
Respondent.

Promulgated:
20 APR 2022

x----------x

RESOLUTION

Before *Us* is a Petition for Disqualification[2] [Petition] filed by Margarita Salonga Salandanan, Crisanto Ducusin Palabay, Mario Flores Ben, Danilo Austria Consumido, Gil Fernando Derilo, Raoul Hafalla Tividad, Nida Mallare Gatchallan and Nomer Calulot Kuan [**Petitioners**] against Ferdinand Romualdez Marcos, Jr. [**Respondent**] under Rule 25 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 9523.[3]

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[1] Former Second Division.
[2] Records, at 5-38.
[3] In the matter of the amendment to Rules 23, 24, and 25 of the COMELEC Rules of Procedures for purposes of the 13 May 2013 National, Local and ARMM Elections and Subsequent Elections; 25 September 2012.

THE FACTUAL ANTECEDENTS

On 06 October 2021, Respondent filed his Certificate of Candidacy[4] [COC] for the position of President of the Republic of the Philippines in connection with the 09 May 2022 National and Local Elections [NLE].

On 07 December 2021, Petitioners filed the instant Petition. In the prayer,[5] which basically contains their arguments, Petitioners seek the following:

> **WHEREFORE**, premises considered, it is respectfully prayed that this Honorable Commission:
>
> (a.) **GRANT** the instant *Petition for Disqualification* for the reasons stated thereabove; and
>
> (b.) **PERPETUALLY DISQUALIFY** Respondent Ferdinand "Bongbong" Romualdez Marcos, Jr. to run for any elective position, or from pursuing his candidacy as President of the Philippines in the forthcoming 2022 *Philippine National Elections* if not yet elected, or if elected, from holding the said elective public office, on the following grounds:
>
> (i) For having been sentenced for crimes involving "**moral turpitude**," as provided under Section 12 of the *Omnibus Election Code*, given that Respondent was convicted eight (8) times by the RTC and that the Court of Appeals affirmed his ***"guilt beyond reasonable doubt"*** in the four (4) convictions resulting from his deliberate failure "to file his income tax returns" and "to pay the proper income taxes" for years 1982, 1983, 1984, and 1985;
>
> (ii) For having been sentenced by final judgment for an offense for which he has been sentenced to a penalty of more than (18) months, as provided under Section 12 of the *Omnibus Election Code*, considering that the Court of Appeals affirmed the Respondent's ***"guilt beyond reasonable doubt"*** in the four (4) convictions by the RTC, including his conviction under Criminal Case No. Q-91-24391 which carried the **penalty of imprisonment of three (3) years**, and which has become final and executory;

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[4] Records, at 169.
[5] *Id.*, at 30-31.

(iii) For having been **perpetually disqualified from the 'right of suffrage'** pursuant to Article 43 of the *Revised Penal Code* in relation to Section 2, Article VII of the *1987 Philippine Constitution*, given that Respondent has been actually sentenced to *prision correccional* or imprisonment of three (3) years under the NIRC; and

(iv) For having been **perpetually disqualified from holding any public office** pursuant to Section 286 of the National Internal Revenue Code of 1977, as amended, considering that Respondent is a public officer convicted of a crime penalized by the NIRC.

Other reliefs that are just and equitable in the premises are likewise prayed for.

Essentially, Petitioners allege in the Petition that Respondent is disqualified to run for any public office as a consequence of his convictions for violations of the original Presidential Decree [PD] No. 1158, otherwise known as National Internal Revenue Code of 1977 [1977 NIRC], and its pertinent amendments.

Acting on the Petition, the Commission (Former Second Division) issued Summons with Notice of Preliminary Conference[6] dated 22 December 2021 directing the Respondent to file a verified Answer within a non-extendible period of five (5) days from receipt of the notice. The parties were likewise notified that the Preliminary Conference of this case is set on 14 January 2022 at 10:00 o'clock in the morning *via* video conference. Lastly, the parties were required to submit a summary of the documents for comparison at least three (3) days before the scheduled conference.

On 28 December 2021, Respondent filed his verified Answer[7] praying for the dismissal of the Petition for lack of merit. Respondent basically countered each argument of the Petitioners. He also raised that retroactive effect should be given to Republic Act No. 10963,[8] which decriminalized the non-filing of annual income tax return by pure compensation earners.[9]

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[6] *Id.*, at 47-50.
[7] *Id.*, at 56-80.
[8] *"The Tax Reform for Acceleration and Inclusion Law [TRAIN]"*
[9] Records, at 60.

On 04 January 2022, a *Motion to Intervene and Admit Attached Answer-In-Intervention*[10] was filed by Gen. Dionisio Santiago, Jr. (Ret.), et. al. claiming that they have legal interest in the matter in litigation in this case. Attached thereto is the Answer-In-Intervention.[11]

On 10 January 2022, Respondent submitted a Summary of Documents/Exhibits,[12] viz:

Exhibit	*Description*
1	Certification from the Local Finance Committee of Ilocos Norte[13]
1-a	Provincial Government of *Ilocos Norte's Index Payments to Employees* for the year 1982[14]
1-b	Provincial Government of *Ilocos Norte's Index Payments to Employees* for the year 1983[15]
1-c	Provincial Government of *Ilocos Norte's Index Payments to Employees* for the year 1984[16]
1-d	Provincial Government of *Ilocos Norte's Index Payments to Employees* for the year 1985[17]
2	*Certification* attesting that the deficiency taxes and fines have been paid[18]

On 11 January 2022, Petitioners filed a Manifestation of Compliance[19] which contains their summary of exhibits, thus:

Exhibits	**Documents**
"A"	Certificate of Candidacy for President of the Respondent [with Certificate of Nomination and Acceptance][20]
"B"	Certification, dated 2 December 2021, issued by Regional Trial Court, Branch 105, Quezon City[21]
"C"	Certification, dated 14 December 2021, issued by Regional Trial Court, Branch 105, Quezon City[22]
"D"	Decision, dated 27 July 1995, in criminal cases nos. Q-91-24390, Q-91-24391, Q-92-29212, to Q-92-29217,

[10] *Id.*, at 104-111.
[11] *Id.*, at 112-132.
[12] *Id.*, at 145-147.
[13] *Id.*, at 244.
[14] *Id.*, at 246.
[15] *Id.*, at 248-249.
[16] *Id.*, at 251-252.
[17] *Id.*, at 254-255 and 257.
[18] *Id.*, at 259-260.
[19] *Id.* at 164-166.
[20] *Id.* at 169-170.
[21] *Id.* at 171.
[22] *Id.* at 172.

	rendered by the Regional Trial Court, Branch 105, Quezon City[23]
"E"	Decision, promulgated on 31 October 1997, by the Special Third Division of the Court of Appeals in the case entitled "The People of the Philippines vs. Ferdinand R. Marcos, Jr.", CA-G.R. No. 18569[24]
"F"	Entry of Judgment in connection with the Decision, promulgated on 31 October 1997, by the Special Third Division of the Court of Appeals in the case entitled "The People of the Philippines vs. Ferdinand R. Marcos, Jr.", CA-G.R. No. 18569[25]
"G", "G-1" and "G-2"	Special Power of Attorney of the Petitioners.[26]

On 14 January 2022, the scheduled preliminary conference was conducted. Petitioners Margarita Salandanan and Nomer Calulot Kuan with their counsel appeared while Respondent appeared through counsel. The parties did not agree on any stipulations. They nonetheless agreed on the following issues:

1. Whether respondent's conviction for several instances of non-filing of income tax returns carried with it moral turpitude for which the respondent should be disqualified for running for and holding public office;

2. Whether respondent was convicted for a crime that carried a penalty of more than 18 months for which he should be disqualified from running for and holding any public office;

3. Whether respondent is perpetually disqualified from holding any public office, to vote and to participate in any election as a consequence of conviction under the National Internal Revenue Code;

4. Whether the Train Law [R.A. No. 10693][27] retroactively applies to respondent to extinguish the penalties of his conviction under the National Internal Revenue Code; and

5. Whether or not respondent is qualified to run for President.

Thereafter, the parties' exhibits were marked accordingly. The parties were then given three (3) days from the date of the conference to submit their respective memoranda.[28]

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[23] *Id.*, at 173-180.
[24] *Id.*, at 181-195.
[25] *Id.* at 196.
[26] *Id.* at 197-204.
[27] *Supra*, Note 8.
[28] Records, at 266-268.

On 17 January 2022, Respondent filed his *Memorandum*.[29] On even date, Petitioners also filed their *Memorandum and Formal Offer of Evidence*.[30] Hence, the case is now deemed submitted for resolution.

THE ISSUE

The main issue to be resolved in this Petition is whether or not Respondent should be disqualified as a Presidential aspirant in the 2022 National and Local Elections.

THE COMMISSION'S RULING

The issues agreed upon in the preliminary conference will be addressed one at a time.

WHETHER RESPONDENT'S CONVICTIONS FOR SEVERAL INSTANCES OF NON-FILING OF INCOME TAX RETURNS CARRIED WITH IT MORAL TURPITUDE FOR WHICH HE SHOULD BE DISQUALIFIED FOR RUNNING FOR AND HOLDING ANY PUBLIC OFFICE.

We rule in the negative.

It is undisputed that Respondent was convicted of four (4) counts of failure to file income tax returns in a Decision dated 27 July 1995[31] by the Regional Trial Court [RTC], Branch 105 of Quezon City, which was affirmed by the Special Third Division of the Court of Appeals [CA] in a Decision[32] dated 31 October 1997. Specifically, the dispositive portion of the CA Decision states:

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[29] *Id.*, at 277-320.
[30] *Id.*, at 337-389.
[31] *Supra*, note 23.
[32] *Supra*, note 24.

> WHEREFORE, the Decision of the trial court is hereby MODIFIED as follows:
>
> 1. ACQUITTING the accused-appellant of the charges of 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-92-29216, 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 due 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. [Emphases *Ours*]

Based on this, Petitioners posit that the **repeated** failure to file income tax return makes it a crime involving moral turpitude. Consequently, they pray that Respondent be disqualified to run for the presidency pursuant to Section 12 of the Omnibus Election Code [OEC] which states that:

> **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.
>
> This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified. [Emphases *Ours*]

We are not convinced.

In *Republic of the Philippines v. Ferdinand R. Marcos II and Imelda R. Marcos* [Republic vs Marcos],[33] the Supreme Court already settled this issue when it categorically declared that **failure to file an income tax return is not a crime involving moral turpitude**. It must be underscored that the issue of moral turpitude in said case is brought about by the very same criminal cases on which the instant Petition is based. Specifically, it was held that:

> The "failure to file an income tax return" is not a crime involving moral turpitude as the mere omission is already a violation regardless of the fraudulent intent or willfulness of the individual. This conclusion is supported by the provisions of the NIRC as well as previous Court decisions which show that with regard to the filing of an income tax return, the NIRC considers three distinct violations: (1) a false return, (2) a fraudulent return with intent to evade tax, and (3) failure to file a return.
>
> The same is illustrated in Section 51(b) of the NIRC which reads:
>
> (b) Assessment and payment of deficiency tax – xxx
>
> In case a **person fails to make and file a return or** list at the time prescribed by law, **or makes willfully or otherwise, false or fraudulent return** or list x x x. (Emphasis Supplied)
>
> Likewise, in *Aznar v. Court of Tax Appeals,* this Court observed:
>
> To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of **(1) false return, (2) fraudulent return with intent to evade tax, (3) 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 **(1) falsity, (2) fraud, and (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, "falsity," "fraud" and "omission."** (Emphasis Supplied)

[33] G.R. Nos. 130371 & 130855, 04 August 2009.

> Applying the foregoing considerations to the case at bar, the filing of a "fraudulent return with intent to evade tax" is a crime involving moral turpitude as it entails willfulness and fraudulent intent on the part of the individual. The same, however, cannot be said for "failure to file a return" where the mere omission already constitutes a violation. Thus, this Court holds that even if the conviction of respondent Marcos II is affirmed, the same not being a crime involving moral turpitude cannot serve as a ground for his disqualification. [Emphases in the original]

It may be argued, however, that the foregoing pronouncement is an *obiter dictum*. In the case of *Landbank of the Philippines vs. Suntay,*[34] the Supreme Court defined and explained *obiter dictum*, thus:

> An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law that is not necessary in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*.

Applying the said definition, the opinion of the Supreme Court in *Republic vs. Marcos* appears to be an *obiter dictum*. Nevertheless, emphasis must be made on the fact that while it is an *obiter dictum*, the opinion was made in light of *Aznar vs. Court of Tax Appeals*[35] [Aznar] which is an oft-cited and relevant case. Therefore, even if it is not binding as a precedent, it is still a persuasive guide in settling controversies involving similar facts. After all, no less than the highest court of the land laid down the opinion.

Nonetheless, *We* find it more prudent to make our own assessment to remove all doubts and finally resolve the controversy. An assiduous study of the records and relevant jurisprudence yields to a conclusion that there is no moral turpitude in this case.

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[34] G.R. No. 188376, 14 December 2011.
[35] G.R. No. L-20569, 23 August 1974.

Jurisprudence has been consistent in following the Black's Law Dictionary definition of moral turpitude as "*an act of baseness, vileness, or depravity in the private duties which a man owes his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman, or conduct contrary to justice, honesty, modesty, or good morals.*"[36] Clearly, moral turpitude is not involved in every criminal act and is not shown by every known and intentional violation of statute, but whether any particular conviction involves moral turpitude may be a question of fact and frequently depends on all the surrounding circumstances.[37] In turn, it is for the Court to ultimately resolve whether an act constitutes moral turpitude. . . As defined, acts tainted with moral turpitude are of such gravity that manifests an individual's depravity or lack of moral fiber.[38] With this in mind, *We* look into the offense itself, the acts of Respondent alleged to be constituting the offense and each of the surrounding circumstances.

Admittedly, the definition of moral turpitude is utterly vague. However, since it is about morality, this can be gauged in light of what is right and wrong. In *Zari vs. Flores* [Zari],[39] it was held that moral turpitude implies something immoral in itself, regardless of the fact that it is punishable by law or not. *We* thus come to the question whether failure to file income tax return is immoral in itself or inherently wrong.

If failure to file income tax return is considered alone, it would appear that it is not inherently wrong. This is supported by the fact that the filing of income tax return is only an obligation created by law and the omission to do so is only considered as wrong because the law penalizes it.

In *Zari*,[40] the Supreme Court made a list of crimes held to be involving moral turpitude, namely: *adultery, concubinage, rape, arson, evasion of income tax, barratry, bigamy, blackmail, bribery, criminal conspiracy to smuggle opium, dueling, embezzlement, extortion, forgery,*

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[36] Dela Torre vs. COMELEC, G.R. No. 121592, 05 July 1996; IRRI vs. NLRC, G.R. No. 97239, 12 May 1993; Magno vs. COMELEC, G.R. No. 147904, 04 October 2002; Villaber vs. COMELEC, G.R. No. 148326, 15 November 2001; Teves vs. COMELEC, G.R. No. 180363, 28 April 2009; Ty-Delgado vs. HRET, G.R. No. 219603, 26 January 2016; Pagaduan vs. Civil Service Commission, G.R. No. 206379, 19 November 2014.
[37] IRRI vs. NLRC, G.R. No. 97239, 12 May 1993.
[38] Mercuria D. So vs. Ma. Lucille P. Lee, B.M. 3288, 10 April 2019.
[39] A.M. No. (2170-MC) P-1356, November 21, 1979.
[40] *Id.*

libel, making fraudulent proof of loss on insurance contract, murder, mutilation of public records, fabrication of evidence, offenses against pension laws, perjury, seduction under the promise of marriage, estafa, falsification of public document, and estafa thru falsification of public document. At first glance of the foregoing list, it can easily be concluded that they are inherently wrong. The evil or immorality is immediately apparent in every crime. This is not the case in non-filing of income tax return.

Notably, however, the enumeration in *Zari* includes evasion of taxes which is related to the issue in this case. The non-filing of income tax return alone cannot be considered as tax evasion as this is committed regardless of the intention of the offender. Conversely, there may be tax evasion in the failure to file income tax return when there is evidence adequately showing that the intention of the offender is the non-payment of tax. Petitioners actually raised this as their argument. Again, according to them, the repeated failure of Respondent to file income tax return demonstrates his intent to evade payment of his income tax liability. There is however nothing on record that would buttress this postulation of Petitioners.

It must be reiterated that the instant Petition is anchored on the CA Decision, which is actually the only material evidence submitted by Petitioners. All theories set forth by them are all conclusions drawn from the said Decision. This should be the case as the core issue here is whether Respondent has been convicted by final judgment of an offense involving moral turpitude. Thus, Petition should be resolved on the basis of the CA Decision.

The tax evasion theory, as well as the other arguments of Petitioners, may find basis in the Decision of the RTC, however, the same has already been modified by the Decision of the CA. Additionally, the latter is already final and executory as evidenced by the Entry of Judgment[41] submitted by Petitioners. When a final judgment is executory, it becomes immutable and unalterable.[42] Hence, the CA Decision cannot and will not be disturbed pursuant to the principle of immutability of judgment.

Tax evasion involves a scheme used outside lawful means and connotes the integration of three (3) factors: (1) the end to be achieved,

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[41] *Supra*, note 25.
[42] PCI Leasing and Finance Inc. vs. Antonio Milan, G.R. No. 151215, 05 April 2010.

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; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willful," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful.[43]

Now, a careful examination of the CA Decision will lead to a finding that squarely negates the tax evasion theory of Petitioners. The CA held that Respondent, being an elected public official for the taxable years concerned, was already subjected to the withholding tax system. And considering this, it was concluded that he could not have intended to evade payment of his tax liability. It is therefore very clear that the first and second factors of tax evasion are not extant in this case. To be precise, the Court of Appeals held that:

> "For the years 1982 to 1985, for which the [sic] had been charged, he had been earning compensation/income from the government as Provincial Governor of Ilocos Norte. Thus, **for those years, the appellant was duty-bound to pay his taxes through the withholding tax system** (Section 91 (a), NIRC of 1977/Section 82 (g) of the NIRC as amended by PD No. 1994).
>
> **Except for the year 1982, the evidence discloses that corresponding withholding taxes were deducted from the appellant's gross income for the years 1983 to 1985 in the amounts of P5,348.42, P4,542.00 and P6,416.27, respectively**, as embodied in Paragraph 2 of the Request for Stipulation dated April 4, 1994, which was admitted by the trial court after noting the comments and qualifications made by the prosecution in their Comment dated April 14, 1994.
>
> **No deficiency assessment for the taxable years 1982 to 1985 was made on the part of the government against the appellant**.
>
> **It bears emphasis that the duty to withhold taxes from government employees, including elected officials like the provincial governor, has been reposed by law in the Government** (Sections 90 (c); (92, NIRC of 1977). Consequently, any deficiency in the taxes so withheld is likewise attributable to and/or determinable by the government and not by the employee concerned (Section 91 (f), 1977 NIRC).
>
> **The appellant had a right to rely on the computation and assessment by the BIR for whatever deficiency income taxes that may be due from him, as after all, it is the government itself which**

[43] Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr., G.R. No. 147188, 14 September 2004.

deducts from his gross income the taxes which he should pay, over which he has no control.

Considering that the income of the appellant for the years herein involved have already been subjected to the withholding tax system, Section 51 (a) of the Tax Code which provides that:

> "(a) Payment of Tax - -
>
> 1. In general - - The total amount of tax imposed by this Title shall be paid at the time the return is filed."

finds no application to the case at bench, contrary to the contention of the appellee that the tax liability of the appellant should have been paid by him at the time of filing his return. Deficiency assessment is an exception to that general rule embodied in the aforequoted Section 51 (a) of the Tax Code (p. 134, NIRC, Annotated, Hector S. de Leon, 1979 Ed.)

The appellee loses sight of the distinction between the so-called "pay-as-you-file system", which is contemplated by the aforequoted Section 51 (a), and with "withholding tax system" where, particularly in this case, the BIR merely seeks to impose deficiency income taxes upon the taxes already paid and withheld from the appellant.

In the former, the total amount of income tax due shall be paid at the time the return is filed. The "date prescribed for the payment of the tax" is the date prescribed for the filing of the return. **In the latter, the taxpayer does not merely deposit the amount withheld from him with the Commissioner but performs and extinguishes his tax obligations for the year concerned by contributing to the said withholding tax system** [Citation omitted]. **Thus, as in the latter case, the appellant had in fact paid his tax liabilities for the taxable years concerned**.

The case of Ungab vs. Cusi (97 SCRA 877), principally relied upon by the trial court and the appellee, cannot apply to the case at bench. In that case, the deficiency tax was brought about by the taxpayer himself by intentionally misrepresenting his income earned for the year 1987. It was clearly stated therein that:

> "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. (at p. 884) (Underscoring supplied). [Underscoring in the original]

The circumstances in the Ungab case do not obtain in the case at bench. The deficiency in the tax of the appellant was not of his own doing and its determination was not his obligation.

> Furthermore, **there could be no attempt on his part, for his failure to file the necessary income tax returns, to evade and defeat the tax as he has in fact paid his tax obligations for the taxable years here-involved under the withholding tax system**.
>
> In one case recently decided by the Supreme Court (Commissioner of Internal Revenue, et. al. vs. Court of Appeals, G.R. No. 119322, June 4, 1996) cited by the appellant, though the facts of the same do not square with the facts of the instant case, the High Court, seeing the necessity of a previous assessment before any criminal action may be commenced, did not strictly apply the provisions of the Tax Code.
>
> **In the same manner, this Court deems it necessary that an assessment be initially made before the criminal actions should have been filed, considering that the appellant would not have known any deficiency income tax liability on his part without any computation or assessment from the BIR and he could not have intended to evade his tax liability as, it has been said, the taxes due had been withheld from him for the years concerned**." [Bracketed insertion *Ours*. Emphases and underscoring supplied]

Based on the foregoing, it is evident that Respondent paid his income tax liability through the withholding system, albeit not in full. Even if his tax liability was not paid in full, the same was not done willfully by Respondent since, as the CA explained, it is the government's obligation to withhold the income tax of Respondent and the latter had the right to rely on the computation of the taxes withheld. Considering this, there is no tax evasion as contemplated by law and jurisprudence in this case.

Thus, regardless of the fact that the non-filing of income tax return was done repeatedly by Respondent, there is still no tax evasion to speak of as no tax was actually intentionally evaded. The government was not defrauded. In the case of Respondent, it can be said that the filing of income tax return is only for record purposes, not for the payment of tax liability. He may have been neglectful in performing this obligation, it however does not reflect moral depravity.

In view of the foregoing discussion, *We* hold that the convictions of Respondent for several instances of non-filing of income tax returns do not carry with it moral turpitude. Respondent cannot therefore be disqualified on this score.

WHETHER OR NOT RESPONDENT WAS CONVICTED FOR A CRIME THAT CARRIED A PENALTY OF MORE THAN 18 MONTHS FOR WHICH HE SHOULD BE DISQUALIFIED FROM RUNNING FOR AND HOLDING ANY PUBLIC OFFICE.

In the Petition, Petitioners allege that the conviction of Respondent in Criminal Case No. Q-91-24391 carried with it the penalties of imprisonment of three (3) years and a fine of Thirty Thousand Pesos (Php 30,000.00). Despite this, they admit that the CA modified the penalty by removing the penalty of imprisonment. However, they argue that this deletion of imprisonment as penalty renders the Decision void as it is done contrary to law. Petitioners posit that Section 254 of the 1977 NIRC, as amended, clearly mandates that the penalty of willful failure to pay income tax and to file a return shall consist of both fine and imprisonment. It is therefore their theory that the penalty provided by their cited law that must be followed, not the one imposed by the CA.

Petitioners are gravely mistaken.

It must be emphasized first and foremost that *We* do not have jurisdiction to correct, amend, modify or review the decisions of the Court of Appeals. Only the Supreme Court can do so pursuant to its appellate jurisdiction, which finds basis, among others, under Section 5 (2), Article VIII of the 1987 Constitution.[44] Petitioners' act of

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[44] **Section 5.** The Supreme Court shall have the following powers:

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2. Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
   a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
   b. All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
   c. All cases in which the jurisdiction of any lower court is in issue.
   d. All criminal cases in which the penalty imposed is reclusion perpetua or higher.

questioning the validity of the CA Decision before *Us* is clearly improper.

Further, as said earlier, the CA Decision has become final and executory. As such, it is already unalterable in accordance with the principle of immutability of judgment. In this regard, the following pronouncement of the Supreme Court in the case of *Nuñal vs. Court of Appeals*[45] is instructive, thus:

> [N]othing is more settled in the law than that when a final judgment becomes executory, it thereby becomes immutable and unalterable. **The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the Court rendering it or by the highest Court of land.** The only recognized exceptions are the correction of clerical errors or the making of so-called nunc pro tunc entries which cause no prejudice to any party, and, of course, where the judgment is void."
>
> **Furthermore, "(a)ny amendment. or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose."** [Emphases *Ours*]

Even if *We* set aside the foregoing, *We* find Petitioners' assertions to be erroneous and misleading.

A reading of the Decisions of both the RTC and the CA will immediately reveal that the applicable law in relation to taxable years 1982, 1983 and 1984 is Article 73 of P.D. No. 1158 which provides:

> "Section 73. *Penalty for failure to file return or to pay tax.* – Any one liable to pay the tax, to make a return or to supply information required under this Code, who refuses or neglects to pay such tax, **to** make such return or to supply such information at the time or times herein specified in each year, **shall be punished by a fine of not more than two thousand pesos** or **by imprisonment for not more than six months, or both**. " [Emphases and underscoring *Ours*]

Consequently, this was amended and renumbered by Presidential Decree No. 1994, which became effective on 01 January 1986.[46]

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e. All cases in which only an error or question of law is involved.

[45] G.R. No. 94005, 06 April 1993.
[46] Section 49. Effectivity. This Decree shall take effect on January 1, 1986.

Considering that the filing of income tax returns is on the 18th of March following the taxable year,[47] the new law is already applicable for taxable year 1985 since the last day of filing is on 18 March 1986. Both the RTC and the CA accordingly applied the amendment with respect to taxable year 1985. The new law reads:

> Sec. 288. *Failure to file return, supply information, pay tax, withhold and remit tax.* – Any person required under this Code or by regulations promulgated thereunder to pay any tax, make a return, keep any records or supply any information, who willfully fails to pay such tax, make such return, keep such records, or supply such information, or withhold or remit taxes withheld, at the time or times required by law or regulations, shall, in addition, to other penalties provided by law, upon conviction thereof, **be fined not less than five thousand pesos nor more than fifty thousand pesos, or imprisoned for not less than six months and one day but not more than five years, or both**. [Emphases and underscoring *Ours*]

At first look at the foregoing laws, it is immediately apparent that both laws impose the penalties of imprisonment and fine in the alternative as it both used the disjunctive word "OR" for failure to file tax returns. It is quite odd that Petitioners cited Section 254 of the 1977 NIRC, as amended, where the law used the conjunctive word "AND" in imposing the penalties. It states:

> Sec. 254. 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 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 regulations shall, in addition, to other penalties provided by law, upon conviction thereof, be fined of not less than Ten thousand pesos

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[47] P.D. No. 1773 -

Section 13. Section 45(c) of the National Internal Revenue Code as amended by Batas Pambansa Blg. 37 and Presidential Decree No. 1705, is hereby further amended to read as follows:

"(c) When to file. The return of:

"(1) Residents of the Philippines, whether citizens or aliens, whose income had been derived solely from salaries, wages, interests, dividends, allowances, commissions, bonuses, fees, pensions, or any combination thereof shall be filed on or before the **eighteenth day of March of each year, covering income for the preceding taxable year.**

xxx

(P10,000) and imprisonment of not less than one (1) year but not more than ten (10) years.

After a survey of tax laws, it appears that the law cited and underscored by Petitioners was introduced by R.A. No. 7497,[48] which only became effective sometime in 1992. Considering that this inflicts greater punishment,[49] to give the same retroactive application, as Petitioners propose, would indubitably violate the constitutional proscription against *ex post facto* laws under Section 22, Article III of the 1987 Constitution.[50] Surely, Petitioners are aware of this proscription.

We cannot be certain as to the intention of Petitioners in citing an inapplicable law. It could have been done deliberately to fit their theory or by mistake. However, it cannot be denied that the applicable laws are clearly written in the RTC Decision,[51] yet Petitioners chose to ignore them. *We* see this as an act of lack of respect and insult to the Commission. It must nonetheless be stressed that the RTC Decision has been modified and replaced by the CA Decision. Petitioners are advised to forget the RTC Decision which must be consigned to the dustbin of history.

Considering the foregoing discussion, Petitioners' argument that conviction of Respondent in Criminal Case No. Q-91-24391 carried with it the penalties of imprisonment of three (3) years and a fine of Thirty Thousand Pesos (Php 30,000.00) is undoubtedly defective and lacking legal basis. Corollarily, their theory that the CA Decision is void due to the deletion of the penalty of imprisonment must fail.

WHETHER RESPONDENT IS PERPETUALLY DISQUALIFIED FROM HOLDING ANY PUBLIC OFFICE, TO VOTE AND TO PARTICIPATE IN ANY ELECTION AS A CONSEQUENCE OF CONVICTION UNDER THE

[48] "Finality of Withholding Tax on Purely Compensation Income"
[49] Benedicto v. Court of Appeals, 416 Phil. 722, 748 (2001)
[50] **Section 22.** No ex post facto law or bill of attainder shall be enacted.
[51] Records, at 177; p. 5 of the RTC Decision.

NATIONAL INTERNAL REVENUE CODE.

Respondent is not perpetually disqualified from holding any public office, to vote and to participate in any election.

Taking into account the arguments of the parties, there are two (2) questions that must be answered, namely: 1.) Is the penalty of perpetual disqualification from holding any public office, to vote and to participate in any election under Article 286 of the 1977 NIRC, as amended by P.D. No. 1994, an accessory penalty and automatically imposed with the principal penalty?; and 2.) Was Respondent a public officer at the time of the expiration of the period to file for taxable year 1985 on 18 March 1986?

Anent the first, *We* hold that it is not an accessory penalty and not automatically imposed with the principal penalty.

Accessory penalties is a legal precept governed by the Revised Penal Code [RPC]. Section 25 of the RPC categorizes perpetual or temporary disqualification and suspension from public office, the right to vote and be voted for, the profession or calling, among others, as accessory penalties. Perhaps this is where Petitioners based their proposition that the penalty at issue is an accessory penalty and is deemed imposed along with the principal penalty.

A reading of Section 73 of the RPC shows that accessory penalties are only deemed imposed in particular cases, viz:

> **Article 73.** *Presumption in regard to the imposition of accessory penalties.* - Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, **according to the provisions of Articles 40, 41, 42, 43 and 44 of this Code**, it must be understood that the accessory penalties are also imposed upon the convict. [Emphasis supplied]

Specifically, accessory penalties are only **inherent** when the penalty imposed are death,[52] *reclusion perpetua* and *reclusion temporal*,[53]

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[52] Article 40 of the RPC.
[53] Article 41 of the RPC.

prision mayor,[54] *prision correccional*[55] and *arresto.*[56]

In this case, the controversial Section 286 of the 1977 NIRC, as amended by P.D. No. 1994, states:

> Sec. 286. *General provisions.* – [a] **Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein:** *Provided,* That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.
>
> [b] x x x
>
> [c] If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation. **If he is a public officer or employee, the maximum penalty prescribed for the offense shall be imposed and, in addition, he shall be dismissed from the public service and perpetually disqualified from holding any public office, to vote and to participate in any election**. If the offender is a certified public accountant, his certificate as a certified public accountant shall, upon conviction, be automatically revoked or cancelled. [Emphases and underscoring *Ours*]

Notably, there is nothing in the foregoing that would suggest that the penalty of perpetual disqualification from holding any public office, to vote and to participate in any election is an accessory penalty, and that it is inherent and understood to be deemed imposed along with the principal penalties. What the law provides is that it is imposed in addition to other penalties. As aptly raised by Respondent, there is no provision in the 1977 NIRC similar to Article 73 of the RPC.

Further, in this case, not only that the penalty of imprisonment imposable is not among those under Article 40 to 44 of the RPC, there is actually no imprisonment penalty imposed by the CA. To reiterate, Respondent was only meted a fine.

With the foregoing, it is certainly not correct to conclude that the penalty of perpetual disqualification from holding any public office, to

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[54] Article 42 of the RPC.
[55] Article 43 of the RPC.
[56] Article 44 of the RPC.

vote and to participate in any election under Article 286 of the 1977 NIRC, as amended by P.D. No. 1994, is deemed imposed along with the basic penalty.

Moving to the second question, *We* hold that Respondent was no longer a public officer at the time of the consummation of the offense of failure to file income tax return on 18 March 1986.[57]

Firstly, both the RTC and the CA have similar finding that Respondent was no longer a public officer at the time of the commission of the offense in relation to taxable year 1985. This is apparent in their imposition of the alternative penalties provided for in P.D. No. 1994, which consist of a **fine of not less than five thousand pesos [P5,000.00] nor more than fifty thousand pesos [P50,000.00], or imprisonment for not less than six months and one day but not more than five years, or both**. For reference, the alternative penalties with respect to taxable years 1982 to 1984, which are provided under Section 73 of the P.D. No. 1158 prior to the P.D. No. 1994 amendment, consist of **a fine of not more than two thousand pesos [P2,000.00] or by imprisonment for not more than six months, or both**. Now, the pertinent dispositive portions of the RTC Decision and CA Decision respectively read:

> WHEREFORE, the Court finds accused Ferdinand Romualdez Marcos II guilty beyond reasonable doubt of the National Internal Revenue Code of 1977, as amended, and sentences him as follows:
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> xxx
>
> **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;**
>
> **4. To serve imprisonment of three (3) years and pay a fine of P30,000 in Criminal Case No. 91-24390 for failure to pay income tax for the year 1985**; and
>
> xxx;

and

> WHEREFORE, the Decision of the trial court is hereby MODIFIED as follows:

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[57] *Supra,* note 46.

xxx

> 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. [Emphases *Ours*]

Clearly, the RTC and the CA both imposed the penalties under P.D. No. 1994 with respect to taxable year 1985, which is the same law that introduced the controversial Section 286. It must be noted that said provision requires that, if the offender is a public officer, the penalty shall be imposed in the maximum. Obviously, both the RTC and the CA did not impose the penalty in the maximum leading to the conclusion that both courts did not consider Respondent as a public officer when he committed the offense.

Relatedly, it must be reiterated that, the CA Decision is already final and executory, and cannot anymore be altered or in any way disturbed pursuant to the principle of immutability of judgment.

Secondly, *We* find the argument of Respondent that he was no longer a public officer after the overthrow of the whole government and their forced exile to Hawaii, USA, which were both precipitated by the EDSA Revolution, to be with merit and logical.

There is no question that the EDSA Revolution occurred, leading to the dismantlement of the whole Philippine government and exile of the Marcos family to Hawaii, U.S.A. on the evening of 25 February 1986.[58] In *Republic v. Sandiganbayan*,[59] the Supreme Court briefly recounted said events and the resulting revolutionary government that ruled afterwards, *to wit:*

> **<u>The EDSA Revolution took place on 23-25 February 1986.</u>** As

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[58] Ng, Alexandria, updated 6 June 2019, Chapter III: The Exile, retrieved from https://www.hawaiinewsnow.com/2019/06/05/chapter-iii-exile/ last accessed 01 January 2022. Richburg, Keith B. and Branigin, William, 29 September 1989, Ferdinand Marcos dies in Hawaii at 72, retrieved from https://www.washingtonpost.com/archive/politics/1989/09/29/ferdinand-marcos-dies-in-hawaii-at-72/d1c26275-d9bd-4bfd-8934-c2a02ff4ab51/, last accessed 01 January 2022.

[59] G.R. No. 104768, 21 July 2003.

succinctly stated in President Aquino's Proclamation No. 3 dated 25 March 1986, the EDSA Revolution was "done in defiance of the provisions of the 1973 Constitution." **The resulting government was indisputably a revolutionary government bound by no constitution or legal limitations except treaty obligations that the revolutionary government, as the de jure government in the Philippines, assumed under international law**.

x x x

We hold that the Bill of Rights under the 1973 Constitution was not operative during the interregnum. However, we rule that the protection accorded to individuals under the Covenant and the Declaration remained in effect during the interregnum.

During the interregnum, the directives and orders of the revolutionary government were the supreme law because no constitution limited the extent and scope of such directives and orders. **With the abrogation of the 1973 Constitution by the successful revolution, there was no municipal law higher than the directives and orders of the revolutionary government**. Thus, during the interregnum, a person could not invoke any exclusionary right under a Bill of Rights because there was neither a constitution nor a Bill of Rights during the interregnum. As the Court explained in Letter of Associate Justice Reynato S. Puno:

A revolution has been defined as "the complete overthrow of the established government in any country or state by those who were previously subject to it" or as "a sudden, radical and fundamental change in the government or political system, usually effected with violence or at least some acts of violence." In Kelsen's book, General Theory of Law and State, it is defined as that which "**occurs whenever the legal order of a community is nullified and replaced by a new order** . . . a way not prescribed by the first order itself."

It was through the February 1986 revolution, a relatively peaceful one, and more popularly known as the "people power revolution" that the Filipino people tore themselves away from an existing regime. This revolution also saw the unprecedented rise to power of the Aquino government.

x x x

It is widely known that Mrs. Aquino's rise to the presidency was not due to constitutional processes; in fact, it was achieved in violation of the provisions of the 1973 Constitution as a Batasang Pambansa resolution had earlier declared Mr. Marcos as the winner in the 1986 presidential election. Thus it can be said that the organization of Mrs. Aquino's Government which was met by little resistance and her control of the state evidenced by the appointment of the Cabinet and other key officers of the administration, the departure of the Marcos Cabinet officials, revamp of the Judiciary

> and the Military signaled the point ***where the legal system then in effect, had ceased to be obeyed by the Filipino.*** [Emphasis and italics in the original]" [Emphases and underscoring Ours]

The dismantling of the whole government, abrogation of the 1973 Philippine Constitution, and the rise of a revolutionary government, coupled with Respondent's forced abandonment of office when he and his family fled to and got exiled in Hawaii, U.S.A., all lead to the conclusion that Respondent was no longer a public officer when he failed to file his 1985 income tax return on 18 March 1986. From the time Respondent and his family left the Philippines, it can be said that he was no longer a public official.

Petitioners however argue that there was no complete dismantlement of the government. They claim that when former President Corazon Aquino issued Proclamation No. 1[60] on 25 February 1986, it was clear that there was no complete dismantling of the whole government but only an order for all appointive public officials to submit their courtesy resignations.[61]

Petitioners fail to persuade *Us*. Proclamation No. 1 was only issued after the ouster of former President Ferdinand E. Marcos, Sr. and the overthrow of the government. A reading of the same reveals that then President Corazon Aquino and then Vice-President Salvador H. Laurel took power over the whole government by virtue of the will of the people and showed their intent to reorganize the government. This only affirms the overthrow of the government. The act of demanding for the courtesy resignation of appointive officials only shows an initial move as they just took power.

Petitioners also posit that the abandonment of office is a mere technicality that should not excuse Respondent from the application of Section 286 of the 1977 NIRC, as amended. *We* unfortunately cannot accept this argument considering that it was not Respondent's choice to abandon office. Again, they were forced to leave the country. Respondent and his family in fact sued the Philippine Government for them to be allowed to return to the Philippines in the case entitled *Ferdinand E. Marcos, et. al. vs. Hon. Raul Manglapus, et. al.*[62] It would have been different if it was shown that Respondent deliberately

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[60] https://www.officialgazette.gov.ph/1986/02/25/proclamation-no-1-s-1986/.
[61] Records, at 364, par. 85 of Petitioners' Memorandum.
[62] G.R. No. 88211, 15 September 1989.

abandoned office to avoid tax liability and application of the law.

Lastly, Petitioners submit that since Respondent's conviction for non-filing of his income tax return involved his earnings in 1985 while he was a public official, the consequences that he must suffer should be those applicable to public officers.[63]

We again do not agree. It must be emphasized that what is involved in this issue is a penal law. It is a basic principle that penal laws should be strictly construed against the state and liberally in favor of the accused.[64] Bearing this in mind, the basis for the application of the additional penalty should be the status of Respondent at the time of consummation of the offense on 18 March 1986. To follow the suggestion of Petitioners will definitely run counter to the mentioned principle.

In view of the foregoing, *We* hold that Respondent was no longer a public officer at the time of the consummation of the offense of non-filing of income tax returns on 18 March 1986. For this reason, the additional penalty of perpetual disqualification from holding any public office, to vote and to participate in any election under Section 286 of the 1977 NIRC, as amended P.D. No. 1994, cannot apply to him.

WHETHER THE TRAIN LAW RETROACTIVELY APPLIES TO RESPONDENT TO EXTINGUISH THE PENALTIES OF HIS CONVICTION UNDER THE NATIONAL INTERNAL REVENUE CODE.

According to Respondent, the new provision introduced by the TRAIN Law, particularly Section 50-A, should be given retroactive effect on the ground that it is favorable to the accused. It is his theory that said law effectively decriminalized non-filing of income tax returns of individuals who are earning purely compensation income.

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[63] Records, at 364; Par. 87 of Petitioners' Memorandum.
[64] Rodan A. Bangayan vs. People of the Philippines, G.R. No. 235610, 16 September 2020.

We do not agree.

Section 51-A of R.A. No. 8424,[65] as amended, states:

> Sec. 51-A. *Substituted Filing of Income Tax Returns by Employees Receiving Purely Compensation Income* - Individual taxpayers receiving purely compensation income, regardless of amount, from only one employer in the Philippines for the calendar year, the income tax of which has been withheld correctly by the said employer (tax due equals tax withheld) shall not be required to file an annual income tax return. The certificate of withholding filed by the respective employers, duly stamped 'received' by the BIR, shall be tantamount to the substituted filing of income tax returns by said employees.

As can be read above, an individual taxpayer earning purely compensation income is not required to file income tax return and seemingly cannot commit the offense of failure to file return. However, a reading of other relevant provisions will prove the contrary.

The substituted filing of pure compensation income earners is actually not new as this is already provided for under Section 251(A)(2)(b) of the original R.A. No. 8424,[66] though there was a threshold, which was later removed by R.A. No. 9504.[67] Nevertheless,

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[65] *"Tax Reform Act of 1997"*

[66] **Section 51.** *Individual Return.* -
(A) *Requirements.* -
xxx
(2) The following individuals **shall not be required to file an income tax return**;
xxx
(b) **An individual with respect to pure compensation income**, as defined in Section 32 (A)(1), derived from sources within the Philippines, the income tax on which has been correctly withheld under the provisions of Section 79 of this Code: Provided, That an individual deriving compensation concurrently from two or more employers at any time during the taxable year shall file an income tax return: Provided, further, That an individual whose compensation income derived from sources within the Philippines exceeds Sixty thousand pesos (P60,000) shall also file an income tax return;
xxx

[67] **Section 51.** *Individual Return.* -
(A) *Requirements.* -
xxx
(2) The following individuals **shall not be required to file an income tax return**;
xxx
"(b) An individual with respect to pure compensation income, as defined in Section 32(A)(1), derived from such sources within the Philippines, the income tax on which has been correctly withheld under the provisions of Section 79 of this Code: *Provided*, That an individual deriving compensation concurrently from two or more employers at any time during the taxable year shall file an income tax return;
xxx

Section 51(A)(3) of R.A. No. 8424, as amended,[68] states that while pure compensation income earners are not required to file income tax return, they may still be required to file information return. It must be noted that Section 255 of R.A. No. 8424, as amended, punishes, among others, failure to file a return. It does not specifically state income tax return. In other words, pure compensation earners are still susceptible to the offense of non-filing of returns. There is therefore no absolute decriminalization.

Further, even assuming that there is indeed decriminalization, the TRAIN Law cannot be given retroactive effect.

As a general, laws are to be applied prospectively. This finds basis under Article 4 of the New Civil Code.[69] This, however, admits exceptions. In this case, *We* do not find any reason to deviate from the general rule.

To support his theory, Respondent cites Article 22 of the RPC, which states:

> **Article 22.** *Retroactive effect of penal laws.* - Penal Laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

Unfortunately for him, the law evidently refers to a penal law. Penal laws have been defined as *those acts of the Legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment.*[70] Here, a plain reading of the law sought to be given retroactive effect by respondent shows that it is not a penal law as it neither defines a crime nor provide for punishment for one. Hence, this cannot support Respondent's proposition.

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[68] **Section 51.** *Individual Return.* -
(A) *Requirements.* -
xxx
(3) The forgoing notwithstanding, any individual not required to file an income tax return **may nevertheless be required to file an information return** pursuant to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

[69] Article 4. Laws shall have no retroactive effect, unless the contrary is provided.
[70] Lacson vs. Executive Secretary, et. al., G.R. No. 128096, 20 January 1999.

Moreover, the TRAIN Law does not provide for its retroactive application.

Lastly, Respondent cannot take refuge in the case of *Hernan vs. Sandiganbayan*[71] since the law involved therein is R.A. No. 10951,[72] which is a penal law and even provides for its retroactive application.[73]

In light of the discussion above, there is undeniably no basis to give retroactive application to Section 51-A of the NIRC, as amended. Respondent's argument therefore must fail.

WHETHER OR NOT RESPONDENT IS QUALIFIED TO RUN AS PRESIDENT.

We no longer find the necessity to address this issue as this has been squarely answered by the discussion above. Consequently, there is no actual issue or controversy regarding the question whether Respondent possesses all the qualifications under Section 2, Article VII of the 1987 Constitution[74] to run for presidency since Petitioners are basically only claiming that Respondent possesses grounds for disqualification under the law. It is ergo undisputed. Besides, it was held in *Gonzalez vs. COMELEC*[75] that *the only instance where a petition questioning the qualifications of a candidate for elective office can be filed before election is when the petition is filed under Section 78 of the OEC*, or a petition to deny due course or cancel COC.

Other matters raised by both parties deserve scant consideration.

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[71] G.R. No. 217874, 05 December 2017.
[72] 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.
[73] **Section 100.** *Retroactive Effect.* - This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.
[74] **Section 2.** No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.
[75] G.R. No. 192856, 08 March 2011.

As it now stands, Respondent possesses all the qualifications and none of the disqualifications under the 1987 Constitution and relevant laws. As such, the dismissal of this Petition is in order.

WHEREFORE, premises considered, the instant Petition is hereby **DENIED** for **LACK OF MERIT**.

SO ORDERED.

SOCORRO B. INTING
Presiding Commissioner

AIMEE P. FEROLINO
Commissioner

AIMEE S. TORREFRANCA-NERI
Commissioner

CERTIFICATION

I hereby certify that the conclusions in the above Resolution were reached in consultation among the members of the First Division before the case was assigned to the *ponente*.

SOCORRO B. INTING
Presiding Commissioner