REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-917**
	For: Violation of Section 255 in relation to Sections 253 and 256 of RA 8424, as amended **(Willful Failure to Pay Tax)**
	Members:
	RINGPIS-LIBAN, *Chairperson,* **MODESTO-SAN PEDRO,** and **FERRER-FLORES,** *JJ.*
- *versus* -	
SERAFIN PANALIGAN VILLALOBOS, proprietor of **PSPV COMMERCIAL RICE SUPPLY & GROCERY,** *Accused.*	Promulgated: NOV 2 6 2024 10:05 Am

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court is the *Information* filed on May 16, 2022 charging the accused **Serafin Panaligan Villalobos**, as proprietor of PSPV Commercial Rice Supply & Grocery, with violation of Section 255, in relation to Sections 253 and 256, of the National Internal Revenue Code of 1997, as amended (1997 NIRC), the accusatory portion of which reads:

> "That on or about 06 July 2017 and thereafter, in Manila City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, **Serafin Panaligan Villalobos**, the proprietor of accused **PSPV Commercial Rice Supply and Grocery**, with Tax Identification No. 185-102-171, to whom notices and demands were made by the Bureau of Internal Revenue (BIR) to pay his **income tax** obligations for the year 2013, in the amount of Three Million Sixty-

> Eight Thousand Four Hundred Sixty-Nine Pesos and Thirty-Four Centavos (**Php3,068,469.34**), exclusive of surcharges and interest, under BIR Assessment Notice No. 34-13-IT-16-0203, did then and there willfully, unlawfully, knowingly and feloniously fail, refuse and neglect to pay the BIR the said amount despite due notice and demand and without formally protesting and appealing the same with the proper authority, which demand has already become final, to the damage and prejudice of the government.
>
> **CONTRARY TO LAW.**"

On June 7, 2022, the Third Division of this Court issued a Resolution[1] ordering the issuance of warrants of arrest for the accused. Accordingly on June 14, 2022, this Court issued the Warrant of Arrest[2] against the accused.

On August 15, 2022, this Court received the Return of Warrant of Arrest dated August 12, 2022[3] issued by the Chief, Manila Criminal Investigation and Detection Group (CIDG) stating that the accused was arrested on August 12, 2022.

On August 17, 2022, this Court received a Motion to Reduce Bail (With Formal Entry of Appearance)[4] filed by the accused praying for the reduction of the amount of the required bail to Thirty Thousand Pesos (₱30,000.00).

In an Order dated August 18, 2022,[5] this Court approved the posting of bail for the provisional liberty of the accused in the amount of Sixty Thousand Pesos (₱60,000.00) and, accordingly, lifted and set aside the Warrant of Arrest issued against the accused.

In a Resolution dated September 14, 2022,[6] this Court declared the accused's Motion to Reduce Bail as moot and academic.

During the arraignment held on March 1, 2023, the accused, with the assistance of his counsel *de parte*, entered a plea of "Not Guilty" to the crime charged.[7] After the termination of the pre-trial upon the issuance of the Pre-Trial Order[8] on July 4, 2023, the trial of the case for the presentation of the parties' evidence ensued.

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[1] Docket, pp. 67-68.
[2] *Id.*, pp. 110-111.
[3] *Id.*, p. 82.
[4] *Id.*, pp. 91-92.
[5] *Id.*, pp. 93-94.
[6] *Id.*, p. 98.
[7] Minutes of the Hearing dated March 1, 2023, Docket, p. 204.
[8] Docket, pp. 247-253.

During trial, the plaintiff presented the following witnesses: (1) Revenue Officer ("RO") Setie Naira B. Deron; (2) RO Sarah A. Dolina; (3) RO Masabae P. Ampuan.

RO Setie Naira B. Deron is a Revenue Officer II in the Regular LT Audit Division III, BIR National Office. She testified, by way of Judicial Affidavit,[9] that sometime in September 2016, when she was still assigned at the Revenue District Office (RDO) No. 34, BIR Revenue Region No. 6-Manila, the internal revenue tax case of the accused was assigned to her for the service of the Preliminary Assessment Notice (PAN) as well as the Formal Letter of Demand (FLD) and Assessment Notices. She further recounted that while she was able to personally serve the PAN to the accused, she had to resort to substituted service in serving the FLD and Assessment Notices because the accused cannot be located at his registered address. She stated that she left a copy of the FLD and Assessment Notices at the office of the Barangay Chairman having jurisdiction over the place of business of the accused. RO Deron also identified Exhibits **"P-11"**, **"P-4"**, **"P-4-a"**, **"P-4-b"**, and **"P-4-c"**, as part of her testimony.

On cross examination,[10] she testified that since she cannot find the accused at the latter's registered address, she thus left the copy of the FLD and Assessment Notices at the barangay; that it was one Janice Dimacali, Barangay Secretary, who received the FLD and Assessment Notices; that she does not know why the copy of the FLD and Assessment Notices attached to the Information appears to have been received by one Elvira Soriano while the copy attached to her Judicial Affidavit appears to have been received by Janice Dimacali; that she does not know who Elvira Soriano is; that when she asked where the residence of the accused was from the the person in the barangay hall, the latter told her she had no idea.

RO Sarah A. Dolina, a Revenue Officer IV-Collection at the BIR Revenue Region No. 6-Manila, testified, through her Judicial Affidavit,[11] that the 2013 internal revenue tax case of the accused was assigned to her for enforcement of collection. She stated that she evaluated the whole tax docket of the case and she ascertained that an FLD and Assessment Notices were issued to the accused on November 14, 2016. Since there was no protest filed on the deficiency assessment, their office thereafter issued a Preliminary Collection Letter (PCL) and Final Notice Before Seizure (FNBS). She likewise testified that she served to the accused a Warrant of Distraint and/or Levy as well as Warrants of Garnishment to different banks. On September 20, 2018, she recommended, through a Memorandum, the referral of the accused's case docket to the Legal Division for appropriate legal action. Thereafter, the Legal Division initiated the filing of criminal charges, with her being one of the affiants in the Joint Complaint-Affidavit filed against the accused. RO Dolina

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[9] Exhibit "P-26", Docket, pp. 148-152.
[10] Transcript of Stenographic Notes (TSN) dated July 4, 2023, pp. 9-17.
[11] Exhibit "P-27", Docket, pp. 121-125.

also identified Exhibits **"P-3"**, **"P-4"**, **"P-4-a"**, **"P-4-b"**, **"P-4-c"**, **"P-12"**, **"P-12-a"**, **"P-13"**, **"P-13-a"**, **"P-14"**, **"P-15"**, **"P-16"**, **"P-17"**, **"P-18"**, **"P-19"**, **"P-20"**, **"P-21"**, **"P-22"**, **"P-23"**, **"P-24"**, and **"P-25"**, as part of her testimony.

On cross-examination,[12] she testified that the collection proceedings against the accused was handled by one JP Gambala before the same was transferred to her; that she confirmed that such transfer was made via a memorandum of assignment.

RO Masabae P. Ampuan, is employed as a Revenue Officer IV at the BIR RDO No. 30, Revenue Region No. 6-Manila. She testified, by way of Judicial Affidavit,[13] that on September 17, 2014 while she was still with BIR RDO No. 34, the 2013 internal revenue tax case of the accused was assigned to her for the conduct of audit. To authorize the conduct of audit of the accused for taxable year 2013, Letter of Authority (LOA) No. LOA-034-2014-00000426/SN eLA201100071259 dated 17 September 2014 was issued, which she thereafter served to the accused together with the Checklist of Requirements on September 18, 2014. After the issuance of the LOA, she also served to the accused the following notices: (1) First Request for Presentation of Records dated October 13, 2014; and (2) Second and Final Request for the Presentation of Records dated August 13, 2014. As the accused failed to submit the required documents and accounting records, they recommended the issuance of a Subpoena *Duces Tecum* (SDT) against the accused. On June 4, 2015, an SDT was issued. Despite his receipt of such SDT, the accused still failed to submit the required documents, prompting the filing of a criminal case against him. RO Ampuan also identified Exhibits **"P-5"**, **"P-6"**, **"P-8"**, **"P-9"**, **"P-9-a"**, **"P-9-b"**, and **"P-10"**, as part of her testimony.

On cross examination,[14] RO Ampuan eventually admitted that it was not the accused who *directly and personally received* the LOA, the First and Second Notices for Presentation of Records, and the SDT; that the LOA and the First Request for Presentation of Records dated October 13, 2014 were actually received by one Janice Dimacali; that the Second and Final Request for the Presentation of Records dated August 13, 2014 was received by one Mercy Parada; and that the SDT dated June 4, 2015 was received by one Juan/Mario Corpus.

On re-direct examination,[15] RO Ampuan testified that when she served the notices, she specifically stated that the same were for taxpayer Serafin Panaligan Villalobos and that she served the notices to the address as stated on the LOA. She further testified that, based on records, there are no other

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[12] TSN dated July 4, 2023, pp. 19-23.
[13] Exhibit "P-25", Docket, pp. 164-169.
[14] TSN dated July 4, 2023, pp. 24-33.
[15] *Id.*, pp. 33-40.

addresses given for the accused save for the registered address to which the notices were served.

On July 12, 2023, the plaintiff filed its Formal Offer of Evidence.[16] In a Resolution dated October 25, 2023[17] the plaintiff's pieces of documentary evidence were admitted except Exhibit **"P-25"** which was denied admission for failure to have the same compared and marked during a commissioner's hearing. Upon motion for reconsideration,[18] Exhibit **"P-25"** was eventually admitted as evidence.

The defense presented three (3) witnesses, namely: (1) Serafin Panaligan Villalobos; (2) Myrna Villalobos Chu; and (3) Myrica Joan V. Chu.

The accused, **Serafin Panaligan Villalobos**, testified, through his Judicial Affidavit,[19] that he and his brother, Rolando Panaligan Villalobos co-managed the day-to-day operations of PSPV Commercial Rice Supply and Grocery (the "store") and supervised the employees while the keeping of books and the BIR compliance were handled by their accountant, Marietta Pellegrino. When his wife, Maria Ana Yumol Villalobos had a stroke in 2013, he left the management of the store to his brother. He further attested that he closed the store in 2015 because of financial reverses and also because he had to attend to his sick wife. He also claimed that on March 19, 2015, he executed an Affidavit of Cancellation of Business which he subsequently gave to his accountant for submission to the BIR with instruction to report the closure of the store to the BIR. After the store's closure, the accused attested that its space was rented out to another. Sometime in April 2016, he was notified of the issuance of a PAN which he then forwarded to his accountant since he allegedly does not have any knowledge about the assessment process. He insisted that his accountant advised him not to worry and need not do anything since the store was already closed. Subsequently, however, he discovered that there was an FLD and a criminal charge against him for failure to pay tax during his arrest sometime in November 2021. He further asserted that he does not know who received the FLD and does not recognize whose signature was affixed to the said document. After his arrest and the posting of his bail, the accused alleged that he immediately coordinated with the BIR regarding his assessment and thereafter paid the deficiency expanded withholding tax amounting to ₱48,225.53 inclusive of increments. The accused also identified Exhibits **"A-3"**, **"A-5"**, **"A-6"**, **"A-7"**, and **"A-12"**, as part of his testimony.

On cross examination,[20] the accused admitted that he was not able to follow-up with his accountant as to whether his Affidavit of Cancellation of Business was submitted to the BIR; that he received a copy of the PAN in

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16 Docket, pp. 257-265.
17 *Id.*, pp. 304-305.
18 Order dated November 7, 2023, Docket, p. 307.
19 Exhibit "A-15", Docket, pp. 216-222.
20 TSN dated November 7, 2023, pp. 11-18.

2016; that he only became aware of the issuance of an FLD against him when he was arrested; that he does not know anyone by the name of Elma B. Soriano, the one who purportedly signed the FLD; that he received a copy of the Warrant of Distraint and/or Levy; that he was elected as Barangay Chairman of their barangay in 2016 and served until 2023; that he knew someone by the name of Janice Dimacali who he confirmed was his barangay secretary; that the accused asserted that the signature on the FLD and the LOA was not that of Janice Dimacali, the secretary of their barangay.

Myrna Villalobos Chu is the sister of the accused. She testified, by way of Judicial Affidavit,[21] that PSPV Commercial Rice Supply and Grocery was actually the business of her parents but was registered under the name of the accused. In 2015, PSPV Commercial Rice Supply and Grocery was closed because the accused got bankrupt and also had to take care of his sick wife.

On cross-examination,[22] she attested that she never took part in the running of PSPV Commercial Rice Supply and Grocery's business; that she does not know any record pertaining to its business; that the space where PSPV Commercial Rice Supply and Grocery used to operate was just rented; and that she does not know who occupied the said space after PSPV Commercial Rice Supply and Grocery had ceased its operations.

Myrica Joan V. Chu is the niece of the accused. She testified, through her Judicial Affidavit,[23] that PSPV Commercial Rice Supply and Grocery ceased operations in 2015 and its space was leased out to another tenant. PSPV Commercial Rice Supply and Grocery was closed by her uncle because the latter's wife was hospitalized for a long time which eventually led to their bankruptcy.

On cross-examination,[24] she attested that she was neither an employee of nor have any direct participation in the business of PSPV Commercial Rice Supply and Grocery; and that she does maintain the same residence as that of the accused.

On June 25, 2024, this Court received the accused's Formal Offer of Documentary Exhibits.[25] In a Resolution dated July 29, 2024,[26] this Court admitted Exhibits **"A-4"**, **"A-7"**, **"A-7-a"**, **"A-7-b"**, **"A-7-c"**, **"A-8"**, **"A-9"**, **"A-9-a"**, **"A-10"**, **"A-10-a"**, **"A-11"**, **"A-15"**, **"A-16"**, and **"A-17"**, subject to this Court final evaluation as to their probative value with respect to the issues of the case. However, Exhibits **"A-3"**, **"A-5"**, **"A-6"**, and **"A-12"**, were denied for failure to submit the copies of these that were actually marked during the

[21] Exhibit "A-17", Docket, pp. 232-235.
[22] TSN dated April 4, 2024, pp. 6-7.
[23] Exhibit "A-16", Docket, pp. 236-239.
[24] TSN dated June 13, 2024, pp. 6-7.
[25] Docket, pp. 322-325.
[26] *Id.*, pp. 333-334.

Commissioner's Hearings for this case, while Exhibits **"A-1"**, **"A-2"**, **"A-13"**, and **"A-14"**, were denied for failure to submit any copies of these exhibits, whether marked or unmarked.

On August 29, 2024, the accused filed his Memorandum[27] via a private courier and it was received by this Court on August 30, 2024. On the other hand, the plaintiff filed its Memorandum[28] on September 9, 2024.

In a Resolution dated September 24, 2024,[29] this Court submitted the present case for decision.

THE ISSUES

For resolution of this Court are the following issues:[30]

1. Whether or not accused is guilty of the crime as charged in the Information;

2. Whether or not accused is civilly liable to pay deficiency income tax in the amount of ₱3,068,469.34 for taxable year 2013 exclusive of surcharges and interest.

THE PARTIES' ARGUMENTS

The plaintiff maintains that it was able to prove the guilt of the accused beyond reasonable doubt based on the evidence presented.[31] Despite the service of the assessment notices, the accused did not file any administrative protest thus resulting to the finality of the assessment.[32]

On the other hand, the accused argues that the plaintiff failed to establish his guilt beyond reasonable doubt because there was no proper service of the LOA and the assessment notices resulting to the nullity of the assessment.[33]

The accused likewise asserts that the crime charged has already prescribed.[34]

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[27] *Id.*, pp. 335-347.
[28] *Id.*, pp. 358-366.
[29] *Id.*, p. 368.
[30] Statement of Issues, Pre-Trial Order, Docket, p. 248.
[31] Docket, pp. 362-364.
[32] *Id.*
[33] Docket, pp. 341-345.
[34] *Id.*

THE COURT'S RULING

Jurisdiction

The Court shall first discuss whether it properly took cognizance of this case. Section 7(b)(1) of Republic Act (RA) No. 1125, as amended, in relevant part, states:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (b) Jurisdiction over cases involving criminal offenses as herein provided:
>
> (1) **Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code** or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however*, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. x x x" *(Emphasis supplied)*

In all criminal offenses arising from violations of the 1997 NIRC where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is One Million Pesos (₱1,000,000.00) or more, this Court shall have exclusive original jurisdiction. In the *Information* filed against the accused, the principal amount of deficiency income tax claimed amounted to **₱3,068,469.34**. Correspondingly, this Court has exclusive original jurisdiction over this case.

Criminal Aspect of the Case

The *Information* charged the accused, as proprietor of PSPV Commercial Rice Supply and Grocery, with violation of Section 255, in relation to Sections 253 and 256, of the 1997 NIRC for alleged failure to pay deficiency income tax for taxable year 2013 in the amount of ₱3,068,469.34, exclusive of surcharges and interest, despite final notice and demand and without filing any protest thereto.

In *People v. Joel C. Mendez*,[35] the Supreme Court held that "to prosecute a violation of Section 255, it must be shown that: (1) the taxpayer is required to pay any tax, make or file a return, keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess

[35] G.R. Nos. 208310-11, March 28, 2023.

taxes withheld on compensation, at the time or times required by law or rules and regulations; (2) the taxpayer failed to do so; and (3) the act is willful."

As the *Information* specifically charges the accused of willful non-payment of tax, the plaintiff must therefore prove beyond reasonable doubt the following elements:

1. The accused is a person required to pay tax;

2. The accused failed to pay such tax at the time required by law; and

3. The failure to pay the tax is willful.

***1st* element:** *Accused is a person required to pay tax*

Section 24(A)(1) of the 1997 NIRC imposes income tax on all taxable income derived for each taxable year from all sources within and without the Philippines, other than those specific items of income subject to final income taxes, by every individual citizen of the Philippines residing therein.

In this case, the parties have stipulated that the accused is the proprietor of PSPV Commercial Rice Supply and Grocery and registered with BIR RDO No. 34 with Tax Identification Number 185-102-171.[36] This is consistent with the admission of the accused in his Judicial Affidavit[37] that he used to be the proprietor of PSPV Commercial Rice Supply and Grocery while it was still in operation until its closure in 2015. The first element was thus sufficiently established in this case.

***2nd* element:** *Accused failed to pay such tax at the time required by law*

The accused was charged with willful failure to pay deficiency income tax for taxable year 2013 arising from BIR Assessment Notice No. 34-13-IT-16-0203. Inasmuch as the alleged deficiency income tax arose from an assessment, as alleged in the *Information*, it becomes necessary for the plaintiff to prove that it issued the subject assessment notices in strict compliance with Section 228 of the 1997 NIRC and implementing regulations.

Section 228 of the 1997 NIRC prescribes the procedure to be observed in the issuance of tax deficiency assessments. The said provision, in relevant part, provides:

[36] Item 3, Statement of Facts, Pre-Trial Order, Docket, p. 247.
[37] Exhibit "A-15", Docket, p. 218.

"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 preassessment notice shall not be required in the following cases:

xxx xxx xxx

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 supplied)*

To implement the foregoing provision, RR No. 12-99, as amended,[38] specifies the due process requirement to be observed in issuing deficiency tax assessments, which include the prescribed mode or manner by which the assessment notices must be served. The relevant portion of the said issuance reads:

"**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 ***Preliminary Assessment Notice (PAN).*** — If after review and evaluation 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 a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or 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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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[38] As amended by RR No. 18-2013 dated November 28, 2013.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN 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 assessment shall be void* (see illustration in ANNEX 'B' hereof).

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3.1.6 *Modes of Service.* – The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner of his duly authorized representative through the following modes:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known* address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii)<u>Substituted service can be resorted to when the party is not present at the registered or known address</u> under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, <u>the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence</u>. The notice shall then be given to said barangay official. <u>Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.</u>

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'Disinterested witnesses' **refers to persons of legal age other than employees of the Bureau of Internal Revenue."** *(Emphasis and underscoring supplied)*

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*,[39] 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,

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

due process requires that it must be served on and received by the taxpayer." *(Emphasis supplied)*

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.

Meanwhile, in the case of *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*,[40] the Supreme Court enunciated the rule to be observed in cases where the taxpayer denies the receipt of assessment notices. The Supreme Court emphatically held that: "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."

To prove that the accused was duly assessed for deficiency income taxes, the plaintiff presented the following documents: (1) Letter of Authority (LOA) No. LOA-034-2014-00000426/SN eLA201100071259 dated 17 September 2014; (2) Checklist of Requirements; (3) First Request for Presentation of Records dated October 13, 2014; (4) Second and Final Request for the Presentation of Records dated August 13, 2014; (5) Subpoena *Duces Tecum* (SDT) dated June 4, 2015; (6) Preliminary Assessment Notice (PAN) dated September 22, 2016 with Details of Discrepancies; and (7) Formal Letter of Demand (FLD) with Assessment Notices dated November 14, 2016.

Upon examination of the foregoing documents, this Court noted that these were received by individuals other than the accused himself, except for the PAN which was personally received by the accused. It is thus incumbent upon the plaintiff to prove that these documents were validly served to the accused strictly in accordance with any of the modes of service prescribed by RR No. 12-99, as amended. The documentary and testimonial evidence presented by the plaintiff, however, proved the contrary.

Based on the testimony of RO Masabae P. Ampuan upon cross-examination conducted during the hearing held on July 4, 2023, she testified as follows:[41]

"**CROSS-EXAMINATION BY ATTY. RAYCHELLE S. PACHECO.**

ATTY. PACHECO:
Q. In your Judicial Affidavit, you mentioned that the Letter of Authority, together with the checklist of requirements was served upon the accused on September 8, 2014, correct?

RO AMPUAN:
A. Yes.

[40] G.R. No. 202695, February 29, 2016, 785 SCRA 258-259.
[41] TSN dated July 4, 2023, pp. 24-32.

ATTY. PACHECO:
Q. And in Item No. 10 of your Judicial Affidavit, you also affirmed that these documents were served upon the accused of the said date, correct?

RO AMPUAN:
A. Yes.

ATTY. PACHECO:
Q. Did you personally serve this letter of authority and that checklist?

RO AMPUAN:
A. Yes, Your Honor.

ATTY. PACHECO:
Q. Do you remember where did you serve these documents?

RO AMPUAN:
A. On the given address in the Letter of Authority, 1637 Dagonoy St. San Andres Bukid, Sta. Ana, Manila.

ATTY. PACHECO:
Q. So it was a store.

RO AMPUAN:
A. Yes.

ATTY. PACHECO:
Q. The store was then open when you served the LOA and checklist.

RO AMPUAN:
A. Yes.

ATTY. PACHECO:
Q. Did you hand over the said LOA and checklist to the accused directly?

RO AMPUAN:
A. It was received by James. Yes.

ATTY. PACHECO:
Q. Did you find the accused there?

RO AMPUAN:
A. I served the Letter of Authority to James.

ATTY. PACHECO:
Q. But you said you served these documents on the address.

RO AMPUAN:
A. Yes.

ATTY. PACHECO:
Q. So you found one Janice Dimacali?

RO AMPUAN:
A. Yes. Janice. Yes.

ATTY. PACHECO:
Q. Isn't it not that this Janice is the Barangay Secretary?

RO AMPUAN:
A. She is the authorized representative of the taxpayer.

ATTY. PACHECO:
Q. Did you ask for her designation?

RO AMPUAN:
A. *Hindi na po namin natanong yung kanyang* designation *pero siya po yung* authorized *na mag*-receive *ng* LOA.

ATTY. PACHECO:
Q. But she was a Barangay Secretary.

RO AMPUAN:
A. *Yun po ang hindi ko matandaan.* This was ten years ago.

JUSTICE RINGPIS-LIBAN:
But you are sure that [it was] *(sic)* the one who received Letter of Authority, the checklist of requirements and other documents is one Janice Dimacali as stated in your exhibits.

RO AMPUAN:
A. Yes, Your Honor.

ATTY. PACHECO:
Q. But you said you personally handed, personally hand over these documents to the accused. Why did you not ask him directly to receive those documents?

RO AMPUAN:
A. *Ano po yung tanong niyo?* Pardon *po.*

ATTY. PACHECO:
Q. You previously said that these documents were directly handed over to the accused, correct?

RO AMPUAN:
A. *Doon po sa nag*-receive.

ATTY. PACHECO:
Q. So you did not find the accused?

RO AMPUAN:
A. *Wala po siya doon.*

ATTY. PACHECO:
Q. And this Janice Dimacali, you did not ask for her identification cards?

RO AMPUAN:
A. *Yun po ang hindi ko matandaan. Alam ko po na hindi ko ito ise*-serve *sa kanya kung hindi siya* authorized *pero* ma'am this was ten years ago *hindi ko na po matandaan.*

ATTY. PACHECO:
Q. In Item No. 12 of your Judicial Affidavit, the 1st Request was served on August 13, 2014, correct?

RO AMPUAN:
A. Yes.

ATTY. PACHECO:
Q. But isn't it not that the said 1st Request was dated October 13, 2014.

RO AMPUAN:
A. *Ano po yung tanong ninyo?*

ATTY. PACHECO:
Q. The 1st Request, Exhibit P-7.

JUSTICE RINGPIS-LIBAN:
Your 1st Request is dated October 13, 2014, that's P-7.

RO AMPUAN:
A. Yes, Your Honor.

JUSTICE RINGPIS-LIBAN:
Your 2nd Request is dated August 13, 2014.

RO AMPUAN:
A. Yes, Your Honor.

JUSTICE RINGPIS-LIBAN:
Now you're asking what?

ATTY. PACHECO:
Q. That the 1st Request was served on August 13, 2014, even if it was dated October 13.

RO AMPUAN:
A. It was received by Janice on October 14.

ATTY. PACHECO:
Q. So, there was an error.

ATTY. VICENTE:
Your Honors, the document specifically states that it was served on October 14, 2014, Your Honors.

ATTY. PACHECO:
Q. But in your Judicial Affidavit, you mentioned that it was served August 13. So, you are now telling us that this 1st Request was really served on October 13.

RO AMPUAN:
A. Yes, ma'am.

ATTY. PACHECO:
Q. How about the 2nd Request?

RO AMPUAN:
A. It was served on August 13, 2014, the second request. The 2nd and Final Request.

ATTY. PACHECO:
Q. But the 2nd Request was dated?

RO AMPUAN:
A. August 13, 2014.

ATTY. PACHECO:
Q. So, the 2nd Request was dated August 13 and the 1st Request was dated October 13. When you served these documents, where did you serve these documents?

RO AMPUAN:
A. In the same address.

ATTY. PACHECO:
Q. Did you find the accused there?

RO AMPUAN:
A. No. *Yung laging nagre*-receive *sa amin, siya lang rin po.*

ATTY. PACHECO:
Q. The 1st Request was received by Janice again, correct?

RO AMPUAN:
A. Yes. Janice Dimacali.

ATTY. PACHECO:
Q. But the 2nd Request was received by one Mercy Parada.

RO AMPUAN:
A. Yes, Your Honor.

ATTY. PACHECO:
Q. Did you not ask where Janice was because she used to receive this document? Now, there was another person receiving the said document.

RO AMPUAN:
A. *Yun po ang hindi ko na matandaan pero pina*-receive *ko siya* personally *doon sa* address.

ATTY. PACHECO:
Q. But you did not determine whether she was an officer or an employee or authorized representative of the accused?

RO AMPUAN:
A. Usually, *nagtatanong po kami kung siya yung* authorized representative *pero hindi ko po matandaan yung* exact *talaga na* name *noong*... Sa 1st Request, *si* Janice *pero ito pong pangalawa, hindi ko na po matandaan.*

ATTY. PACHECO:
Q. Let's go now to the *subpoena duces tecum*. In Item No. 17 of your Judicial Affidavit, you mentioned that the SDT dated June 4, 2015 was served at the accused's registered address again, correct?

RO AMPUAN:
A. Yes, on June 17.

ATTY. PACHECO:
Q. And in your Joint Affidavit dated October 12, 2015, you further mentioned that the SDT was served upon the accused by substituted service, correct?

RO AMPUAN:
A. Complaint affidavit, yes, Your Honor.

ATTY. PACHECO:
Q. Did you personally serve this SDT?

RO AMPUAN:
A. Yes, Your Honor. *Ako po ang nag*-serve, *nakapirma po ako diyan.*

ATTY. PACHECO:
Q. In Exhibit P-9, can you please tell us who received this document, the SDT?

RO AMPUAN:
A. It was received by Juan Corpus.

ATTY. PACHECO:
Q. Did you ask for his identification?

RO AMPUAN:
A. *Hindi ko na po matandaan pero may kasama akong* officer *para ma*-receive *niya yung* SDT.

ATTY. PACHECO:
Q. Did you ask for his identification, yes or no?

RO AMPUAN:
A. Yes, Your Honor.

ATTY. PACHECO:
Q. And his designation was?

RO AMPUAN:
A. *Hindi ko na po matandaan kasi hindi niya po nilagay dito. Hindi ko na po matandaan.*

ATTY. PACHECO:
Q. **Did you ask where the accused was during that time?**

RO AMPUAN:
A. ***Lagi po kaming nagsi*-serve ng *notices, umabot na po ng* subpoena, *lagi pong wala doon yung* accused.**

ATTY. PACHECO:
Q. But the store was open.

RO AMPUAN:
A. Yes.

ATTY. PACHECO:
Q. It was operational then.

RO AMPUAN:
A. Yes.

ATTY. PACHECO:
Q. Did you look for Janice or Mercy? Because the first two documents were received by Janice and one Mercy.

RO AMPUAN:
A. Usually *po* ma'am *nagtatanong po kami,* since *lagi pong wala sila o wala na sila doon so kung sino po ang* available *doon, doon po namin sini*-serve *yung* notices.

ATTY. PACHECO:
Q. You mentioned also that you executed an Affidavit of Service, correct?

RO AMPUAN:
A. Yes, Your Honor.

ATTY. PACHECO:
Q. In the same Affidavit, isn't it not that in that affidavit, you indicated that the SDT was served by personal service?

RO AMPUAN:
A. Yes, Your Honor.

ATTY. PACHECO:
Q. Specifically, by delivering personally a copy to the taxpayer at his registered address?

RO AMPUAN:
A. Yes, to the registered address of the taxpayer.

ATTY. PACHECO:
Q. But it was received by one Mario Corpus?

RO AMPUAN:
A. Yes, Your Honor.

ATTY. PACHECO:
Q. And not the taxpayer, the accused?

RO AMPUAN:
A. Yes *po, wala po doon kasi yung* accused.

ATTY. PACHECO:
No further cross, Your Honors." *(Emphasis and underscoring supplied)*

Upon clarificatory questioning by this Court, speaking through Associate Justice Maria Rowena Modesto-San Pedro, RO Ampuan further testified:[42]

"JUSTICE MODESTO-SAN PEDRO:
I have some clarificatory. Ms. Witness, please look at your P-5 and P-6, these are the LOA and the checklist. Who is this Janice Dimacali you claim as having signed receipt the same for the taxpayer as a representative. Who is she?

RO AMPUAN:
A. According to... *hindi ko na po matandaan kasi* this was ten years ago, *siya po yung* authorized representative. *Siya po kasi yung laging bantay* during the 1st.

JUSTICE MODESTO-SAN PEDRO:
Do you know if she was an employee or a relative of the accused?

RO AMPUAN:
A. Maybe an employee.

JUSTICE MODESTO-SAN PEDRO:
Did you ask for any identification card from her?

RO AMPUAN:
A. *Hindi ko na po matandaan.*

JUSTICE MODESTO-SAN PEDRO:
So, how did you know she was the authorized representative of the accused? Because she was always there at the store.

RO AMPUAN:
A. Yes.

JUSTICE MODESTO-SAN PEDRO:
Just because of her presence always at the store.

RO AMPUAN:
A. Yes.

JUSTICE MODESTO-SAN PEDRO:
Are you aware that your colleague, RO Setie Deron just testified that Janice Dimacali is a barangay secretary. Does not ring a bell to you that she's a barangay secretary?

N

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[42] *Id.*, pp. 34-37.

RO AMPUAN:
A. *Hindi ko na po matandaan. Ang nangyari po kasi sa* case *na ito, wala na po ako doon sa* District so *ang nag*-continue *na po na* RO *ay yung nalipat na po doon sa amin.*

JUSTICE MODESTO-SAN PEDRO:
Yes, but this is your testimony. You're testifying that she received the LOA and the checklist.

RO AMPUAN:
A. Yes, Your Honor.

JUSTICE MODESTO-SAN PEDRO:
Because if you are not sure, then why are you testifying? So again I ask you, are you testifying that Janice Dimacali is a representative of the taxpayer?

RO AMPUAN:
A. Yes, Your Honor.

JUSTICE MODESTO-SAN PEDRO:
You remember that?

RO AMPUAN:
A. Yes, Your Honor.

JUSTICE MODESTO-SAN PEDRO:
Okay. In your Joint Affidavit attached to your Judicial Affidavit as P-9, you were asked during cross, you stated that the subpoena was served by a substituted service.

RO AMPUAN:
A. Yes, Your Honor.

JUSTICE MODESTO-SAN PEDRO:
This is your Joint Affidavit. You said it was served via substituted service. But in the Affidavit of Service, your P-9-A, you stated that it was personally delivered to the taxpayer at his registered address. These are two different methods. Personal service and substituted service. So can you tell us now how was the method of service? Because those two are different, personal *po ba o* substituted?

RO AMPUAN:
A. Personally *ako po yung* nag-serve *pero* substituted *kasi hindi po yung* taxpayer *ang mismong naka*-receive.

JUSTICE MODESTO-SAN PEDRO:
So, what appears in your P-9-A is wrong because in P-9-A, you said that it was delivered personally to the taxpayer. So you're saying now that that is not correct. It should be substituted service. You left a copy at the address with somebody.

RO AMPUAN:
A. It should be substituted Your Honor. I think I have erroneously checked that one. *Pero ang ano ko po* ma'am *nai*-serve *ko po siya pero hindi doon sa mismong* taxpayer.

JUSTICE MODESTO-SAN PEDRO:
Okay. *Sa tatlong* box *na narito,* which one here? You left it at the registered address with a clerk or person having charged.

RO AMPUAN:
A. Yes. Leaving a copy of this DP as the party's taxpayers registered address with his clerk or with the person having charged thereof.

JUSTICE MODESTO-SAN PEDRO:
And I ask you again, what is your proof that that person is his clerk or the person in charge?

RO AMPUAN:
A. Like what I said ma'am *siya po yung laging nandoon sa tindahan.*

JUSTICE MODESTO-SAN PEDRO:
And you were testifying that this is not a barangay secretary.

RO AMPUAN:
A. *Yun po ang hindi ko matandaan* Your Honors.

JUSTICE MODESTO-SAN PEDRO:
And you found this Janice Dimacali not in the barangay office, but in the store.

RO AMPUAN:
A. Yes, Your Honor.

JUSTICE MODESTO-SAN PEDRO:
The store of the accused.

RO AMPUAN:
A. Yes, Your Honor." *(Emphasis and underscoring supplied)*

As may be gleaned from the foregoing, RO Ampuan had admitted that the LOA dated September 17, 2014, the Checklist of Requirements, the First Request for Presentation of Records dated October 13, 2014, the Second and Final Request for the Presentation of Records dated August 13, 2014, and the SDT dated June 4, 2015 were **not personally and directly served to the accused**.

While it is true that substituted service of assessment notices may be validly resorted to when the taxpayer is not present at the registered or known address, an examination of the records reveals that the revenue officer who served the aforementioned documents utterly failed to comply with the requirements of a valid substituted service, as mandated by RR No. 12-99, as amended. To validly effect such mode of service, the rules require that the notice be left with the clerk or a person having charge of the taxpayer's place of business, if such is the nature of the known or registered address. In the present case, however, RO Ampuan had confirmed through her testimony that she failed to verify the identities of those who received the documents. She merely assumed that one of the recipients was the authorized representative of the accused just because of the recipient's mere presence at the store. It is also not clear from the records as to whether these recipients were, indeed, the "clerk or the person having charge" of the taxpayer's place of business, as contemplated by the rules. The documents merely bore the purported dates of receipt as well as the names and the signature of the recipients without any indication as to their respective designation and/or relationship to the accused. **More importantly, there is nothing on record that would establish the fact that the recipients were duly authorized by the accused to receive those documents on his behalf.**

The same is true with respect to the service of the FLD with Assessment Notices dated November 14, 2016. RO Setie Naira B. Deron, in her testimony upon cross-examination conducted during the hearing held on July 4, 2023, testified as follows:[43]

> **"ATTY. PACHECO:**
> **Q. And in Item No. 13 of your Judicial Affidavit, you testified that the Formal Letter of Demand dated November 14, 2016, was served upon the accused by leaving a copy thereof to the office of the barangay chairman having jurisdiction over the place of the accused, correct?**
>
> **RO DERON:**
> **A. Yes.**
>
> **ATTY. PACHECO:**
> **Q. <u>But have you tried serving this copy to the address you previously mentioned?</u>**
>
> **RO DERON:**
> **A. <u>I went to the address, ma'am, but the taxpayer is no longer there and cannot be located so I served it to the barangay.</u>**
>
> ATTY. PACHECO:
> Q. Were you accompanied by someone?
>
> RO DERON:
> A. Yes.
>
> ATTY. PACHECO:
> Q. Who accompanied you in serving the Formal Letter of Demand?
>
> RO DERON:
> A. As far as I remember, Attorney, I was accompanied by my then Supervisor Bernardina Guillen.
>
> **ATTY. PACHECO:**
> **Q. Ms. Witness, you previously identified the FLD, correct?**

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[43] *Id.*, pp. 10-13.

RO DERON:
A. Yes.

ATTY. PACHECO:
Q. And it was marked as Exhibit P-4. In the said FLD, can you please tell us who received the said document?

RO DERON:
A. It was the Barangay Secretary, Ms. Janice Dimacali.

ATTY. PACHECO:
Q. But as shown in the FLD, it was received by one Elvira V. Soriano, page 2 of Exhibit P-4.

JUSTICE RINGPIS-LIBAN:
My copy states that it's Janice Dimacali. Are you sure you have the same copy?

ATTY. PACHECO:
I'm sorry, Your Honors, in the Complaint Affidavit, Annex D, the Formal Letter of Demand was attached as Annex D. But in the same Annex D, do you have a copy of your Complaint Affidavit?

ATTY. VICENTE:
Your Honors, I have the original of the Formal Letter of Demand, if the good counsel for the accused would like to examine it.

ATTY. PACHECO:
In the said document, Annex D of your Complaint Affidavit was received by Elvira V. Soriano.

ATTY. VICENTE:
Your Honor, the original of the Formal Letter of Demand is with me, Your Honor, and states that it was received by Janice Dimacali, Barangay Secretary.

JUSTICE MODESTO-SAN PEDRO:
How do you explain the difference between the attachment to the Information and the attachment to your Judicial Affidavit? That is directed to the witness.

EXECUTIVE CLERK:
Per the record, Your Honors, the one who received the Formal Letter of Demand is Ms. Elvira V. Soriano on November 14, 2016.

JUSTICE MODESTO-SAN PEDRO:
Yes. So, Ms. Witness, how do you explain the difference between these two documents? In the document attached to the Information, which is annex D, it appears that it was received by one Elvira Soriano. But the document that you attached to your Judicial Affidavit was received by one Janice Dimacali. So how do you explain the difference? Why do you have two documents that would be purported to be the same, the Formal Letter of the Demand?

RO DERON:
A. <u>I'm sorry for the confusion, but as far as I can remember, it was received by Ms. Janice Dimacali, who was present at the barangay hall at that time.</u>

JUSTICE MODESTO-SAN PEDRO:
<u>So you do not know Ms. Elvira Soriano, whose signature appears in the attachment to the Information?</u>

RO DERON:
A. <u>Yes, Your Honor</u>.

ATTY. PACHECO:
Q. Ms. Witness, you said you served that copy to the barangay office. Did you not ask where the residence of the accused was since you were already there?

RO DERON:
A. <u>I asked, actually, but the person in the barangay hall said she had no idea. Because as far as I can remember, the store is still there, but I'm not sure if it was confirmed by the barangay secretary as well. But she confirmed that the taxpayer was not there that's why we left the copy to her.</u>

ATTY. PACHECO:
Q. <u>But have you tried visiting that official address?</u>

RO DERON:
A. <u>Yes.</u>

ATTY. PACHECO:
Q. <u>And the accused was not there?</u>

RO DERON:
A. <u>Yes, ma'am.</u>" *(Emphasis and underscoring supplied)*

There is likewise no compliance with the rules on substituted service with respect to the service of the FLD with Assessment Notices dated November 14, 2016. RR No. 12-99, as amended, plainly requires that "if no person is found in the party's registered or known address, **the revenue officers concerned shall bring a barangay official <u>and two (2) disinterested witnesses</u> to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position, and signatures of the witnesses.**" Clear from RO Deron's testimony that they failed to do so. Worse, she could not even explain why the purported copy of the FLD and Assessment Notices attached to the Information bore the name and signature of one Elvira B. Soriano as its recipient even though she vehemently claims that the documents were received by one Janice Dimacali.

Considering all of the foregoing circumstances, the inescapable conclusion is that the plaintiff failed to prove that the accused *actually* received the LOA, the Checklist of Requirements, the First Request for Presentation of Records, the Second and Final Request for the Presentation of Records, the SDT, and the FLD with Assessment Notices. Accordingly, this Court finds that the plaintiff failed to establish the 2nd element that the accused failed to pay the correct tax at time required by law.

3rd element: *Failure to pay the tax is willful.*

"Willful" in the tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown.[44] Thus, to attribute to the accused a "willful failure to pay" the tax, it must be shown that such failure or omission by accused was done knowingly, intentionally and with the specific intent not to pay the tax. In other words, it must be shown that accused was aware of his obligation to pay the tax, but he nevertheless voluntarily, knowingly, and intentionally failed to pay it.

Given that the plaintiff had failed to prove that it duly apprised the accused of its alleged tax liability through the valid issuance of assessment notices, the accused cannot be deemed to have willfully failed to pay the alleged deficiency tax. For failure of the plaintiff to prove all the elements of the offense charged, the acquittal of the accused is in order.

Civil Aspect of the Case

In *People v. Joel C. Mendez,*[45] the Supreme Court laid down the following guidelines:

> ***"Guidelines in the prosecution of criminal actions for violation of tax laws.***
>
> For the guidance of the bench and bar, the following rules shall govern the prosecution of criminal tax law violations and the corresponding civil liability for unpaid taxes:
>
> (1) When a criminal action for violation of the tax laws is filed, a prior assessment is not required. Neither a final assessment is a precondition to *collection* of delinquent taxes in the criminal tax case. The criminal action is deemed a collection case. **Therefore, the government must prove** two things: *one*, the guilt of the accused by proof beyond reasonable doubt, and *two*, **the accused's civil**

[44] Mertens' Law of Federal Income Taxation, Chapter 47.05, page 28, Volume 13, see *U.S. vs. Green*, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. vs. Moore*, 627 F2d 830 (CA7 1980) and *U.S. vs. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns.

[45] G.R. Nos. 208310-11 & 208662, March 28, 2023

> **liability for taxes by competent evidence (other than an assessment).**
>
> (2) If *before* the institution of the criminal action, the government filed (1) a civil suit for collection, or (2) an answer to the taxpayer's petition for review before the CTA, the civil action or the resolution of the taxpayer's petition for review shall be suspended before judgment on the merits until final judgment is rendered in the criminal action. However, before judgment on the merits is rendered in the civil action, it may be consolidated with the criminal action. In such a case, the judgment in the criminal action shall include a finding of the accused's civil liability for unpaid taxes relative to the criminal case." *(Emphasis supplied)*

Pursuant to the above-cited guidelines, even if the deficiency assessment in this case was found to be void due to the plaintiff's failure to prove that the assessment notices were properly served upon the accused, that is not *per se* a reason for this Court not to determine and render judgment on the accused's civil liability for taxes. As explicitly stated in the above guidelines, the accused's civil liability for taxes must be proved by competent evidence (other than an assessment).

After applying the above-mentioned standards, this Court finds that there is no such competent evidence (other than an assessment) presented in this case upon which the accused's civil liability for unpaid taxes may be based.

As discussed earlier, not only did the plaintiff fail to prove that it validly served the assessment notices to the accused but it likewise failed to prove that it validly served the LOA itself purportedly authorizing the conduct of the examination of the accused's books of accounts and other accounting records for taxable year 2013. Well-settled is the rule that there must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment.[46] In the absence of such an authority, the **examination** conducted by the revenue officer and the resulting **assessment** are both considered void.[47]

Inasmuch as the testimonies of the plaintiff's witnesses have proceeded from their void or ineffectual examination of the accused's tax liabilities for taxable year 2013, the same cannot be taken as competent evidence (other than an assessment) as contemplated by the above guidelines.

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[46] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021.

[47] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010; *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023.

All things considered, none of the pieces of evidence presented by the plaintiff, whether testimonial and/or documentary, sufficiently serves as competent evidence of the accused's civil liability for taxes.

WHEREFORE, premises considered, accused **Serafin Panaligan Villalobos** is **ACQUITTED** of the crime charged.

The cash bail bond posted by the accused for his provisional liberty in the amount of Sixty Thousand Pesos (₱60,000.00) is **DISCHARGED** and to be **RELEASED** to him upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

With Separate Concurring Opinion
CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the 1987 Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-917**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
SERAFIN PANALIGAN VILLALOBOS, proprietor of **PSPV COMMERCIAL RICE SUPPLY & GROCERY,** (1637 Dagonoy Street, San Andres Bukid, Santa Ana, Manila), *Accused.*	Promulgated: NOV 2 6 2024 10:05 AM

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SEPARATE CONCURRING OPINION

FERRER-FLORES, J.:

I concur with the *ponencia* in acquitting accused Serafin Panaligan Villalobos for the crime charged in the *Information* filed on May 16, 2022 for failure to prove all the elements of the offense charged and exonerating accused from civil liability.

In addition, it must be pointed out that the *Information* was filed beyond the five-year prescriptive period.

Section 281 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the five-year prescriptive period, viz.:

> SEC. 281. *Prescription for Violations of any Provision of this Code.* — **All violations of any provision of this Code shall prescribe after five (5) years.**
>
> **Prescription shall begin to run from the day of the commission of the violation of the law**, and if the same be not known at the time, from

> the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines. *(Emphasis supplied)*

Here, the crime charged is willful refusal to pay deficiency Income Tax for taxable year 2013, in violation of Section 255 of the NIRC of 1997, as amended.

The Supreme Court, in the case of *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*,[1] held that for cases involving taxpayer's refusal to pay the deficiency income tax due, the violation is committed only after the service of notice and demand for payment, to wit:

> Relative to Criminal Case Nos. 1788 and 1789 which involved petitioners' refusal to pay the deficiency income taxes due, again both parties are in accord that by their nature, **the violations as charged could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayers**. Petitioners maintain that the five-year period of limitation under Section 354 should be reckoned from April 7, 1965, the date of the original assessment while the Government insists that it should be counted from July 3, 1968 when the final notice and demand was served on petitioners' daughter-in-law.
>
> We hold for the Government. Section 51 (b) of the Tax Code provides:
>
> > (b) Assessment and payment of deficiency tax. — After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.
>
> 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**. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. *(Emphasis supplied)*

1 G.R. Nos. L-48134-37, October 18, 1990.

Furthermore, in *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep and People of the Philippines,*[2] which similarly involves the offense of failure to pay tax despite demand, the Supreme Court likewise ruled that the offense of willful failure to pay taxes is "committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period".

Based on the foregoing, when the offense involves the willful refusal to pay taxes, the same is committed only upon the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period. Otherwise stated, the five-year prescriptive period shall run from the time the assessment becomes final and executory.

In the instant case, since the offense charged is for willful refusal to pay taxes, the prescriptive period begins to run when from the date the assessment notices became final and executory. A perusal of the records show that the Formal Letter of Demand was received by a certain "Elvira V. Soriano" on November 16, 2016. Accused had 30 days therefrom,[3] or until December 16, 2016, within which to file a Protest. If the taxpayer fails to file a valid protest against the FLD and assessment notices within 30 days from receipt thereof, the assessment shall become final, executory and demandable. In view of the plaintiff's allegation that accused failed to file protest, the FLD then became final, executory and demandable on **December 17, 2016**. It is on this date that offense is committed when accused refused to pay his deficiency tax liabilities despite demand.

Counting five years from December 17, 2016, when the offense is committed, plaintiff had until **December 17, 2021** to file the Information before the Court. Thus, when plaintiff filed the *Information* on **May 16, 2022,** the right of the government to institute a case against accused had already prescribed.

ALL TOLD, I CONCUR with the *ponencia.*

CORAZON G. FERRER-FLORES
Associate Justice

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[2] G.R. No. 127777, October 1, 1999.
[3] Section 3.1.5, Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13.