REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case No. O-629** **(NPS Docket No. XVI-INV-15H-00321)** For: Violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended
-versus-	Members: **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
CROSS COUNTRY OIL AND PETROLEUM CORP., ARTURO M. ZAPATA AND JACOB VALERIANO, JR., *Accused.*	Promulgated: MAY 04 2018

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RESOLUTION

On December 18, 2017, accused Cross Country Oil and Petroleum Corp., Arturo M. Zapata, and Jacob Valeriano, Jr., filed their Demurrer to Evidence (with Leave of the Honorable Court) praying that the case be dismissed for insufficiency of evidence.

Cross Country Oil and Petroleum Corp., Arturo M. Zapata and Jacob Valeriano, Jr. are accused, through an Information filed on February 13, 2017,[1] and subsequently amended on March 20, 2017[2] and August 4, 2017,[3] of "Willful Failure to Pay Taxes on Income Tax" for taxable year 2010 under Section 255, in relation to Section 253(d) and 256, of the National Internal Revenue Code of 1997, as amended (NIRC), allegedly committed as follows:

> That on July 2014 and thereafter, in Metro Manila, and within the jurisdiction of this Honorable Court,

[1] Docket, CTA Case No. O-629, Vol. I, pp. 6-8
[2] Docket, Vol. I, pp. 91-93.
[3] Docket, Vol. I, pp. 183-185.

> accused CROSS COUNTRY OIL AND PETROLEUM CORPORATION, ARTURO M. ZAPATA and JACOB VALERIANO JR., respectively conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously fail to pay the corporation's basic deficiency income tax for the taxable year 2010 in the amount of One Hundred Forty One Million Eight Hundred Nineteen Thousand Four Hundred Sixty Two Pesos and Eighty Seven Centavos (Php141,819,462.87) exclusive of penalties, surcharges, and interest, despite final assessment, including prior and post notices and demands to pay, the latest of which was issued by the BIR on 15 July 2014, to the damage and prejudice of the government.
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> CONTRARY TO LAW.[4]

On March 28, 2017, the Court ordered the issuance of warrants of arrest for accused Arturo M. Zapata and Jacob Valeriano.[5] Both accused voluntarily surrendered and posted their respective cash bail bonds of Php30,000.00 on May 4, 2017.[6]

Upon arraignment, both accused pleaded "NOT GUILTY".[7] The case proceeded to preliminary conference and pre-trial.

During trial, the prosecution presented the following witnesses: (1) Florentino M. Racuya; (2) Ma. Paz Arcilla; (3) Fernando R. Gonzales; (4) Jefferson T. Ocampo; and (5) Dennis V. Ruelo. Their testimonies are summarized below.

Florentino M. Racuya

Mr. Racuya testified that he is a Revenue Officer II-Assessment whose duties and functions include the conduct of audit or examination of taxpayers within the jurisdiction of district where he is assigned; that on October 20, 2010 the Regional Director of BIR Manila issued a Letter of Authority (LOA) authorizing him, together with Revenue Officer (RO) Jeffry Camba and Group Supervisor Evelyn Jose to examine the books and accounts of Cross Country for the period January 1, 2010 to June 30, 2010; that said LOA together with the Checklist of

[4] Docket, Vol. I, Amended Information filed on August 4, 2017, pp. 183-185.
[5] Docket, Vol. I, pp. 95-97.
[6] Docket, Vol. I, Resolution dated May 4, 2017, p. 120.
[7] Docket, Vol. I, Order dated May 25, 2017, pp. 143-145.

Requirements were served personally and received by accused Arturo M. Zapata on October 26, 2010; that a First Request for Presentation of Records was served on Cross Country and received by an accounting clerk named Jessa Ranido on November 11, 2010; and, that a Second and Final Notice was served on Cross Country and received by Jessa Ranido on December 7, 2010. Mr. Racuya also testified that after failing to heed the various requests, they recommended the issuance of a *subpoena duces tecum* to compel the submission of the books of accounts and other accounting records of Cross Country; that said *subpoena duces tecum* was issued against accused Arturo M. Zapata and Jacob Valeriano; and, that said *subpoena duces tecum* was served personally to accused Arturo M. Zapata on February 14, 2011.

Mr. Racuya also stated that another LOA was issued covering the whole year of 2010 and the same was consolidated with the investigation covered under the previously issued LOA; that Cross Country filed its annual Income Tax Return (ITR) for taxable year 2010 on August 15, 2011; that they were able to conduct an audit based on documents partially submitted by Cross Country where they found the deficiency tax liabilities for income tax, VAT, and expanded withholding tax for taxable year 2010 in the amounts of Php89,500,826.12, Php1,236,817,741.89, and Php12,952,048, respectively, or a total amount of Php1,339,270,616.64.

Mr. Racuya then testified that a Notice of Informal Conference (NIC) with Computation of Deficiency Taxes was served on May 8, 2013; that on October 14, 2013, they served through LBC Express the Notice of Informal Conference (Amended) dated October 10, 2013 with Computation of Deficiency Taxes and Details of Discrepancies; that they served through LBC Express the Preliminary Assessment Notice (PAN) dated December 3, 2013; and, that on January 13, 2014, they served the Final Assessment Notice and Final Letter of Demand (FAN/FLD) by constructive service and by registered mail.[8]

<u>Ma. Paz Arcilla</u>

Ms. Arcilla testified that she is the Revenue Officer IV-Chief, Billing Section at the BIR; that her duties is to personally supervise the preparation, issuance and monitoring of demand letters, final assessment notices and transcripts of assessments

[8] Docket, Vol. 1, Exhibit "P-33", pp. 188-194.

of tax cases; and that the instant case was forwarded to her office for issuance of the FAN/FLD; that the FAN/FLD were issued on January 9, 2014; and, that they received a memorandum from RO Florentino Racuya, RO Jeffry Camba and GS Evelyn Jose relative to the service of the FAN/FLD.

Ms. Arcilla also testified that the tax docket was forwarded to the Collection Division, through a 1st Indorsement dated April 7, 2014.[9]

Fernando R. Gonzales

Mr. Gonzales testified that he is assigned as Revenue Officer II-Reviewer whose functions include reviewing the reports of investigation submitted by other ROs; that he was assigned to review the report of investigation submitted by RO Florentino Racuya, RO Jeffry Camba, and GS Evelyn Jose; that after reviewing said report, he prepared the Revenue Officer's Audit Report on Income Tax and the PAN with Details of Discrepancies; that they requested RO Racuya, RO Camba and GS Jose to serve the PAN to Cross Country; that they received a Memorandum containing the report on the service of the PAN on Cross Country.

Mr. Gonzales further testified that the entire 2010 tax docket was forwarded to the Billing Section for issuance of FAN/FLD.[10]

Jefferson T. Ocampo

Mr. Ocampo testified that he is a Revenue Officer II-Collection whose duties and functions include the enforcement of collection of delinquent accounts through administrative remedies, such as warrant of distraint and/or levy (WDL), warrant of garnishment on banks, and/or tax lien notice to the Registry of Deeds; that the case of Cross Country was assigned to him for enforcement of collection; that based on Cross Country's General Information Sheet (GIS), he determined that accused Arturo M. Zapata and Jacob Valeriano, Jr., are the President and Treasurer, respectively of Cross Country; he also gleaned the accused's residential address from said GIS; that he served the WDL upon Cross Country, and Warrants of Garnishment to different banks; that accused still failed to pay

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[9] Docket, Vol. I, Exhibit "P-35", pp. 245-248.
[10] Docket, Vol. I, Exhibit "P-34", pp. 258-261.

the deficiency income tax; and, that he forwarded the case docket to the office of the Chief, Legal Division, Revenue Rgion No. 6, Manila for legal action.

Mr. Ocampo also testified that he executed a complaint-affidavit for violation of Section 255, in relation to Sections 253(d) and 256 of the Tax Code of 1997 against Cross Country, Arturo M. Zapata, and Jacob Valeriano, Jr. for their failure to pay the 2010 internal revenue tax liabilities; and, that then Commissioner of Internal Revenue Kim S. Jacinto-Henares authorized the filing of the criminal complaint.[11]

Dennis V. Ruelo

Mr. Ruelo testified that he is assigned as Revenue Officer I-Collection whose duties include enforcement of collection of delinquent accounts through administrative remedies such as sending collection notices and demand letters; that the instant case was assigned to him for enforcement of collection; that he sent a Preliminary Collection Letter (PCL) by registered mail to Cross Country on June 19, 2014; that he also sent by registered mail on July 15, 2014 a Final Notice Before Seizure; that Cross Country failed to pay the 2010 internal revenue tax liabilities; and that he recommended that the case be forwarded to the Arrears Management Team-Group II for further enforcement through summary remedies.[12]

On September 15, 2017, the prosecution filed its Plaintiff's Formal Offer of Evidence,[13] which was resolved by the Court on December 4, 2017[14] resulting to the admission of most of plaintiff's evidence.

On December 18, 2017, accused filed their Demurrer to Evidence (with Leave of the Honorable Court).[15] On January 31, 2018, the Court granted accused's motion for leave of court to file demurrer to evidence.[16] The Court also ordered both parties to file their memoranda with respect to the demurrer to evidence.[17]

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[11] Docket, Vol. I, Exhibit "P-36", pp. 274-277.
[12] Docket, Vol. I, Exhibit "P-37", pp. 305-307.
[13] Docket, Vol. I, pp. 321-332.
[14] Docket, Resolution dated December 4, 2017, pp. 429-430.
[15] Docket, Vol. II, pp. 432-444.
[16] Docket, Vol. II, Order dated January 31, 2018, p. 474.
[17] Docket, Vol. II, Order dated January 31, 2018, p. 474.

In the Demurrer to Evidence, accused argues that the instant case should be dismissed for insufficiency of evidence due to the following: (1) there was no valid authority to perform and undertake any audit on the books of Cross Country Oil and Petroleum Corp. (Cross Country), thus making the assessments null and void; (2) Cross Country's right to due process was violated for failure to serve the NIC, PAN, and FAN/FLD; and (3) plaintiff failed to present evidence that accused Cross Country, Zapata, and Valeriano, Jr. willfully, intentionally, deliberately and voluntarily refused to pay the deficiency income tax for taxable year 2010.

In its Memorandum, plaintiff argues that it exerted all efforts to have the Notice of Informal Conference, PAN, and FAN/FLD served upon the taxpayer. However, there is no showing in the BIR records that Cross Country transferred its registered business address and notified the BIR of said transfer, if any. Plaintiff states that the assessments have become final, executory and demandable for failure of the taxpayer to file any administrative protest. Plaintiff also states that it has proven the elements of a violation of Section 255 in that: (1) Cross Country is required to pay its deficiency income tax for taxable year 2010; (2) despite notice, Cross Country failed and refused to pay the said tax liability; and (3) the accused are the employees or officers responsible for the violation.

The Court resolves for the accused.

The corporate taxpayer, Cross Country, with accused Zapata as the President, and, Valeriano as the Treasurer of Cross Country, are charged for willful failure to pay taxes on income tax for the taxable year 2010, pursuant to Section 255, in relation to Sections 253(d) and 256 of the NIRC. These provisions are quoted below:

> 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.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

SEC. 253. *General Provisions.* –

xxx xxx xxx

(d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation.

SEC. 256. *Penal Liability of Corporations.* – Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000).

Based on Section 255 of the NIRC, above-quoted, the elements to establish willful failure to pay income tax are the following:

1. That a corporate taxpayer is required under the NIRC to pay the income tax;

2. That the corporate taxpayer failed to pay such income tax, at the time or times required by law or rules and regulations;

3. That the failure to pay was willful; and

4. That the individual accused are the employees or officers responsible for the willful failure to pay such tax at the time or times required by law or rules and regulations.

Based on the above elements, the showing of the failure to pay the pertinent tax and the willfulness of such failure rest on whether the corporate taxpayer is required to pay the said tax in the first place. Thus, it is only when the first element is established that the remaining elements must be determined to exist. In other words, there can be no willful failure to pay a tax if there is no requirement to pay the same.[18]

In the instant case, the charge consists of the accused's alleged failure to pay the deficiency tax assessment for taxable year 2010 under FLD[19] dated January 9, 2014 and Assessment Notice No. 30-10-IT-5555[20], despite notices issued to the accused.

Considering that the obligation or requirement to pay the alleged deficiency tax arose from an assessment, the Court shall look into the validity of the subject tax assessment in order to determine if the first element has been established.

Accused argues that the assessments are null and void for two reasons: (1) the LOA was served beyond the 30-day period from its date of issuance, without proof that it was revalidated; and (2) Cross Country's right to due process was violated for failure to validly serve the NIC, the PAN, and FAN/FLD.

In the instant case, the examination of accused's books of accounts are covered by two LOAs with the following details:

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[18] People v. Bienvenido S. Dimson, *et al.*, CTA Crim. Case No. O-304, May 17, 2017.
[19] Docket, Vol. I, Exhibit "P-20", pp. 369-372.
[20] Docket, Vol. I, Exhibti "P-19", p. 368.

	First LOA[21] SN: eLA201000014091 LOA-030-2010-00000442	Second LOA[22] SN: eLA201000045507 LOA-030-2011-00000616
Date Issued	October 20, 2010	July 22, 2011
Date Received	October 26, 2010	September 2, 2011
Authorized BIR employees	RO Florentino Racuya RO Jeffry Camba GS Evelyn Jose	RO Florentino Racuya RO Jeffry Camba GS Evelyn Jose
Investigating Office	Revenue District No. 030-Binondo	Revenue District No. 030-Binondo
Tax Type	All internal revenue taxes	All internal revenue taxes including OTH
Tax Period	January 1, 2010 to June 30, 2010	January 1, 2010 to December 31, 2010
Basis	Regular Audit Program for 2010	Audit Criteria for Taxable Years 2009 & 2010
Signatory	Alfredo V. Misajon Regional Director, Manila	Alfredo V. Misajon Regional Director, Manila

Prosecution's witness, Mr. Racuya, testified in his Judicial Affidavit, that the investigations under the two LOAs were consolidated.[23] Considering that the Information charges willful failure to pay income tax for the entire taxable year of 2010, the validity of the 2nd LOA, which covers January 1 to December 31, 2010, is significant.

Accused argues that the service of the LOA on September 2, 2011, or beyond the 30-day period from the date of its issuance on July 22, 2011, rendered the said LOA void. The Court agrees.

In *Dakay Construction and Development Corp. v. Commissioner of Internal Revenue*,[24] the Court *En Banc* had occasion to discuss the effect of the delayed service of the LOA, *to wit*:

> Under Section 6(A) of the Tax Code, the Commissioner of Internal Revenue (CIR) is granted the authority to examine and to make an assessment to determine the correct amount of tax due from a taxpayer.

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[21] Docket, Vol. I, Exhibit "P-2", p. 335.
[22] Docket, Vol. I, Exhibit "P-9", p. 341.
[23] Docket, Vol. I, Exhibit "P-33" Judicial Affidavit of RO Florentino M. Racuya, p. 191.
[24] CTA EB No. 1294, September 20, 2016.

Corollary thereto, Section 13 of the NIRC provides as follows:

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> a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax** (Emphasis supplied) due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

In so far as tax assessments are concerned, it bears emphasis that an audit and examination of books to be lawful, must be based on a valid Letter of Authority (LOA).

A Letter of Authority is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enable the revenue officer to examine the books of accounts and other accounting records, in order to determine the correct tax liabilities of a particular taxpayer.

In sum, before any revenue officer can conduct an examination or assessment, there must be [a] grant of authority. Further, the revenue officer so authorized must not go beyond the authority given. Otherwise, a deficiency assessment issued without a valid authority is a nullity.

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, the Supreme Court emphasized as follows:

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> "there **must be a grant of authority** before any revenue officer can conduct an examination or assessment. **Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an**

> **authority, the assessment or examination is a nullity.**" (Emphasis supplied)
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> xxx xxx xxx

Notably, an audit and examination should be in accordance with the procedures prescribed by law. Procedural standards must also be observed in issuing LOA to ensure that such authority is not arbitrarily exercised. There is a need to establish constraints on the authority of the revenue officers acting under delegated authority from the CIR. As part of due process, the purpose of the LOA is not only to give the subject taxpayer notice on the coverage of the tax investigation, but also to prevent the examiner from claiming blanket authority to conduct the audit and investigation.

Revenue Memorandum Order (RMO) No. 43-90 mandates as follows:

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> C. Other policies for issuance of L/As.
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> 1. All **audits/investigations**, whether field audit or office audit, **should be conducted under a Letter of Authority.**
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> xxx xxx xxx

Accordingly, Revenue Audit Memorandum Order (RAMO) 1-00 provides as follows:

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> 2.3 A Letter of Authority **must be served** or presented to the taxpayer **within 30 days from its date of issue; otherwise it becomes null and void**, unless revalidated. The taxpayer has the right to refuse its service if presented beyond the 30-day period depending on the policy set up by management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on _______" on the face of the copy of the Letter of Authority issued. am

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> Furthermore, the General Audit Procedures and Documentation of the Bureau of Internal Revenue explicitly state:
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> 4.) When must a Letter of Authority be served?
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> A Letter of Authority **<u>must</u> be served to the concerned Taxpayer within thirty (30) days from its date of issuance, otherwise, it <u>shall</u> become null and void**. The Taxpayer shall then have the right to refuse the service of this LA, unless the LA is revalidated.
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> The LOA should be properly served on the subject taxpayer. The RMOs clearly mandate that the LOA **<u>must be served on the subject taxpayer within thirty (30) days</u>** from date of issue lest the authority become null and void.
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> The LOA no longer has any force or effect having been served on the petitioner beyond the prescribed 30-day period. The assessment conducted by the Revenue Officers was already unauthorized, because there was no valid LOA covering it. (*Emphasis and underscoring in the original*)

In the instant case, the LOA dated July 22, 2011 was served only on September 2, 2011 or clearly beyond the 30-day period enjoined by the BIR's issuances. Thus, the LOA no longer had any force or effect when it was served upon accused Cross Country. As a result, the assessment conducted by the ROs was already unauthorized due to absence of a valid LOA.

There being no valid assessment, the Court finds that the prosecution failed to prove the existence of the first element. In other words, the prosecution failed to prove that Cross Country is required to pay the said deficiency income tax.

Because of the prosecution's failure to prove that accused Cross Country is required to pay the assessed deficiency income tax, the Court will no longer discuss the remaining elements of the crime charged.

WHEREFORE, accused's Demurrer to Evidence is **GRANTED**. Accordingly, CTA Crim. Case No. O-629 is **DISMISSED**.

Accused Cross Country Oil & Petroleum Corp., Arturo M. Zapata, and Jacob Valeriano, Jr. are **ACQUITTED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice