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SECOND DIVISION

[G.R. No. 102967. February 10, 2000]

BIBIANO V. BAÑAS, JR., *petitioner, vs.* **COURT OF APPEALS, AQUILINO T. LARIN, RODOLFO TUAZON AND PROCOPIO TALON,** *respondents.*

SYNOPSIS

Petitioner, Bibiano V. Bañas Jr., sold to Ayala Investment Corporation (AYALA), 128,265 square meters of land located at Bayanan, Muntinlupa, for two million, three hundred eight thousand, seven hundred seventy (₱2,308,770.00) pesos. The Deed of Sale provided that upon the signing of the contract AYALA shall pay four hundred sixty-one thousand, seven hundred fifty-four (₱461,754.00) pesos and the balance of one million, eight hundred forty-seven thousand and sixteen (₱1,847,016.00) pesos to be paid in four equal consecutive annual installments. The same day, petitioner discounted the promissory note with AYALA, for its face value of ₱1,847,016.00, evidenced by a Deed of Assignment signed by the petitioner and AYALA. AYALA issued nine (9) checks to petitioner, all dated February 20, 1976, drawn against Bank of the Philippine Islands with the uniform amount of two hundred five thousand, two hundred twenty-four (₱205,224.00) pesos. In the succeeding years, until 1979, petitioner reported a uniform income of two hundred thirty thousand, eight hundred seventy-seven (₱230,877.00) pesos as gain from sale of capital asset. In his 1980 income tax amnesty return, petitioner also reported the same amount of ₱230,877.00 as the realized gain on disposition of capital asset for the year. On April 11, 1978 then Revenue Director Mauro Calaguio authorized their tax examiners, Rodolfo Tuazon and Procopio Talon to examine the books and records of petitioner for the year 1976. They discovered that petitioner had no outstanding receivable from the 1976 land sale to AYALA and concluded that the sale was cash and the entire profit should have been taxable in 1976 since

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the income was wholly derived in 1976. Meantime, respondent Aquilino Larin who succeeded as Regional Director of Manila, Region IV-A, filed on June 17, 1981 a criminal complaint for tax evasion against the petitioner. On July 1, 1981, news items appeared in the now defunct Evening Express Evening Post and Bulletin Today, which mentioned petitioner's false income tax return concerning the sale of land to AYALA. Reacting to the complaint for tax evasion and the news reports, petitioner filed with the RTC of Manila an action for damages against respondents Larin, Tuazon and Talon for extortion and malicious publication of the BIR's tax audit report. The trial court decided in favor of the respondents and awarded Larin damages. Respondent appellate court affirmed the trial court's decision. Hence, the present petition.

The Supreme Court affirmed the decision of the Court of Appeals. The Court ruled that although the proceeds of a discounted promissory note are not considered part of initial payment, still it must be included as taxable income for the year it was converted to cash. When petitioner had the promissory notes covering the succeeding installment payments of the land issued by AYALA, discounted by AYALA itself, on the same day of the sale, he lost entitlement to report the sale as a sale on installment, since, a taxable disposition resulted and petitioner was required by law to report in his returns the income derived from the discounting. According to the Court, what petitioner did is tantamount to an attempt to circumvent the rule on payment of income taxes gained from the sale of the land to AYALA for the year 1976. The Court deleted the award of actual damages to respondent Larin for lack of basis because the records of the case contained no statement whatsoever of the amount of the actual damages sustained by the respondents. The Court stressed that actual damages cannot be allowed unless supported by evidence on the record. The Court, however, agreed that there was sufficient basis for the award of moral and exemplary damages in favor of respondent Larin. Petitioner's actions against Larin were found by the Court "unwarranted and baseless," bolstered by the fact that the criminal charges filed against him in the Tanodbayan and City Fiscal's Office were all dismissed.

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SYLLABUS

1. **TAXATION; TAX AMNESTY; MERE FILING OF TAX AMNESTY RETURN UNDER P.D. 1740 AND P.D. 1840 DOES NOT *IPSO FACTO* SHIELD TAXPAYER FROM IMMUNITY AGAINST PROSECUTION.**— Petitioner did not meet the twin requirements of P.D. 1740 and 1840, declaration of his untaxed income and full payment of tax due thereon. Clearly, the petitioner is not entitled to the benefits of P.D. Nos. 1740 and 1840. The mere filing of tax amnesty return under P.D. 1740 and 1840 does not *ipso facto* shield him from immunity against prosecution. Tax amnesty is a general pardon to taxpayers who want to start a clean tax slate. It also gives the government a chance to collect uncollected tax from tax evaders without having to go through the tedious process of a tax case. To avail of a tax amnesty granted by the government, and to be immune from suit on its delinquencies, the taxpayer must have voluntarily disclosed his previously untaxed income and must have paid the corresponding tax on such previously untaxed income. It also bears noting that a tax amnesty, much like a tax exemption, is never favored nor presumed in law and if granted by statute, the terms of the amnesty like that of a tax exemption must be construed strictly against the taxpayer and liberally in favor of the taxing authority. Hence, on this matter, it is our view that petitioner's claim of immunity from prosecution under the shield of availing tax amnesty is untenable.

2. **ID.; NATIONAL INTERNAL REVENUE CODE; ACCOUNTING PERIOD AND METHODS OF ACCOUNTING; INCOME COMPUTED ON INSTALLMENT BASIS; DISCOUNTING OF PROMISSORY NOTES DONE BY THE SELLER HIMSELF WILL RESULT IN A TAXABLE DISPOSITION; INCOME DERIVED FROM SUCH DISCOUNTING MUST BE REPORTED IN THE RETURNS.**— Where an installment obligation is discounted at a bank or finance company, *a taxable disposition results,* even if the seller guarantees its payment, continues to collect on the installment obligation, or handles repossession of merchandise in case of default. This rule prevails in the United States. Since our income tax laws are of American origin, interpretations by American courts on our parallel tax laws have persuasive effect on the interpretation of these laws. Thus, by analogy, all the more would a taxable disposition result when the discounting of the promissory note is done by the seller himself. Clearly, the indebtedness of the buyer is discharged, while the seller

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acquires money for the settlement of his receivables. Logically then, the income should be reported at the time of the actual gain. For income tax purposes, income is an actual gain or an actual increase of wealth. Although the proceeds of a discounted promissory note is not considered initial payment, still it must be included as taxable income on the year it was converted to cash. When petitioner had the promissory notes covering the succeeding installment payments of the land issued by AYALA, discounted by AYALA itself, on the same day of the sale, he lost entitlement to report the sale as a sale on installment since, a taxable disposition resulted and petitioner was required by law to report in his returns the income derived from the discounting. What petitioner did is tantamount to an attempt to circumvent the rule on payment of income taxes gained from the sale of the land to AYALA for the year 1976.

3. **CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY; AWARD DELETED FOR LACK OF BASIS.**— Lastly, petitioner questions the damages awarded to respondent Larin. Any person who seeks to be awarded actual or compensatory damages due to acts of another has the burden of proving said damages as well as the amount thereof. Larin says the extortion cases filed against him hampered his immediate promotion, caused him strong anxiety and social humiliation. The trial court awarded him two hundred thousand (P200,000.00) pesos as actual damages. However, the appellate court stated that, despite pendency of this case, Larin was given a promotion at the BIR. Said respondent court: "We find nothing on record, aside from defendant-appellee Larin's statements (TSN, pp. 6-7, 11 December 1985), to show that he suffered loss of seniority that allegedly barred his promotion. In fact, he was promoted to his present position despite the pendency of the instant case (TSN, pp. 35-39, 04 November 1985)." Moreover, the records of the case contain no statement whatsoever of the amount of the actual damages sustained by the respondents. Actual damages cannot be allowed unless supported by evidence on the record. The court cannot rely on speculation, conjectures or guesswork as to the fact and amount of damages. To justify a grant of actual or compensatory damages, it is necessary to prove with a reasonable degree of certainty, the actual amount of loss. Since we have no basis with which to assess, with certainty, the actual or compensatory damages counter-claimed by respondent Larin, the award of such damages should be deleted.

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4. **ID.; ID.; MORAL DAMAGES; BASIS FOR AWARD ESTABLISHED.**— We agree that there is sufficient basis for the award of moral and exemplary damages in favor of respondent Larin. The appellate court believed respondent Larin when he said he suffered anxiety and humiliation because of the unfounded charges against him. Petitioner's actions against Larin were found "unwarranted and baseless," and the criminal charges filed against him in the Tanodbayan and City Fiscal's Office were all dismissed. Hence, there is adequate support for respondent court's conclusion that moral damages have been proved.

5. **ID.; ID.; ID.; AWARDING MORAL DAMAGES TO GOVERNMENT OFFICIALS IN CONNECTION WITH THEIR OFFICIAL FUNCTIONS MUST BE EXERCISED BY THE COURTS WITH CAUTION; REASON.**— Considering that here, the award is in favor of a government official in connection with his official function, it is with caution that we affirm granting moral damages, for it might open the floodgates for government officials counter-claiming damages in suits filed against them in connection with their functions. Moreover, we must be careful lest the amounts awarded make citizens hesitate to expose corruption in the government, for fear of lawsuits from vindictive government officials. Thus, conformably with our declaration that moral damages are not intended to enrich anyone, we hereby reduce the moral damages award in this case from two hundred thousand (₱200,000.00) pesos to seventy five thousand (₱75,000.00) pesos, while the exemplary damage is set at ₱25,000.00 only.

APPEARANCES OF COUNSEL

Cuevas De la Cuesta & De las Alas for petitioner.
Ramon U. Ampil for A. T. Larin.

DECISION

QUISUMBING, *J.*:

For review is the Decision of the Court of Appeals in CA-G.R. CV No. 17251 promulgated on November 29, 1991. It affirmed *in toto* the judgment of the Regional Trial Court (RTC), Branch 39, Manila, in Civil Case No. 82-12107. Said judgment disposed as follows:

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"FOR ALL THE FOREGOING CONSIDERATIONS, this Court hereby renders judgment DISMISSING the complaint against all the defendants and ordering plaintiff [herein petitioner] to pay defendant Larin the amount of ₱200,000.00 (Two Hundred Thousand Pesos) as actual and compensatory damages; ₱200,000.00 as moral damages; and ₱50,000.00 as exemplary damages and attorneys fees of ₱100,000.00."[1]

The facts, which we find supported by the records, have been summarized by the Court of Appeals as follows:

On February 20, 1976, petitioner, Bibiano V. Bañas Jr. sold to Ayala Investment Corporation (AYALA), 128,265 square meters of land located at Bayanan, Muntinlupa, for two million, three hundred eight thousand, seven hundred seventy (₱2,308,770.00) pesos. The Deed of Sale provided that upon the signing of the contract AYALA shall pay four hundred sixty-one thousand, seven hundred fifty-four (₱461,754.00) pesos. The balance of one million, eight hundred forty-seven thousand and sixteen (P1,847,016.00) pesos was to be paid in four equal consecutive annual installments, with twelve (12%) percent interest per annum on the outstanding balance. AYALA issued one promissory note covering four equal annual installments. Each periodic payment of ₱461,754.00 pesos shall be payable starting on February 20, 1977, and every year thereafter, or until February 20, 1980.

The same day, petitioner discounted the promissory note with AYALA, for its face value of ₱1,847,016.00, evidenced by a Deed of Assignment signed by the petitioner and AYALA. AYALA issued nine (9) checks to petitioner, all dated February 20, 1976, drawn against Bank of the Philippine Islands with the uniform amount of two hundred five thousand, two hundred twenty-four (₱205,224.00) pesos.

In his 1976 Income Tax Return, petitioner reported the ₱461,754 initial payment as income from disposition of capital asset.[2]

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[1] *Rollo*, p. 38.

[2] *Id.* at 28.

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Selling Price of Land	₱2,308,770.00
Less Initial Payment	461,754.00[3]
Unrealized Gain	₱1,847,016.00

1976 Declaration of Income on Disposition of Capital Asset subject to Tax:

Initial Payment	₱461,754.00
Less: Cost of Land and other incidental Expenses	(76,547.90)
Income	₱385,206.10
Income subject to tax (₱385,206.10 x 50%)	₱192,603.65

In the succeeding years, until 1979, petitioner reported a uniform income of two hundred thirty thousand, eight hundred seventy-seven (₱230,877.00) pesos[4] as gain from sale of capital asset. In his 1980 income tax amnesty return, petitioner also reported the same amount of ₱230,877.00 as the realized gain on disposition of capital asset for the year.

On April 11, 1978, then Revenue Director Mauro Calaguio authorized tax examiners, Rodolfo Tuazon and Procopio Talon to examine the books and records of petitioner for the year 1976. They discovered that petitioner had no outstanding receivable from the 1976 land sale to AYALA and concluded that the sale was cash and the entire profit should have been taxable in 1976 since the income was wholly derived in 1976.

Tuazon and Talon filed their audit report and declared a discrepancy of two million, ninety-five thousand, nine hundred fifteen (₱2,095,915.00) pesos in petitioner's 1976 net income. They recommended deficiency tax assessment for two million, four hundred seventy-three thousand, six hundred seventy-three (₱2,473,673.00) pesos.

Meantime, Aquilino Larin succeeded Calaguio as Regional Director of Manila Region IV-A. After reviewing the examiners' report, Larin directed the revision of the audit report, with instruction

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[3] P476,754 in Petition, *Rollo* p. 28.

[4] 50% of the agreed yearly installment based on the Deed of Sale. Computation is 50% of P461,754.

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to consider the land as capital asset. The tax due was only fifty (50%) percent of the total gain from sale of the property held by the taxpayer beyond twelve months pursuant to Section 34[5] of the 1977 National Internal Revenue Code (NIRC). The deficiency tax assessment was reduced to nine hundred thirty six thousand, five hundred ninety-eight pesos and fifty centavos (₱936,598.50), inclusive of surcharges and penalties for the year 1976.

On June 27, 1980, respondent Larin sent a letter to petitioner informing him of the income tax deficiency that must be settled immediately.

On September 26, 1980, petitioner acknowledged receipt of the letter but insisted that the sale of his land to AYALA was on installment.

On June 8, 1981, the matter was endorsed to the Acting Chief of the Legal Branch of the National Office of the BIR. The Chief of the Tax Fraud Unit recommended the prosecution of a criminal case for conspiring to file false and fraudulent returns, in violation of Section 51 of the Tax Code against petitioner and his accountants, Andres P. Alejandre and Conrado Bañas.

On June 17, 1981, Larin filed a criminal complaint for tax evasion against the petitioner.

On July 1, 1981, news items appeared in the now defunct *Evening Express* with the headline: "BIR Charges Realtor" and another in the defunct *Evening Post* with a news item: "BIR raps Realtor, 2 accountants." Another news item also appeared in the July 2, 1981, issue of the *Bulletin Today* entitled: "3-face P1-M tax evasion raps." All news items mentioned petitioner's false income tax return concerning the sale of land to AYALA.

On July 2, 1981, petitioner filed an Amnesty Tax Return under P. D. 1740 and paid the amount of forty-one thousand, seven

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[5] *Capital gains and losses* —x x x (b) *Percentage taken into account.* — In the case of a taxpayer, other than a corporation, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net capital gain, net capital loss, and net income: x x x (2) *Fifty per centum if the capital asset has been held for more than twelve months.* (italics ours)

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hundred twenty-nine pesos and eighty-one centavos (₱41,729.81). On November 2, 1981, petitioner again filed an Amnesty Tax Return under P.D. 1840 and paid an additional amount of one thousand, five hundred twenty-five pesos and sixty-two centavos (₱1,525.62). In both, petitioner did not recognize that his sale of land to AYALA was on cash basis.

Reacting to the complaint for tax evasion and the news reports, petitioner filed with the RTC of Manila an action[6] for damages against respondents Larin, Tuazon and Talon for extortion and malicious publication of the BIR's tax audit report. He claimed that the filing of criminal complaints against him for violation of tax laws were improper because he had already availed of two tax amnesty decrees, Presidential Decree Nos. 1740 and 1840.

The trial court decided in favor of the respondents and awarded Larin damages, as already stated. Petitioner seasonably appealed to the Court of Appeals. In its decision of November 29, 1991, the respondent court affirmed the trial court's decision, thus:

"The finding of the *court a quo* that plaintiff-appellant's actions against defendant-appellee Larin were unwarranted and baseless and as a result thereof, defendant-appellee Larin was subjected to unnecessary anxiety and humiliation is therefore supported by the evidence on record.

Defendant-appellee Larin acted only in pursuance of the authority granted to him. In fact, the criminal charges filed against him in the Tanodbayan and in the City Fiscal's Office were all dismissed.

WHEREFORE, the appealed judgment is hereby AFFIRMED *in toto*."[7]

Hence this petition, wherein petitioner raises before us the following queries:

I. WHETHER THE COURT OF APPEALS ERRED IN ITS INTERPRETATION OF PERTINENT TAX LAWS, THUS IT FAILED TO APPRECIATE THE CORRECTNESS AND ACCURACY OF PETITIONER'S RETURN OF THE INCOME DERIVED FROM THE SALE OF THE LAND TO AYALA.

[6] Civil Case No. 82-12107. The case was originally raffled to the Court of First Instance of Manila, Branch 12, then transferred to the Regional Trial Court of Manila, Branch 39.

[7] *Rollo*, pp. 77-78.

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II. WHETHER THE RESPONDENT COURT ERRED IN NOT FINDING THAT THERE WAS AN ALLEGED ATTEMPT TO EXTORT [MONEY FROM] PETITIONER BY PRIVATE RESPONDENTS.

III. WHETHER THE RESPONDENT COURT ERRED IN ITS INTERPRETATION OF PRESIDENTIAL DECREE NOS. 1740 AND 1840, AMONG OTHERS, PETITIONER'S IMMUNITY FROM CRIMINAL PROSECUTION.

IV. WHETHER THE RESPONDENT COURT ERRED IN ITS INTERPRETATION OF WELL-ESTABLISHED DOCTRINES OF THIS HONORABLE COURT AS REGARDS THE AWARD OF ACTUAL, MORAL AND EXEMPLARY DAMAGES IN FAVOR OF RESPONDENT LARIN.

In essence, petitioner asks the Court to resolve *seriatim* the following issues:

1. Whether respondent court erred in ruling that there was no extortion attempt by BIR officials;
2. Whether respondent court erred in holding that P.D. 1740 and 1840 granting tax amnesties did not grant immunity from tax suits;
3. Whether respondent court erred in finding that petitioner's income from the sale of land in 1976 should be declared as a cash transaction in his tax return for the same year (because the buyer discounted the promissory note issued to the seller on future installment payments of the sale, on the same day of the sale);
4. Whether respondent court erred and committed grave abuse of discretion in awarding damages to respondent Larin.

The first issue, on whether the Court of Appeals erred in finding that there was no extortion, involves a determination of fact. The Court of Appeals observed,

"The only evidence to establish the alleged extortion attempt by defendants-appellees is the plaintiff-appellant's self serving declarations.

As found by the court *a quo*, "said attempt was known to plaintiff-appellant's son-in-law and counsel on record, yet, said counsel did not take the witness stand to corroborate the testimony of plaintiff."[8]

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[8] *Id.* at 74.

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As repeatedly held, findings of fact by the Court of Appeals especially if they affirm factual findings of the trial court will not be disturbed by this Court, unless these findings are not supported by evidence.[9] Similarly, neither should we disturb a finding of the trial court and appellate court that an allegation is not supported by evidence on record. Thus, we agree with the conclusion of respondent court that herein private respondents, on the basis of evidence, could not be held liable for extortion.

On the second issue of whether P.D. Nos. 1740 and 1840 which granted tax amnesties also granted immunity from criminal prosecution against tax offenses, the pertinent sections of these laws state:

P.D. No. 1740. CONDONING PENALTIES FOR CERTAIN VIOLATIONS OF THE INCOME TAX LAW UPON VOLUNTARY DISCLOSURE OF UNDECLARED INCOME FOR INCOME TAX PURPOSES AND REQUIRING PERIODIC SUBMISSION OF NET WORTH STATEMENT.

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SECTION 1. *Voluntary Disclosure of Correct Taxable Income.*— Any individual who, for any or all of the taxable years 1974 to 1979, had failed to file a return is hereby, allowed to file a return for each of the aforesaid taxable years and *accurately declare therein the true and correct income*, deductions and exemptions and pay the income tax due per return. Likewise, any individual who filed a false or fraudulent return for any taxable year in the period mentioned above may amend his return and pay the correct amount of tax due after deducting the taxes already paid, if any, in the original declaration. (italics ours)

x x x x x x x x x

SECTION 5. *Immunity from Penalties.— Any individual who voluntarily files a return under this Decree and pays the income tax due thereon shall be immune from the penalties, civil or criminal,* under the National Internal Revenue Code arising from failure to pay the correct income tax with respect to the taxable years from which an amended

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[9] *Guerrerro vs. Court of Appeals,* 285 SCRA 670, 678 (1998); *Sta. Maria vs. Court of Appeals,* 285 SCRA 351, 357-358 (1998), citing *Medina vs. Asistio,* 191 SCRA 218, 223-224 (1990).

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return was filed or for which an original return was filed in cases where no return has been filed for any of the taxable years 1974 to 1979: *Provided, however,* That these immunities shall not apply in cases where the amount of net taxable income declared under this Decree is understated to the extent of 25% or more of the correct net taxable income. (italics ours)

P.D. NO. 1840 — GRANTING A TAX AMNESTY ON UNTAXED INCOME AND/OR WEALTH EARNED OR ACQUIRED DURING THE TAXABLE YEARS 1974 TO 1980 AND REQUIRING THE FILING OF THE STATEMENT OF ASSETS, LIABILITIES, AND NET WORTH.

SECTION 1. *Coverage.* — In case *of voluntary disclosure of previously untaxed income and/or wealth such as earnings*, receipts, gifts, bequests or any other acquisition from any source whatsoever, realized here or abroad, by any individual taxpayer, which are taxable under the National Internal Revenue Code, as amended, the assessment and collection of all internal revenue taxes, including the increments or penalties on account of non-payment, as well as all civil, criminal or administrative liabilities arising from or incident thereto under the National Internal Revenue Code, are hereby condoned provided that the individual taxpayer shall pay. (italics ours) x x x

SECTION 2. *Conditions for Immunity.*— The immunity granted under Section one of this Decree shall apply only under the following conditions:

a) Such *previously untaxed income and/or wealth* must have been earned or realized in any of the years 1974 to 1980;

b) The taxpayer must file an amnesty return on or before November 30, 1981, *and fully pay the tax due thereon;*

c) The amnesty tax paid by the taxpayer under this Decree shall not be less than P1,000.00 per taxable year; and

d) The taxpayer must file a statement of assets, liabilities and net worth as of December 31, 1980, as required under Section 6 hereof. (italics ours)

It will be recalled that petitioner entered into a deed of sale purportedly on installment. On the same day, he discounted the promissory note covering the future installments. The discounting seems questionable because ordinarily, when a bill is discounted, the lender (*e.g.* banks, financial institution) charges or deducts a certain percentage from the principal value as its compensation.

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Here, the discounting was done by the buyer. On July 2, 1981, two weeks after the filing of the tax evasion complaint against him by respondent Larin on June 17, 1981, petitioner availed of the tax amnesty under P.D. No. 1740. His amended tax return for the years 1974 - 1979 was filed with the BIR office of Valenzuela, Bulacan, instead of Manila where the petitioner's principal office was located. He again availed of the tax amnesty under P.D. No. 1840. His disclosure, however, did not include the income from his sale of land to AYALA on cash basis. Instead he insisted that such sale was on installment. He did not amend his income tax return. He did not pay the tax which was considerably increased by the income derived from the discounting. He did not meet the twin requirements of P.D 1740 and 1840, declaration of his untaxed income and full payment of tax due thereon. Clearly, the petitioner is not entitled to the benefits of P.D. Nos. 1740 and 1840. The mere filing of tax amnesty return under P.D. 1740 and 1840 does not *ipso facto* shield him from immunity against prosecution. Tax amnesty is a general pardon to taxpayers who want to start a clean tax slate. It also gives the government a chance to collect uncollected tax from tax evaders without having to go through the tedious process of a tax case. To avail of a tax amnesty granted by the government, and to be immune from suit on its delinquencies, the tax payer must have voluntarily disclosed his previously untaxed income and must have paid the corresponding tax on such previously untaxed income.[10]

It also bears noting that a tax amnesty, much like a tax exemption, is never favored nor presumed in law and if granted by statute, the terms of the amnesty like that of a tax exemption must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[11] Hence, on this matter, it is our view that petitioner's claim of immunity from prosecution under the shield of availing tax amnesty is untenable.

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[10] *Republic v. Intermediate Appellate Court,* 196 SCRA 335, 339 (1991); *People v. Judge Castañeda,* 165 SCRA 327, 338-339 (1988); *Nepomuceno vs. Hon. Montecillo,* 118 SCRA 254, 259 (1982).

[11] *People vs. Castañeda, Jr.*, 165 SCRA 327, 341 (1988), citing *E. Rodriguez, Inc. vs. The Collector of Internal Revenue,* 28 SCRA 1119 (1969); *Commissioner of Internal Revenue vs. A.D. Guerrero,* 21 SCRA 180 (1967).

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On the third issue, petitioner asserts that his sale of the land to AYALA was not on cash basis but on installment as clearly specified in the Deed of Sale which states:

"That for and in consideration of the sum of TWO MILLION THREE HUNDRED EIGHT THOUSAND SEVEN HUNDRED SEVENTY (₱2,308,770.00) PESOS Philippine Currency, to be paid as follows:

1. ₱461,754.00, upon the signing of the Deed of Sale; and,
2. The balance of ₱1,847,016.00, to be paid in four (4) equal, consecutive, annual installments with interest thereon at the rate of twelve percent (12%) per annum, beginning on February 20, 1976, said installments to be evidenced by four (4) negotiable promissory notes."[12]

Petitioner resorts to Section 43 of the NIRC and Sec. 175 of Revenue Regulation No. 2 to support his claim.

Section 43 of the 1977 NIRC states,

Installment basis. — (a) Dealers in personal property. — x x x

(b) Sales of realty and casual sales of personalty — In the case (1) of a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year), for a price exceeding one thousand pesos, or (2) of a sale or other disposition of real property if in either case the *initial payments do not exceed twenty-five percentum of the selling price, the income may, under regulations prescribed by the Minister of Finance, be returned on the basis and in the manner above prescribed in this section.* As used in this section the term "initial payment" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made. x x x (italics ours)

Revenue Regulation No. 2, Section 175 provides,

Sale of real property involving deferred payments.— Under Section 43 deferred-payment sales of real property include (1) agreements of purchase and sale which contemplate that a conveyance is not to be made at the outset, but only after all or a substantial portion of the selling price has been paid, and (b) sales in which there is an immediate transfer of title,

[12] Records, p. 216.

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the vendor being protected by a mortgage or other lien as to deferred payments. Such sales either under (a) or (b), fall into two classes when considered with respect to the terms of sale, as follows:

(1) Sales of property on the installment plan, that is, sales in which the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable year in which the sale is made do not exceed 25 per cent of the selling price;

(2) Deferred-payment sales not on the installment plan, that is sales in which the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable year in which the sale is made exceed 25 per cent of the selling price;

In the sale of mortgaged property the amount of the mortgage, whether the property is merely taken subject to the mortgage or whether the mortgage is assumed by the purchaser, shall be included as a part of the "selling price" but the amount of the mortgage, *to the extent it does not exceed the basis to the vendor of the property sold,* shall not be considered as a part of the "initial payments" or of the "total contract price," as those terms are used in Section 43 of the Code, in sections 174 and 176 of these regulations, and in this section. The term "initial payments" does not include amounts received by the vendor in the year of sale from the disposition to a third person of notes given by the vendee as part of the purchase price which are due and payable in subsequent years. Commissions and other selling expenses paid or incurred by the vendor are not to be deducted or taken into account in determining the amount of the "initial payments," the "total contract price," or the "selling price." The term "initial payments" contemplates at least one other payment in addition to the initial payment. If the entire purchase price is to be paid in a lump sum in a later year, there being no payment during the year, the income may not be returned on the installment basis. Income may not be returned on the installment basis where no payment in cash or property, other than evidences of indebtedness of the purchaser, is received during the first year, the purchaser having promised to make two or more payments, in later years.

Petitioner asserts that Sec. 43 allows him to return as income in the taxable years involved, the respective installments as provided by the deed of sale between him and AYALA. Consequently, he

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religiously reported his yearly income from sale of capital asset, subject to tax, as follows:

Year 1977 (50% of P461,754)	P 230,877.00
1978	230,877.00
1979	230,877.00
1980	230,877.00

Petitioner says that his tax declarations are acceptable modes of payment under Section 175 of the Revenue Regulations (RR) No. 2. The term "initial payment", he argues, does not include amounts received by the vendor which are part of the complete purchase price, still due and payable in subsequent years. Thus, the proceeds of the promissory notes, not yet due which he discounted to AYALA should not be included as income realized in 1976. Petitioner states that the original agreement in the Deed of Sale should not be affected by the subsequent discounting of the bill.

On the other hand, respondents assert that taxation is a matter of substance and not of form. Returns are scrutinized to determine if transactions are what they are and not declared to evade taxes. Considering the progressive nature of our income taxation, when income is spread over several installment payments through the years, the taxable income goes down and the tax due correspondingly decreases. When payment is in lump sum the tax for the year proportionately increases. Ultimately, a declaration that a sale is on installment diminishes government taxes for the year of initial installment as against a declaration of cash sale where taxes to the government is larger.

As a general rule, the whole profit accruing from a sale of property is taxable as income in the year the sale is made. But, if not all of the sale price is received during such year, and a statute provides that income shall be taxable in the year in which it is "received," the profit from an installment sale is to be apportioned between or among the years in which such installments are paid and received.[13]

[13] Corpus Juris Secundum, Volume 85, Taxation, Section 1097, par. h, (Installment Sale).

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Section 43 and Sec. 175 says that among the entities who may use the above-mentioned installment method is a seller of real property who disposes his property on installment, provided that the initial payment does not exceed 25% of the selling price. They also state what may be regarded as installment payment and what constitutes initial payment. Initial payment means the payment received in cash or property excluding evidences of indebtedness due and payable in subsequent years, like promissory notes or mortgages, given of the purchaser during the taxable year of sale. Initial payment does not include amounts received by the vendor in the year of sale from the disposition *to a third person* of notes given by the vendee as part of the purchase price which are due and payable in subsequent years.[14] Such disposition or discounting of receivable is material only as to the computation of the initial payment. If the initial payment is within 25% of total contract price, exclusive of the proceeds of discounted notes, the sale qualifies as an installment sale, otherwise it is a deferred sale.[15]

Although the proceed of a discounted promissory note is not considered part of the initial payment, it is still taxable income for the year it was converted into cash. The subsequent payments or liquidation of certificates of indebtedness is reported using the installment method in computing the proportionate income[16] to be returned, during the respective year it was realized. Non-dealer sales of real or personal property may be reported as income under the installment method provided that the obligation is still outstanding at the close of that year. If the seller disposes the entire installment obligation by discounting the bill or the promissory note, he necessarily must report the balance of the income from

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[14] *Ibid.*

[15] Revenue Regulation No. 2 — *Section 177. Deferred-payment sale of real property not on installment plan.* — In transactions included in class (2) in section 175 of these regulations, *the obligations of the purchaser* received by the vendor are to be considered as the *equivalent of cash.*

[16] *Expressed in formula:*

Gross Profit * x Installment payments = Proportionate Income (Income
Contract Price actually received to be reported for the year)

**Gross profit is Contract price less Cost.*

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the discounting not only income from the initial installment payment.

Where an installment obligation is discounted at a bank or finance company, *a taxable disposition results,* even if the seller guarantees its payment, continues to collect on the installment obligation, or handles repossession of merchandise in case of default.[17] This rule prevails in the United States.[18] Since our income tax laws are of American origin,[19] interpretations by American courts on our parallel tax laws have persuasive effect on the interpretation of these laws.[20] Thus, by analogy, all the more would a taxable disposition result when the discounting of the promissory note is done by the seller himself. Clearly, the indebtedness of the buyer is discharged, while the seller acquires money for the settlement of his receivables. Logically then, the income should be reported at the time of the actual gain. For income tax purposes, income is an actual gain or an actual increase of wealth.[21] Although the proceeds of a discounted promissory note is not considered initial payment, still it must be included as taxable income on the year it was converted to cash. When petitioner had the promissory notes covering the succeeding installment payments of the land issued by AYALA, discounted by AYALA itself, on the same day of the sale, he lost entitlement to report the sale as a sale on installment since, a taxable disposition resulted and petitioner was required by

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[17] 1995 American Jurisprudence 2d, Income Tax, Corporate Taxation, Tax Accounting Taxable Income, Section 7207. *Discounting or loan and pledge of installment obligation.*

[18] *Collector of Internal Revenue vs. Binalbagan Estate, Inc.,* 13 SCRA 1, 8 (1965); citing William Ziegler, Jr., 1 BTA 186; Wallis Tractor Co., 3 BTA 981; Napoleon B. Burge, 4 BTA 732; C.A. O'Meara, 11 BTA 101; *Livingston v. Commissioner of Internal Revenue,* 18 BTA 1184; *Florida Machine & Foundry Co. vs. Fahs.*, '73 F. Supp. 379 [D.C. S.D.] Aff'd 168 F[2d] 957 [CCA 5th]; *Dr. G.H. Tichenor Antiseptic Co. vs. United States,* 77 F. Supp. 288 [D.C.].

[19] *Ibid*; citing *Madrigal and Paterno vs. Rafferty and Concepcion,* 38 Phil. 414 (1918), *Compañia General de Tabacos vs. Collector of Internal Revenue,* 279 U.S. 306, 73 L. Ed. 704.

[20] *Ibid.*

[21] Corpus Juris Secundum Volume 85, Taxation, Section 1096, par. a.

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law to report in his returns the income derived from the discounting. What petitioner did is tantamount to an attempt to circumvent the rule on payment of income taxes gained from the sale of the land to AYALA for the year 1976.

Lastly, petitioner questions the damages awarded to respondent Larin.

Any person who seeks to be awarded actual or compensatory damages due to acts of another has the burden of proving said damages as well as the amount thereof.[22] Larin says the extortion cases filed against him hampered his immediate promotion, caused him strong anxiety and social humiliation. The trial court awarded him two hundred thousand (₱200,000.00) pesos as actual damages. However, the appellate court stated that, despite pendency of this case, Larin was given a promotion at the BIR. Said respondent court:

"We find nothing on record, aside from defendant-appellee Larin's statements (TSN, pp. 6-7, 11 December 1985), to show that he suffered loss of seniority that allegedly barred his promotion. In fact, he was promoted to his present position despite the pendency of the instant case (TSN, pp. 35-39, 04 November 1985)."[23]

Moreover, the records of the case contain no statement whatsoever of the amount of the actual damages sustained by the respondents. Actual damages cannot be allowed unless supported by evidence on the record.[24] The court cannot rely on speculation, conjectures or guesswork as to the fact and amount of damages.[25] To justify a grant of actual or compensatory damages, it is necessary to prove with a reasonable degree of certainty, the actual amount of loss.[26] Since we have no basis with which to assess, with

[22] *DBP vs. CA,* 284 SCRA 14, 29-30 (1998); *Del Mundo vs. CA,* 240 SCRA 348, 356 (1995); *Cf. Chua vs. Court of Appeals,* 242 SCRA 341, 345 (1995).

[23] *Rollo*, p. 77.

[24] *People vs. Nialda,* 289 SCRA 521, 535 (1998).

[25] *Del Rosario vs. Court of Appeals*, 267 SCRA 158, 171 (1997).

[26] *Sumalpong vs. Court of Appeals*, 268 SCRA 764, 774-775 (1997); citing *People vs. Rosario, et al.,* 246 SCRA 658, 671 (1995); *Del Mundo vs. Court of Appeals, et al.,* 240 SCRA 348, 356 (1995); *Sulpicio Lines Inc., vs. Court of Appeals,* 246 SCRA 376 (1995).

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certainty, the actual or compensatory damages counter-claimed by respondent Larin, the award of such damages should be deleted.

Moral damages may be recovered in cases involving acts referred to in Article 21[27] of the Civil Code.[28] As a rule, a public official may not recover damages for charges of falsehood related to his official conduct unless he proves that the statement was made with actual malice. In *Babst, et al. vs. National Intelligence Board, et al.,* 132 SCRA 316, 330 (1984), we reiterated the test for actual malice as set forth in the landmark American case of *New York Times vs. Sullivan*,[29] which we have long adopted, in defamation and libel cases, *viz.*:

"x x x with knowledge that it was false or with reckless disregard of whether it was false or not."

We appreciate petitioner's claim that he filed his 1976 return in good faith and that he had honestly believed that the law allowed him to declare the sale of the land, in installment. We can further grant that the pertinent tax laws needed construction, as we have earlier done. That petitioner was offended by the headlines alluding to him as tax evader is also fully understandable. All these, however, do not justify what amounted to a baseless prosecution of respondent Larin. Petitioner presented no evidence to prove Larin extorted money from him. He even admitted that he never met nor talked to respondent Larin. When the tax investigation against the petitioner started, Larin was not yet the Regional Director of BIR Region IV-A, Manila. On respondent Larin's instruction, petitioner's tax assessment was considered one involving a sale of capital asset, the income from which was subjected to only fifty percent (50%) assessment, thus reducing the original tax assessment by half. These circumstances may be taken to show that Larin's involvement in extortion was not indubitable. Yet, petitioner went on to file the

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[27] Article 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damages.

[28] *Filinvest Credit Corporation vs. Court of Appeals,* 248 SCRA 549, 564 (1995).

[29] 376 U.S. 254 (1964).

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extortion cases against Larin in different fora. This is where actual malice could attach on petitioner's part. Significantly, the trial court did not err in dismissing petitioner's complaints, a ruling affirmed by the Court of Appeals.

Keeping all these in mind, we are constrained to agree that there is sufficient basis for the award of moral and exemplary damages in favor of respondent Larin. The appellate court believed respondent Larin when he said he suffered anxiety and humiliation because of the unfounded charges against him. Petitioner's actions against Larin were found "unwarranted and baseless," and the criminal charges filed against him in the Tanodbayan and City Fiscal's Office were all dismissed[30] Hence, there is adequate support for respondent court's conclusion that moral damages have been proved.

Now, however, what would be a fair amount to be paid as compensation for moral damages also requires determination. Each case must be governed by its own peculiar circumstances.[31] On this score, *Del Rosario vs. Court of Appeals*,[32] cites several cases where no actual damages were adjudicated, and where moral and exemplary damages were reduced for being "too excessive," thus:

"In the case of *PNB v. C.A.*, [256 SCRA 309 (1996)], this Court quoted with approval the following observation from *RCPI v. Rodriguez, viz.*:

> 'x x x. Nevertheless, we find the award of P100,000.00 as moral damages in favor of respondent Rodriguez excessive and unconscionable. In the case of *Prudenciado v. Alliance Transport System, Inc.* (148 SCRA 440 [1987]) we said: "x x x [I]t is undisputed that the trial courts are given discretion to determine the amount of moral damages (*Alcantara v. Surro*, 93 Phil. 472) and that the Court of Appeals can only modify or change the amount awarded when they are palpably and scandalously excessive 'so as to indicate that

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[30] *Rollo*, pp. 77-78.

[31] *Philippine National Bank vs. Court of Appeals*, 266 SCRA 136, 140 (1997); citing *Makabali vs. C.A.* 157 SCRA 253 (1988).

[32] 267 SCRA 158, 173-174, citing *Geraldez vs. C. A.*, 230 SCRA 320 (1994).

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it was the result of passion, prejudice or corruption on the part of the trial court' (*Gellada v. Warner Barnes & Co., Inc.*, 57 O.G. [4] 7347, 7358; *Sadie v. Bacharach Motors Co., Inc.*, 57 O.G. [4] 636 and *Adone v. Bacharach Motor Co., Inc.*, 57 O.G. 656). But in more recent cases where the awards of moral and exemplary damages are far too excessive compared to the actual loses sustained by the aggrieved party, this Court ruled that they should be reduced to more reasonable amounts. x x x. (Italics ours.)'

'In other words, the moral damages awarded must be commensurate with the loss or injury suffered.'

"In the same case *(PNB v. CA)*, this Court found the amount of exemplary damages required to be paid (₱1,000,000.00) 'too excessive' and reduced it to an 'equitable level' (₱25,000.00)."

It will be noted that in above cases, the parties who were awarded moral damages were not public officials. Considering that here, the award is in favor of a government official in connection with his official function, it is with caution that we affirm granting moral damages, for it might open the floodgates for government officials counter-claiming damages in suits filed against them in connection with their functions. Moreover, we must be careful lest the amounts awarded make citizens hesitate to expose corruption in the government, for fear of lawsuits from vindictive government officials. Thus, conformably with our declaration that moral damages are not intended to enrich anyone,[33] we hereby reduce the moral damages award in this case from two hundred thousand (₱200,000.00) pesos to seventy five thousand (₱75,000.00) pesos, while the exemplary damage is set at ₱25,000.00 only.

The law allows the award of attorney's fees when exemplary damages are awarded, and when the party to a suit was compelled to incur expenses to protect his interest.[34] Though government officers are usually represented by the Solicitor General in cases connected with the performance of official functions, considering the nature of the charges, herein respondent Larin was compelled

[33] *Philtranco Service Enterprises, Inc. vs. Court of Appeals,* 273 SCRA 562, 574 (1997).

[34] Civil Code of the Philippines, Article 2208, par. (1) and (2).

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to hire a private lawyer for the conduct of his defense as well as the successful pursuit of his counterclaims. In our view, given the circumstances of this case, there is ample ground to award in his favor ₱50,000.00 as reasonable attorney's fees.

WHEREFORE, the assailed decision of the Court of Appeals dated November 29, 1991, is hereby *AFFIRMED* with *MODIFICATION* so that the award of actual damages are deleted; and that petitioner is hereby *ORDERED* to pay to respondent Larin moral damages in the amount of ₱75,000.00, exemplary damages in the amount of ₱25,000.00, and attorney's fees in the amount of ₱50,000.00 only.

No pronouncement as to costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ.*, concur.

FIRST DIVISION

[G.R. No. 114261. February 10, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BERLY FABRO y AZUCENA,** *accused-appellant.*

SYNOPSIS

Accused-appellant, together with her common-law husband Donald Pilay y Calag and Irene Martin, was charged with the crime of "violation of Section 21 (b), Art. IV, in relation to Section 4, Art. II of Republic Act No. 6425, as amended," before the Regional Trial Court of Baguio City. The information alleged that the above-named accused sold and/or delivered to PO2 Ellonito Apduhan, who acted as poseur-buyer, one kilo of dried