REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NOS. O-823 & O-824**
	For: Violation of Section 255 of the National Internal Revenue Code, as amended
-versus-	
	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
ANNE GIL RACHEL K. LABAO, Proprietor of SAN MIGUEL SECURITY AGENCY, *Accused.*	Promulgated: MAR 14 2024 8:45 a.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is accused's Demurrer to Evidence filed on 27 February 2023.[1]

Accused, Anne Gil Rachel K. Labao, was charged with the crime of violation of ***Section 255 of the National Internal Revenue Code, as amended, ("NIRC")*** for willful failure to pay deficiency income tax and value added tax ("VAT") for calendar year ("CY") 2010, allegedly committed as follows:

Criminal Case No. O-823[2]

> "That on or about May 15, 2018 and thereafter, in Iligan City, and within the jurisdiction of this Honorable Court, accused Anne Gil Rachel K. Labao, a registered taxpayer engaged in the business of security agency with obligation under the law to pay correct value-added tax, did then and there, willfully, unlawfully, and feloniously fail to pay deficiency value-added tax

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[1] Records, CTA Case Nos. O-823 & O-824, Vol. 2.
[2] Information, Criminal Case No. O-823, Records, CTA Case No. O-823, Vol. 1, pp. 5-6.

for the taxable year 2010 in the amount of One Million Two Hundred Forty Three Thousand One Hundred Twenty Five and 51/100 Pesos only (Php1,243,125.51), exclusive of surcharges and interest, despite final assessment and formal demand to pay and the services of several prior and post notices and demands, to the damage and prejudice of the Government.

CONTRARY TO LAW."

Criminal Case No. O-824[3]

"That on or about May 15, 2018 and thereafter, in Iligan City, and within the jurisdiction of this Honorable Court, accused Anne Gil Rachel K. Labao, a registered taxpayer engaged in the business of security agency with obligation under the law to pay correct income tax, did then and there, willfully, unlawfully, and feloniously fail to pay deficiency income tax for the taxable year 2010 in the amount of Two Million Six Hundred Eighty Seven Thousand Two Hundred Thirty Three and 19/100 Pesos only (Php2,687,233.19), exclusive of surcharges and interest, despite final assessment and formal demand to pay and the services of several prior and post notices and demands, to the damage and prejudice of the Government.

CONTRARY TO LAW."

Accused filed her Motion for Leave of Court to File Demurrer to Evidence[4] on 8 August 2022, which this Court granted in a Resolution, dated 1 February 2023.[5] Pending the resolution of such Motion for Leave of Court to File Demurrer to Evidence and even before the actual filing of accused's Demurrer to Evidence, the prosecution filed through registered mail on 8 September 2022 its Motion for Leave to File Embodied Motion to Admit Opposition to Demurrer to Evidence,[6] which contained its Opposition to the Accused's Demurrer to Evidence. Thereafter, accused filed her Demurrer to Evidence on 27 February 2023.

The accused's Demurrer to Evidence contains the following grounds:

1. The prosecution failed to establish the link between the accused as the registered owner, proprietress, and/or responsible officer of San Miguel Security Agency during the CY 2010 from which the alleged income tax arose;

2. The revenue officers ("ROs") presented by the prosecution were not the ones authorized under the Letter of Authority ("LOA") to conduct audit and/or assessment and were not the one who personally conducted the audit/assessment of the books and other accounting records of San Miguel Security Agency ("SMSA"), rendering the alleged income tax deficiency assessment void;

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[3] Information, Criminal Case No. O-824, Records, CTA Case No. O-824, Vol. 1, pp. 5-6.
[4] Records, CTA Case Nos. O-823 & O-824, Vol. 2, pp. 699-710.
[5] *Id.*, pp. 770-771.
[6] *Id.*, pp. 715-734

3. Accused Labao was not accorded due process in the issuance of the Preliminary Assessment Notice ("PAN") and Formal Letter of Demand ("FLD") as there was failure to prove that these notices were properly and duly served upon and received by accused or her duly authorized representative;

4. The prosecution failed to prove that there was willfulness or deliberate intent on the part of the accused to make or file a return; and

5. Accused is not civilly liable to pay the alleged income taxes and VAT.

On the other hand, the prosecution's Opposition to the Accused's Demurrer to Evidence counter-argues as following:

1. The prosecution has established clear and convincing evidence and proof beyond reasonable doubt for the conviction of the accused for the offense charged herein. The prosecution has sufficiently established through Exhibits "P-1" to "P-35-a" the elements of ***Section 255 of the NIRC*** in the present case;

2. The prosecution's witnesses, ROs Ivy Rose T. Gemina and Hidjarah B. Macarambon identified accused Labao as the proprietor of SMSA with Tax Identification Number 196-393-586 and registered with the Bureau of Internal Revenue ("BIR") at Revenue District Office ("RDO") No. 101 at Iligan City. On the other hand, ROs Saniarah Diangca and Yahya Bantuas of RDO 101 duly assessed accused with deficiency income tax and VAT in the total amount of Php6,376,576.94 and the BIR similarly served the LOA No. 101-2011-00000181, dated 8 November 2011; First Notice, dated 2 January 2012; Second and Final Notice, dated 30 January 2012; PAN, dated 8 January 2014; and Final Assessment Notice ("FAN") and FLD, dated 4 March 2014, at the registered business address of the taxpayer as appearing in the BIR documents. Further, the accused made attempts to settle and compromise her liability through executing Waiver of the Statute of Limitations, dated 29 April 2014, and sending a Letter Offer for Compromise Settlement, dated 27 April 2015. Moreover, the BIR exerted efforts to collect the deficiency income tax and VAT assessment during which the accused made partial payments in the amount of Php140,000.00.

3. Accused's Demurrer to Evidence are based merely on bare denials and surmises that are contrary to the evidence on record;

4. The BIR observed all of the elements for the observance of due process in providing the accused the basis for the tax assessment. This despite the fact that the assessment process is separate from criminal prosecution. Simply put, accused is obliged under the law to pay income tax and VAT, and it is proven that she did not do so;

5. As to the allegation that the accused did not personally receive the notices from the BIR, the same is without merit since the law, rules and regulations simply require that a representative of the taxpayers receive the BIR's notices on their behalf. In cases where the concerned ROs were unable to serve the required notices personally, they may resort to substituted service or service through registered mail. Existing revenue issuances do not define or delineate when personal service becomes impracticable or impossible, thus, ROs are free to resort to substituted service or service through registered mail at their option. The presumption of regularity of performance of official duty applies where public officers exerted utmost efforts in their duties. In the absence of affirmative evidence to rebut the presumption of regularity in the performance of official duties, it becomes conclusive. Thus, the validity of the methods employed by the concerned ROs in the case at bar for the purpose of serving notices upon the accused must stand in clear view of the absence of any evidence to the contrary;

6. Moreover, the accused cannot claim that the BIR kept sending notices to the same address of SMSA considering that it is the obligation of the taxpayer to inform the BIR of such changes. It is the duty of the taxpayer to inform the BIR of any changes on the taxpayer's address; and

7. Likewise, the prosecution need not present the ROs who conducted the assessment considering that their findings already form part of the BIR's docket, thus, are public records.

After careful evaluation of the pieces of documentary and testimonial evidence presented by the prosecution, this Court finds the same to be insufficient to secure a judgment of conviction against the accused.

A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence their adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue.[7] The party demurring challenges the sufficiency of the whole evidence to sustain a verdict.[8] In criminal cases, this remedy is provided by ***Section 23, Rule 119 of the Rules of Court*** which states:

> "**SEC. 23. Demurrer to evidence.** - After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

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[7] Katigbak v. The Sandiganbayan, G.R. No. 140183, 10 July 2003.

[8] JCL V Realty & Development Corporation v. Phil Galicia Mangali, G.R. No. 236618, 27 August 2020; Go- Yu v. Yu, G.R. No. 230443, 3 April 2019.

> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
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> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
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> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (1 0) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment."

In consonance with the foregoing, when the accused files a demurrer to evidence, the role of the trial court is to ascertain, based on the exercise of its sound discretion, whether there is competent or sufficient evidence to support a verdict of guilt.[9]

In the present case, the accused is charged with willful failure to pay tax under ***Section 255 of the NIRC,*** which reads as follows:

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

From the foregoing, the following elements must be established beyond reasonable doubt to sustain a conviction for willful failure to pay tax:

1. A person is required under the ***NIRC,*** or its rules and regulations, to pay any tax;

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[9] Singian, Jr. v. Sandiganbayan (3rd Division) et. al., G.R. Nos. 195011-19, 30 September 2013.

2. The said person failed to pay the required tax at the time required by law or rules and regulations; and

3. Such failure to pay the required tax at the time required by law or rules and regulations is willful.

First Element: The person is required by law, or the rules and regulations, to pay any tax.

Section 56 of the NIRC states:

> "**SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations.* –**
>
> ***(A) Payment of Tax.* -**
>
> ***(1) In General.*** - The total amount of tax imposed by this Title shall be paid by the person subject thereto at the time the return is filed.
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> xxx xxx xxx
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> ***(B) Assessment and Payment of Deficiency Tax.*** - After the return is filed, the Commissioner shall examine it and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid **upon <u>notice and demand</u> from the Commissioner.**"
> (Emphasis and underscoring, Ours)

In addition to ***Section 56 of the NIRC,*** the second instance where a taxpayer is legally obligated to pay tax as mentioned above likewise finds support from ***Section 6 of the NIRC***, which provides:

> **"SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -**
>
> (A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality:** *Provided, however,* **That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.**
>
> **<u>The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.</u>**

> Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided,* That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further,* That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer."
> (Emphasis and underscoring, Ours)

Based on the above provisions, the legal obligation to pay tax under the ***NIRC*** arises on two (2) specific instances, namely: (1) at the time required by law to pay a particular tax; and (2) upon being informed of a tax assessment issued by the BIR requiring the taxpayer to pay the same within a specified period, as indicated in the notice of assessment. In ***People v. Cross Country Oil & Petroleum Corp., et. al,***[10] this Court explained these instances as follows:

> "The first instance, involves a self-assessment of tax obligations as outlined by the Supreme Court in the case of *Commissioner of Internal Revenue v. Fitness by Design, Inc.* (or Fitness by Design case), to wit:
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> 'The assessment process starts with the filing of the tax return and payment of tax by the taxpayer. The initial assessment evidenced by the tax return is a self assessment of the taxpayer. The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment.'
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> A self-assessment approach, in essence, starts and ends with the initial assessment by the taxpayer of the tax due, corresponding with the filing of the requisite return and payment of the said tax. Thereafter, assuming the tax obligations were properly computed and paid, the process is rendered complete without the participation or intervention of the BIR.
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> **The second instance, on the other hand, involves the issuance by the BIR of a tax assessment, when the tax obligation was not properly computed or paid. The deficiency tax assessment, shall then be paid by the taxpayer upon notice and demand. <u>These notice and demand are predicated upon a valid assessment issued in full compliance with the requirements on procedural due process."</u>**
> (Emphasis and underscoring, Ours)

A perusal of the two Informations, both dated 5 August 2019, filed against the accused reveals that the alleged legal obligation of the accused to pay taxes under the ***NIRC*** was derived from the second instance, *i.e.*, upon being informed of a deficiency tax assessment issued by the BIR requiring the taxpayer to pay the same within a specified period, as indicated in a final assessment with formal demand to pay. Accordingly, to satisfy the first element of the crime charged, the prosecution must be able to establish the existence of a valid assessment notice and demand duly issued to the accused thereby legally obligating the latter to pay deficiency taxes. The validity of

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[10] CTA Crim. Case No. 0-620, 19 May 2021.

the assessment would, in turn, depend on whether the same was issued strictly in accordance with the requirements of the *NIRC* and its relevant rules and regulations.

The NIRC requires that taxpayers must be informed in writing of the facts and laws upon which an assessment is based.

Section 228 of the NIRC prescribes the procedure to be observed in the issuance of tax deficiency assessments. The said provision provides:

> "SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice." (Emphasis, Ours)

To implement the foregoing provisions, ***Revenue Regulations No. 12-1999 ("RR 12-99")***[11] specifies the due process requirement to be observed in issuing deficiency tax assessments. The relevant portion of the said issuance reads:

> "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –
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> 3.1 Mode of procedures in the Issuance of a deficiency tax assessment:
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> xxx xxx xxx
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> 3.1.2 Preliminary Assessment Notice (PAN). - If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, **showing in detail, the facts and the law, rules and regulations, or**

[11] Considering that the deficiency assessments involved in this case cover taxable year 2010, the provisions of RR No. 12-99 before the same was amended by Revenue Regulation No. 18-2013 properly applies in this case.

> **jurisprudence on which the proposed assessment is based** (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> xxx xxx xxx
>
> 3.1.4 Formal Letter of Demand and Assessment Notice. - The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void** (see illustration in ANNEX B hereof). **The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.**
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> xxx xxx xxx
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> 3.1.7 Constructive Service. If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case (see illustration in ANNEX D hereof)."
> (Emphasis, Ours)

In ***Commissioner of Internal Revenue vs. Metro Star Superama, Inc.***,[12] the Supreme Court categorically held that failure to strictly comply with the notice requirements prescribed under ***Section 228 of the NIRC*** and ***RR 12- 99***, as amended, is tantamount to denial of due process. It further stressed the need to fully inform a taxpayer of the facts and laws upon which an assessment issued against him or her is based:

> "Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. **He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not**

[12] G.R. No. 185371, 8 December 2010, 637 SCRA 644, 646.

merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.

xxx xxx xxx

From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. **Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void."**

From the above, any failure to fully inform a taxpayer, as required, renders nugatory any assessment made by the tax authorities.

Meanwhile, in the case of ***Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue***,[13] the Supreme Court held that it is a requirement of due process that the taxpayer **must actually receive the assessment**, to wit:

"x x x It must be noted, however, that the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. In Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, we had occasion to say:

> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer."**

(Emphasis, Ours)

Thus, it is not simply a question of whether the assessment notices were sent to respondent by petitioner. It is imperative that the taxpayer actually received such tax assessment notices.

[13] G.R. No. 155541, 27 January 2004, 421 SCRA 275.

Finally, in the case of ***Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.***[14] ("***GJM Philippines***") the Supreme Court enunciated the rule to be observed in cases where the taxpayer denies the receipt of assessment notices. The Supreme Court held:

> "If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the onus probandi has shifted to the BIR to show by contrary evidence that [the taxpayer] indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee."

Based from the foregoing, the rule is that in case the taxpayer denies receipt of the assessment notices from the BIR, the latter has the burden to prove by competent evidence that the required notices were actually received by the taxpayer.

The prosecution failed to prove actual receipt by the accused of the PAN and FLD/FAN.

Accused in the case at bar denies actual receipt of the one pager PAN, dated 8 January 2014,[15] the one pager FLD, dated 4 March 2014 which was signed by Regional Director Alberto Olasiman,[16] and the FAN, which were all dated 4 March 2014.[17]

Accused insists that she never actually received a copy of the PAN. Accused further alleged that although a Letter Protest, dated 14 January 2014,[18] was sent to the BIR to refute the contents of the PAN, the same was drafted and signed entirely by her father, Francisco Labao. Accused explained that she never had any participation in the drafting of such Letter Protest in the same way that she never took part in the affairs of SMSA. Further, accused posited that the person who supposedly received the PAN, Ms. Cristine B. Lorejo is not her duly authorized representative.

Moreover, accused argues that she never actually received the FLD/FAN, considering that neither her signature nor that of a duly authorized representative is present therein indicating her actual receipt of such documents. y

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[14] G.R. No. 202695, 29 February 2016, 785 SCRA 258-259.
[15] Exhibit "P-10".
[16] Exhibit "P-14".
[17] Exhibits "P-13" and "P-13-a".
[18] Exhibit "P-11".

Following the accused's denial of actual receipt of the PAN, FAN and FLD, it becomes incumbent upon the prosecution to prove beyond reasonable doubt that the accused actually received such documents. As provided by ***GJM Philippines***, the burden of proof is shifted to the prosecution to prove that the taxpayer actually received the assessment notices whenever the latter denies receiving the assessment notices.

Particularly, for the PAN, the prosecution should have adduced evidence proving beyond reasonable doubt that the person who supposedly received such document, Ms. Lorejo, is a duly authorized representative of the accused who is authorized to receive correspondences on her behalf (*i.e.*, the testimony of Ms. Lorejo), and that, as such, Ms. Lorejo's receipt of the PAN is deemed receipt by accused.

For the FAN/FLD, the prosecution should have presented the actual receiving copy showing accused's receiving signature if the mode of service was through personal service or the actual registry receipt indicating actual receipt by accused of the mailed copy of the FAN/FLD if the mode of service was through registered mail.

However, the prosecution failed to adduce any of these or similar pieces of evidence which would prove beyond reasonable doubt that the accused actually received copies of the PAN, FAN, and FLD.

The prosecution cannot seek refuge under the presumption that mail matter sent by registered mail is deemed received by the addressee in the regular course of mail precisely because there was a direct denial by accused of her receipt of the assessment notices. In ***Commissioner of Internal Revenue v. T Shuttle Services, Inc.***,[19] the Supreme Court pertinently held as follows:

> "x x x Under Section 3 (v), Rule 131 of the Rules of Court, there is a disputable presumption that 'a letter duly directed and mailed was received in the regular course of the mail.' However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee."

The same holds true with respect to the presumption of regularity in the performance of official duty. As accused denied receipt of the assessment notices, thus denying that official duty was performed without any irregularities, said presumption is inapplicable here.

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[19] G.R. No. 240729, 24 August 2020

Accordingly, the accused is deemed not to have been served a PAN, FAN and FLD. Without a PAN, FAN, or FLD, accused had no way of determining the facts and laws upon which the assessment issued against her was based and thus cannot intelligently address such assessment — a clear violation of her right to due process.[20] The present income tax and VAT assessment is consequently void.

To reiterate, the subject Information would show that the present criminal cases filed under ***Section 255 of the NIRC*** against accused is allegedly based upon the latter's willful failure to pay taxes demanded through an assessment. As found by this Court, the assessment issued against the accused is a void assessment as the accused failed to actually receive a copy of the PAN, FAN and FLD. Such void assessment does not contain a valid demand to pay taxes. Accordingly, without a valid demand to pay taxes as contained in an assessment, there is no legal obligation to pay a tax on the part of the accused, thereby rendering the present criminal cases under ***Section 255 of the NIRC***, which are allegedly based on the accused's willful failure to pay a tax due as a result of an assessment, without any basis. Thus, the present criminal cases must be dismissed.

In ***Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines***,[21] the Supreme Court held that, by its nature, the offense of a failure to pay deficiency tax after repeated demands by the taxing authority could only be committed after service of the FLD/FAN and demand for payment of the deficiency taxes upon the taxpayer. According to the Supreme Court:

> "Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. This is so because **prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allotted period."**
> (Emphasis and underscoring, Ours)

A taxpayer who has not received a valid FLD/FAN is under no obligation to pay the deficiency taxes assessed thereon. It necessarily cannot commit any violation of ***Section 255 of the NIRC*** for refusal to pay said assessed deficiency taxes without receiving the valid FLD/FAN.

[20] Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 & 201418-19, 3 October 2018.

[21] G.R. Nos. L-48134-37, 18 October 1990.

The PAN and FLD/FAN failed to state the factual and legal bases of the assessment.

In addition to the findings that the accused failed to actually receive a copy of the PAN, FLD, and FAN, the instant assessment is likewise void considering that PAN, FLD, and FAN failed to provide the factual and legal bases of the present assessment.

To reiterate, under ***Section 228 of the NIRC***, "the taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void." Even ***Section 3.1.4 of RR 12-99*** requires that the assessment notices "shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based"; otherwise, the assessment is void.

The requirement that the taxpayer be informed of the factual and legal bases of the assessment is mandatory.[22] It cannot be presumed.[23] As a requirement of due process, this rule allows the taxpayer to protest effectively.

Given the foregoing, the assessment notices (*i.e.,* PAN and FAN/FLD) must be accompanied by complete details, *i.e.,* facts, law, rules and regulations, or jurisprudence on which the assessment is based. Otherwise, it is void.

A perusal of the one pager PAN, dated 8 January 2014,[24] shows that the BIR simply stated that there is deficiency income tax and VAT due from SMSA in the total amount of Php6,183,106.35 but did not provide the legal and factual bases as to how such amount was determined to be due from SMSA. The PAN did not present complete details covering the discrepancies established during the investigation. In other words, there is nothing in the PAN that would show the factual and legal bases on which the assessments were made.

The same is equally true with the one pager FLD, dated 4 March 2014, which was signed by Regional Director Alberto Olasiman,[25] and the FAN, which were all dated 4 March 2014.[26] These also failed to sufficiently present complete details which would identify the discrepancies determined during investigation and show the factual and legal bases of the assessment. y

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[22] Commissioner of Internal Revenue v. Spouses Magaan, G.R. No. 232663, 3 May 2021, *citing* Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, 8 December 2010.
[23] *Id., citing* Commissioner oflnternal Revenue v. Enron Subic Power Corporation, G.R. No. 166387, 19 January 2009.
[24] Exhibit "P-10".
[25] Exhibit "P-14".
[26] Exhibits "P-13" and "P-13-a".

In fact, the FLD and the FAN simply reiterated the Php6,183,106.35 income tax and VAT assessment contained in the PAN without even explaining as to how such amount was retained. Simply put, the FLD/FAN just demanded the payment of alleged deficiency income tax and VAT in the amount of Php6,183,106.35 without any details or particulars of how they were arrived at or why SMSA's arguments in its 2-page Protest to the PAN[27] were rejected by the BIR.

Moreover, while the FLD provided that the discrepancies found during investigation were further explained in an Annex, such Annex was not presented in evidence before this Court. The existence of such Annex cannot be presumed considering that the prosecution must establish its case beyond reasonable doubt. This Court must thus deem the Annex absent from the FLD, which consequently lacked any further explanations for the discrepancies allegedly found during investigation.

This Court thus finds the PAN and FLD/FAN void for failure to state the factual and legal bases of the assessment, further proving that the present criminal cases are without any basis.

Second and Third Element: Failure to pay the required tax at the time required by law, or the rules and regulations; Such failure to pay the required tax is willful.

The showing of failure to pay the pertinent tax and the willfulness of such failure rests on whether the taxpayer is required to pay said tax in the first place. Accordingly, the second and third elements can arise only when the first element actually exists. There can be no willful failure to pay tax at all if there is no requirement to pay the same.

Since the subject assessments are void, accused was not required to pay tax. Accordingly, accused cannot be said to have failed to pay the deficiency taxes (*i.e.*, second element), much more to have done so willfully (*i.e.*, third element).

In sum, the prosecution failed to prove any of the elements in the offense charged, entitling accused to an acquittal.

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[27] Records, CTA Case No. O-823, Vol. 1, pp. 31-32.

Accused has no civil liability.

In addition, no civil liability may likewise be adjudged against the accused. ***Section 2, Rule 111 of the Rules of Court*** provides:

> "RULE 111
> Prosecution of Civil Action
>
> XXX XXX XXX
>
> SEC. 2. When separate civil action is suspended. –
>
> XXX XXX XXX
>
> The extinction of the penal action does not carry with it extinction of the civil action. **However, the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist."**
> **(Emphasis, Ours)**

Given the finding that the subject assessments are void, the civil liability *ex delicto* is likewise deemed extinguished considering that the act or omission from which the civil liability may arise did not exist.

This Court thus finds no need to discuss the other arguments set forth by the parties.

WHEREFORE, the accused's Demurrer to Evidence filed on 27 February 2023 is hereby **GRANTED.** Accordingly, CTA Crim. Case Nos. O-823 & O-824 are hereby dismissed for insufficiency of evidence.

The cash bail bond of accused **ANNE GIL RACHEL K. LABAO** is hereby **DISCHARGED** and to be **RELEASED** to her upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice