REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

COSCO PETROLEUM COMPANY, INC., MICHAEL T. CO SAY,
Santiago, Pili, Camarines Sur,
Accused.

CTA CRIM. CASE NO. O-805
For: Violation of Section 255, in relation to Sections 253 and 256, of the NIRC of 1997, as amended.

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, and
FERRER-FLORES, JJ.

Promulgated:

JAN 20 2025

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DECISION

FERRER-FLORES, J.:

THE CASE

Before the Court is the *Information*[1] filed on January 28, 2020 charging accused **Cosco Petroleum Company, Inc. (Cosco)** and its responsible officer, **Michael T. Co Say**, for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion of which reads:

> **INFORMATION**
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> The undersigned Assistant State Prosecutor of the Department of Justice hereby accuses **COSCO PETROLEUM COMPANY, INC.** and its responsible corporate officer **MICHAEL T. CO SAY,**[2] the President of

[1] Docket, pp. 5 to 6.
[2] Confirming Order dated March 29, 2023, Docket pp. 154 to 155; During arraignment, the name of the accused in the *Information* was amended from "Michael **C. Cosay**" to "Michael **T. Co Say**".

said corporation, of violation for Section 255, in relation to Sections 253 and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> "That on or about November 5, 2015 and thereafter, in Santiago, Pili, Camarines Sur, and within, the jurisdiction of, this Honorable Court, the above-named accused MICHAEL T. CO SAY,[3] being the President and responsible corporate officer of COSCO Petroleum Company, Inc., did then and there willfully and unlawfully fail to pay deficiency Value-Added Tax for taxable year 2008, in the amount of P7,953,624.79, exclusive of increments and penalties, despite final assessment notice, including prior and post notices and demands to pay the last being in the nature of a demand before suit issued by the Bureau of Internal Revenue on November 5, 2015, to the damage and prejudice of the government."
>
> CONTRARY TO LAW.
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> Manila for Quezon City, Philippines, December 14, 2018.

FACTUAL ANTECEDENTS

Accused Cosco is a registered taxpayer with the Bureau of Internal Revenue (BIR) under Revenue District Office (RDO) No. 65 – Naga City with Tax Identification Number (TIN) 005-532-524-000 and registered address at CoSay Building, National Highway, Santiago, Pili, Camarines Sur, while accused Co Say is the president of Cosco.

On May 20, 2010, the *Letter of Authority* (LOA) No. LOA200900012154[4] dated May 7, 2010 authorizing Revenue Officer (RO) El-Se H. Vida to conduct an examination of the books of account and other accounting records of accused Cosco for taxable year (TY) 2008 was served upon accused Cosco which was received by a certain Ms. Jocelyn K. Corpuz. The *First Notice*[5] was likewise served upon accused Cosco on same date.

Thereafter, the BIR served via registered mail the *Second Request for Presentation of Records*[6] and *Final Notice for Presentation of Records*[7] on July 9, 2010 and October 12, 2010, respectively.

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3 *Id.*
4 Exhibit "P-2" and Exhibit "A-7", Docket, p. 257.
5 Checklist/Request For Presentation of Records, Exhibit "P-4", Docket, p. 258.
6 Exhibit "P-5" and Exhibit "A-9", Docket, p. 259.
7 Exhibit "P-6" and Exhibit "A-10", Docket, p. 260.

On November 14, 2012, the BIR issued the *Preliminary Assessment Notice* (PAN)[8] with *Details of Discrepancies*[9] assessing accused Cosco deficiency income tax and value-added tax (VAT), interest and surcharges for TY 2008 in the aggregate amount of ₱66,967,450.24. The same was purportedly served upon accused Cosco via registered mail on even date.

Subsequently, the *Formal Letter of Demand*[10] with *Details of Discrepancies*[11] both dated January 9, 2013 were issued reiterating the findings in the PAN with a request to pay the deficiency tax liabilities within the time shown in the notice enclosed therewith. The same was served upon accused Cosco via registered mail on January 10, 2013.

The BIR then sent out demands for payment of the deficiency tax liabilities for TY 2008 in the form of *1st Collection Notice* dated December 10, 2013 and *Final Notice Before Seizure* dated June 25, 2014.

On September 2, 2015, *Warrant of Distraint and/or Levy No. 065-44-011* was served upon accused through the father of accused Co Say, Mr. Maximo Co Say.[12]

Thereafter, the *Final Demand Before Suit* dated November 5, 2015 was issued by the BIR.[13]

However, despite the foregoing efforts, the deficiency tax liabilities remained unpaid; thus, CIR Kim Jacinto-Henares wrote a letter to the then Secretary of Justice Emmanuel L. Caparas,[14] referring the *Joint Complaint-Affidavit*[15] executed by RO Vida, RO Annalee N. Mina and RO Alex Referiza, for preliminary investigation and the filing of appropriate informations in court, if evidence so warrants.

The Department of Justice (DOJ), through its Resolution dated December 14, 2018,[16] recommended the filing of the *Information* for willful failure to pay deficiency income tax, one count of willful failure to pay deficiency VAT, and another count for willful failure to pay deficiency expanded withholding tax (EWT) all for TY 2008.

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8 Exhibit "P-7" and Exhibit "A-11", Docket, pp. 261 to 262.
9 Exhibit "P-7-a", Docket, p. 263.
10 Exhibit "P-8" and Exhibit "A-12", Docket, pp. 264 to 265.
11 Exhibit "P-8-b", Docket, p. 266.
12 Exhibit "P-11" and Exhibit "A-15", Docket, p. 269.
13 Exhibit "P-12" and Exhibit "A-16", Docket, p. 270.
14 Exhibit "P-15", Docket, pp. 277 to 278.
15 Exhibit "P-13", Docket, pp. 271 to 276.
16 Exhibit "P-13", Docket, pp. 271 to 276.

Hence, the instant *Information*.

PROCEEDINGS BEFORE THIS COURT

The *Information*[17] charging the accused for the offense of willful failure to pay deficiency VAT for TY 2008, in violation of Section 255 of the NIRC of 1997, as amended, was filed before the Court on January 28, 2020.

On February 13, 2020, the Court found the existence of probable cause to issue a warrant of arrest against accused and ordered the issuance of the same.[18] Accordingly, a Warrant of Arrest was issued against accused Co Say, as responsible officer of Cosco.[19]

Thereafter, by order of the Court,[20] an Alias Warrant of Arrest was issued on January 5, 2021.[21]

Subsequently, or on October 29, 2021, the case was archived, without prejudice to its revival immediately upon accused's apprehension.[22]

On February 9, 2023, accused Co Say appeared and submitted his person to the jurisdiction of this Court and posted a cash bail[23] which was approved by the Court.[24] On even date, the case was reinstated and the Alias Warrant of Arrest against accused Co Say was lifted and set aside.[25] The Arraignment and Pre-Trial Conference was then set on March 29, 2023.[26]

Accused filed his *Pre-Trial Brief*[27] on March 24, 2023 while plaintiff filed its *Pre-Trial Brief with Entry of Appearance*[28] on the same date.

During the arraignment on March 29, 2023, accused Co Say entered a plea of "NOT GUILTY". The Court then proceeded to conduct the Pre-Trial Conference.[29] The Court noted that, based on the driver's license of the accused, his name is reflected as "Michael T. Co Say" and not "Michael C.

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[17] Docket, pp. 5 to 6.
[18] Resolution dated February 13, 2020, Docket, pp. 72 to 74.
[19] Docket, p. 75.
[20] Resolution dated January 4, 2021, Docket, p. 78.
[21] Docket, p. 79.
[22] Resolution dated October 29, 2021, Docket, p. 82.
[23] O.R. No. 8982522, Docket, p. 96.
[24] Resolution dated February 9, 2023, Docket, pp. 89 to 90.
[25] *Id.*
[26] *Id.*
[27] Docket, pp. 105 to 108.
[28] Docket, pp. 110 to 115.
[29] *Minutes of the Hearing* dated March 29, 2023, Docket, p. 142; Confirming Order dated March 29, 2023, Docket, pp. 154 to 155.

Cosay" as appearing in the *Information*. The Court thus ordered that his name in the *Information* be amended to show his true name.[30]

At the Pre-Trial Conference, the parties stipulated on the following facts and issue:

Stipulated Facts

1. The identity of the accused as the one charged in the Information;
2. The jurisdiction of the Court over the person of the accused and over the subject matter of the case;
3. Accused is the President of COSCO Petroleum Company Inc.; and,
4. Accused has been acquitted in CTA Crim. Case No. O-804 involving deficiency income tax for the year 2008 for COSCO Petroleum Company Inc.

Stipulated Issue

Whether or not the accused is guilty of the charge against him for failure to pay deficiency VAT for TY 2008 as President of Cosco.

Thereafter, the Court set the Preliminary Conference for the marking of evidence on March 30, 2023.

The Pre-Trial Order was issued on July 11, 2023,[31] thus terminating the pre-trial.

Trial then ensued.

Plaintiff presented the following witnesses by way of Judicial Affidavits: 1) Ms. Imelda L. Moroña, and 2) Mr. Alex D. Referiza.

After the presentation of its last witness, the Court granted plaintiff 15 days from July 11, 2023 within which to file its Formal Offer of Evidence (FOE), and the accused was granted the same period to file his comment/opposition thereto. The initial presentation of evidence for the accused was set on October 3, 2023 for the testimony of accused Co Say and the continuation of the presentation of evidence for accused via video

[30] *Id.*
[31] Docket, pp.188 to 193.

conference for the testimonies of Ma. Lorenza Nacor and Maria Roxan R. Nayles on November 7, 2023.

Plaintiff filed its *Formal Offer of Evidence*[32] via registered mail on July 26, 2023, sans accused's comment.[33]

In the Resolution dated October 3, 2023,[34] the Court admitted Exhibits "P-3", "P-3-a", "P-19", and "P-20" and denied the rest of its offered documentary exhibits. During the scheduled hearing on even date, plaintiff manifested that it will file a Motion for Reconsideration to the resolution of its FOE. Accordingly, the hearing for the testimony of accused Co Say was cancelled and reset to January 30, 2024.

On October 13, 2023, plaintiff posted its *Motion for Reconsideration (Re: Resolution dated October 3, 2023)*,[35] to which accused filed his *Comments*[36] via registered mail on November 8, 2023.

In the meantime, hearing for the presentation of accused's evidence was cancelled until further orders.

On April 4, 2024, the Court granted plaintiff's *Motion* and admitted Exhibits "P-2", "P-2-a", "P-4", "P-4-a", "P-5", "P-6", "P-6-1", "P-7", "P-7-a", "P-8", "P-8-a", "P-8-b", "P-9", "P-10", "P-11", "P-11-a", "P-12", "P-13", and "P-15". The hearing for the testimony of accused Co Say was then set on May 23, 2024.[37]

During the hearing on May 23, 2024, accused testified by way of Judicial Affidavit. His testimony was completed and terminated after re-direct examination. There being no other witnesses for the defense, the Court gave accused 10 days to file his FOE, and plaintiff was granted the same period to file its comment thereon. Furthermore, the presentation for plaintiff's rebuttal evidence was set on August 20, 2024.[38]

On May 28, 2024, accused filed through registered mail his *Formal Offer of Exhibits with Manifestation*[39] while plaintiff likewise filed via

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[32] Docket, pp. 197 to 206.
[33] *Records Verification* dated September 4, 2023, Docket, p. 247.
[34] Docket, pp. 251 to 252.
[35] *Id.*, at 253 to 256.
[36] *Id.*, at 284 to 285.
[37] *Id.*, at 294 to 296.
[38] Minutes of the Hearing dated May 23, 2024, Docket, p.297.
[39] Docket, pp. 299 to 301.

registered mail its *Comments on the Formal Offer of Exhibits of the Accused (Re: Resolution dated October 3, 2023)* on June 21, 2024.[40]

In the Resolution dated August 14, 2024,[41] the Court resolved the accused's FOE. The Court admitted Exhibits "A-1", "A-2", "A-3", "A-4", "A-5", "A-6", "A-7", "A-8", "A-9", "A-10", "A-11", "A-12", "A-13", "A-14", "A-15", "A-16", "A-17", and "A-18".

On August 20, 2024, plaintiff manifested that it will no longer present rebuttal evidence; thus, the Court gave the parties a period of 30 days from August 20, 2024 within which to file their respective memoranda.[42]

Accused filed through registered mail his *Memorandum* on September 3, 2024, which was received by the Court on September 9, 2024.[43] Meanwhile, plaintiff filed via registered mail its *Memorandum* on September 20, 2024 which was received by the Court on September 25, 2024.[44]

In the Minute Resolution dated October 22, 2024 the Court noted the parties' respective memoranda and submitted the case for decision.[45]

EVIDENCE FOR THE PROSECUTION

To establish the culpability of the accused, plaintiff presented its witnesses, Ms. Moroña, and Mr. Referiza, whose testimonies during their direct examination, cross-examination and/or responses to clarificatory questions propounded by the Court are summarized as follows:

1. Testimony of Ms. Imelda L. Moroña:[46]

Ms. Moroña, then Assistant Chief of Assessment Division in BIR Revenue Region 10 - Legazpi, testified that part of her duties and responsibilities is the review and evaluation of Reports of Investigation covered by LOA, PAN and FLD/FAN. Upon evaluation of the tax docket of accused Cosco for TY 2008, their office prepared the PAN with Details of Discrepancies, based on the investigation report. When no protest was received within the reglementary period, their office proceeded to prepare the FLD with Details of Discrepancies.

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[40] *Id.*, at pp. 374 to 380.
[41] *Id.*, at pp. 384 to 385.
[42] Minutes of the Hearing dated August 20, 2024, Docket, p.386.
[43] Docket, pp. 388 to 397.
[44] *Id.*, at pp. 103 to 421.
[45] *Id.*, at p. 422.
[46] Exhibit "P-19", Docket, pp. 133 to 138; Transcript of Stenographic Notes (TSN) dated July 11, 2023.

During cross-examination, Ms. Moroña stated that the PAN was served via registered mail. Since there was no indication of any return card nor a protest, they proceeded with the issuance of the FLD. The FLD was also served via registered mail. When asked about the receipt of the notices by accused, she answered that the same was beyond her jurisdiction since a different division was in charge of mailing the notices. On re-direct examination, Ms. Moroña clarified that the mailing of notices is done by the Administrative and Human Resource Management Division and that, after mailing, a report containing the date of mailing with registry receipt is prepared.

In response to the Court's clarificatory questions, Ms. Moroña testified that the LOA was in the name of RO Sevilla who was assigned to audit accused Cosco. Moreover, Ms. Moroña affirmed that she is testifying based on the record as the audit happened a long time ago and that she did not find on record any registry receipt and return card for the PAN and FLD.

<u>2. Testimony of Mr. Alex D. Referiza</u>: [47]

Mr. Referiza, an RO from the Collection Section of BIR RDO No. 65, Naga City, testified that his duties and responsibilities include the enforcement of collection through administrative summary remedies of due and demandable or delinquent accounts from the taxpayers and the recommendation for filing of legal action after willful failure of the taxpayer to pay its long overdue tax liability as an offense punishable under the pertinent provisions of the NIRC of 1997, as amended. He narrated that, sometime in August 2015, he received a Memorandum of Assignment with the whole tax docket on the 2008 delinquent account of accused Cosco. He was directed to conduct a verification whether the account has been settled and to submit report on the action taken in the collection of the delinquent account. After examining the records, he served the Warrant of Distraint and/or Levy (WDL) dated September 2, 2015 to the registered address of accused Cosco and was received by Mr. Maximo Cosay, the father of accused Co Say or, allegedly, his authorized representative on September 2, 2015. After his numerous efforts to communicate with accused Cosco to remind it of its due and demandable obligation, no payment was made. Following this, he and his fellow BIR ROs, Ms. El-Se H. Vida and Ms. Annalee N. Mina executed an *Investigation Data Form* with *Joint Complaint-Affidavit*, which was eventually filed against accused Cosco and accused Co Say before the DOJ.

On cross-examination, Mr. Referiza confirmed that, when the cases were filed against the accused, the corporation had already closed. He was

[47] Exhibit "P-19", Docket, pp. 120 to 128; Transcript of Stenographic Notes (TSN) dated July 11, 2023.

then asked if he can recall a certain "Jocelyn Corpuz" to which he responded in the affirmative and added that Ms. Corpuz is the bookkeeper of Co Say and Company. He explained that Ms. Corpuz would frequently visit his office for some transactions related to Co Say and Company and concluded that she is aware of the case when she received the notice for the accused. While he admitted that Ms. Corpuz did not tell him that she was authorized to receive the notices, she nonetheless consented to receive the same. He went on to explain that he exerted efforts to find employees of accused Cosco but could not find any.

During re-direct examination, Mr. Referiza expounded that he did not make any notations as to the designation of the person receiving the notices since he presumed that Ms. Corpuz is part of the corporation. Mr. Referiza reasoned similarly when asked if Mr. Maximo was authorized to receive the WDL. He also stated that he did not know if Ms. Corpuz was an employee of accused Cosco and just presumed that she was connected to the accused because of her frequent visits to his office to make various payments of many corporations, including accused Cosco.

The Court then interposed its clarificatory questions to which Mr. Referiza responded as follows: (1) he did not ask for any ID or authorization from Ms. Corpuz; (2) he did not have proof of any payment made by Ms. Corpuz for accused Cosco to substantiate his claim that Ms. Corpuz has represented the accused in some transactions before his office; and, (3) he has no proof of the authority of Mr. Maximo, father of accused Co Say, to receive correspondence for the corporation but presumed so by reason of their relationship.

EVIDENCE FOR THE ACCUSED

To counter the foregoing evidence of the prosecution, the defense, presented the accused Co Say, whose testimony during his direct examination, cross-examination and responses to clarificatory questions is summarized as follows:

Testimony of accused Co Say:[48]

Accused Co Say, the former president of accused Cosco, testified that Cosco Petroleum was already closed since 2008; thus, there can be no assessment to speak of as the corporation could not have earned that much as it is being assessed. He claimed that neither he nor the other officers and employees of the corporation ever received any notice from the BIR;

[48] TSN dated March 30, 2022 and May 24, 2022.

otherwise, they could have contested the assessment which was disproportionate to the income or gross receipts of the corporation.

He was then asked if he knew the persons who received the BIR notices, particularly, Ms. Corpuz and Ms. Ma. Lorenza Nacor. Accused Co Say answered in the affirmative; however, he stated that these persons are employees of Co Say and Company and not employees of accused Cosco.

Accused Co Say also presented the BIR Certificate of Registration (COR) of Co Say and Company as proof that accused Cosco is a separate entity from the former. Accused Co Say explained that they were unable to file any protest with the BIR because they did not receive any notice from the BIR. When asked for proof of the closed status of accused Cosco, accused Co Say presented various certifications issued by the Punong Barangay of Pili and the Office of the Municipal Treasurer stating that the company has ceased operations effective January 2008.

Finally, he manifested that he did not receive any demand letter from the BIR and only discovered the case when he was required to file a counter-affidavit before the prosecutor's office.

During cross-examination, accused confirmed his residential address to be "Santiago, Pili, Camarines Sur". Accused Co Say also affirmed that this was one of the office addresses of accused Cosco and Co Say and Company as mentioned in its COR.

Accused Co Say was also asked how he was able to say that, although the office was already closed, their records with BIR were not yet closed. In response, accused explained that he assumed the same since the accountant advised that the closure process was already done. Accused, nonetheless, admitted that no notice of closure was filed with the BIR nor was a Petition for Dissolution of the corporation filed with the Securities and Exchange Commission (SEC).

On re-direct examination, accused Co Say clarified that his residence and the office address of Cosco Petroleum are in the same barangay but housed in different places/buildings.

THE ISSUE

The Pre-Trial Order limits the issue of the case as follows:

Whether or not the accused is guilty of the charge against him for failure to pay deficiency VAT for TY 2008 as President of Cosco.

ARGUMENTS OF THE PARTIES

Plaintiff's arguments:

Plaintiff mainly argues in its *Memorandum* that mere denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law.

The mere unexplained assertions that a company had been closed since 2008 to shield itself from ongoing tax assessments by the BIR, without visible efforts to process its closure from any government institution apart from mere certifications from barangay and municipal halls should bear no weight.

Plaintiff insists that the continued failure of Cosco to pay the deficiency VAT despite repeated demands from the BIR constitutes willful failure to pay tax under Section 255 of the NIRC of 1997, as amended.

Furthermore, Cosco was not denied its due process when all the assessment notices were duly served at its known address.

Plaintiff thus maintains that Cosco willfully and deliberately evaded the payment of taxes for TY 2008 despite due demands.

Accused's counter-arguments:

Accused anchors its lack of culpability on the non-receipt of the assessment notices for the TY 2008 tax assessments. Accused claims that the records clearly show that the notice of tax delinquency, demand letters and notices to Cosco were not personally nor constructively received by the corporation or its officers and employees. Accused argues that it was not afforded ample opportunity and/or due process as mandated by law. Although notices may have been received by Ms. Corpuz, Ms. Nacor and Mr. Maximo Cosay, said receipts did not indicate their designation and authority to act on behalf of the corporation.

THE COURT'S RULING

The Court shall first determine whether it has jurisdiction over the instant *Information*.

Section 7(b) of Republic Act (R.A.) 1125,[49] as amended by R.A. No. 9282,[50] provides for the jurisdiction of the Court of Tax Appeals (CTA) over criminal offenses:

> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> xxx xxx xxx
>
> (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 and 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 (₱1,000,000.00)** or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized. *(Emphasis supplied)*

Based on the foregoing, the CTA has jurisdiction over criminal offenses arising from the NIRC of 1997, as amended, among others, except where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (₱1,000,000). Stated otherwise, where the case involves criminal offenses arising from the NIRC of 1997, as amended, and the principal amount of taxes and fees involved is exceeding One million pesos (₱1,000,000), the same falls under the original jurisdiction of the CTA.

Here, as alleged in the *Information*, accused Cosco and Co Say are charged with violation of Section 255, in relation to Sections 253 and 256, of

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49 An Act Creating the Court of Tax Appeals.

50 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and For Other Purposes.

the NIRC of 1997, as amended, with the principal tax involved amounted to ₱7,953,624.79, exclusive of increments and penalties. Thus, it appears that the CTA has jurisdiction over the *Information.*

However, equally important to the jurisdiction of the CTA is the prescription of the offense charged and whether the *Information* was filed within the applicable prescriptive period.

The government's right to prosecute the case has prescribed.

In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and, (3) the time the prescriptive period is interrupted.

The *first* consideration may be found in Section 281 of the NIRC of 1997, as amended, which provides for the **five-year prescriptive period** as follows:

> 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)*

Inasmuch as accused was charged for violation of Section 255 of the NIRC of 1997, as amended, the applicable prescriptive period is **five years** as provided above.

As to the *second* consideration (i.e., commencement of the prescriptive period), Section 281 of the NIRC of 1997, as amended, provides for two reckoning points from when the period of prescription begins to run:

(1) If the day of commission is known, prescription begins to run from the day of the commission of the violation of the law; or

(2) If the day of the commission is unknown, from its discovery *and* the institution of judicial proceedings for its investigation and punishment.

In the *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*[51] (*Lim* case), the Supreme Court discussed the date of commission of tax evasion in relation to the commencement of the five-year prescriptive period in criminal cases involving willful refusal to pay deficiency taxes and those involving the filing of fraudulent tax returns, *viz:*

> Relative to Criminal Cases 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.* (Emphasis supplied)
>
> 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 wilful *[sic]* refusal to pay the taxes due within the alloted *[sic]* 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.
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> With regard to Criminal Cases Nos. 1790 and 1791 which dealt with petitioners' **filing of fraudulent consolidated income tax returns with intent to evade the assessment decreed by law**, petitioners contend that the said crimes have likewise prescribed. They advance the view that the five-year period should be counted from the date of discovery of the alleged fraud which, at the latest, should have been October 15, 1964, the date stated

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

by the Appellate Court in its resolution of April 4, 1978 as the date the fraudulent nature of the returns was unearthed.

On behalf of the Government, the Solicitor General counters that the crime of filing false returns can be considered 'discovered' only after the manner of commission, and the nature and extent of the fraud have been definitely ascertained. It was only on October 10, 1967 when the BIR rendered its final decision holding that there was no ground for the reversal of the assessment and therefore required the petitioners to pay ₱1,237,190.55 in deficiency taxes that the tax infractions were discovered.

Not only that. The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. Note the conjunctive word 'and' between the phrases 'the discovery thereof' and 'the institution of judicial proceedings for its investigation and proceedings.' In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced.

But according to the Lim spouses, that argument had precisely been raised, considered and found without merit in the case of *People vs. Ching Lak* which had perfunctorily dismissed the Government's position in this wise:

> 'Anent the theory that in the present case the period of prescription should commence from the time the case was referred to the Fiscal's Office, *suffice it to state that the theory is not supported by any provision of law and we need not elucidate thereon.*' (Emphasis supplied).

The Court is inclined to adopt the view of the Solicitor General. For while that particular point might have been raised in the Ching Lak case, the Court, at that time, did not give a definitive ruling which would have settled the question once and for all. **As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases,** such as the present ones, **are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed five (5) years**. *(Emphasis supplied)*

In sum, the date of commission of the crime of tax evasion would depend on the mode of commission as alleged in the information charged. It now becomes imperative to first determine the mode of commission based on the charge in the *Information* to ascertain the commencement of the five-year prescriptive period.

A perusal of the *Information* shows that the violation alleged therein is for accused's willful refusal to pay the deficiency VAT despite demand.[52]

In this regard, the Court takes into consideration the case of *Tupaz vs. Ulep,*[53] which similarly involves the offense of failure to pay tax despite demand, where the Supreme Court determined the day of the commission of the violation of the law and prescription of the criminal action in this wise:

> Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. vs. Court of Appeals,* we stated that by its nature **the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. **The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period**. In this case, when the notice of assessment was issued on July 16, 1984, the taxpayer still had thirty (30) days from receipt thereof to protest or question the assessment. Otherwise, the assessment would become final and unappealable. As he did not protest, the assessment became final and unappealable on August 16, 1984. Consequently, when the complaint for preliminary investigation was filed with the Department of Justice on June 8, 1989, the criminal action was instituted within the five (5) year prescriptive period. (*Emphasis supplied*)

In the instant case, since, by the nature of the violation charged against the accused (i.e., willful refusal to pay taxes despite demand), the day of the commission of the violation when the prescriptive period begins to run is <u>upon the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period</u>.

Here, the BIR issued the FLD on January 9, 2013, demanding that the accused pay the deficiency tax liabilities for TY 2008 "within the time shown in the enclosed assessment notice". On the face of the FLD, the Court observes that the same was served via registered mail on January 10, 2013. The records, however, is bereft of proof alluding the date of actual receipt of the accused. Thus, for purposes of commencement of the period of prescription, the Court is constrained to reckon said period from the date when the assessment became final or the date when the 30-day period to file a protest lapsed without the taxpayer filing any protest, pursuant to Section 3 of RR No. 12-1999,[54] or settling the liability. In this case, counting 30 days from

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[52] Accusatory portion of the information reads: "xxx willfully and unlawfully fail to pay deficiency Value-Added Tax for taxable year 2008, in the amount of P7,953,624.79, exclusive of increments and penalties, despite final assessment notice, including prior and post notices and demands to pay xxx"; Docket, pp.5 to 6.

[53] G.R. No. 127777, October 1, 1999.

[54] SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

January 10, 2013 (i.e., mailing of the FLD), accused had until February 9, 2013 to file a protest against the FLD; thus, on **February 10, 2013,** the assessment became final with the accused allegedly refusing to pay the subject taxes within the period it was given. At this point, insofar as the BIR was concerned, it was already known to them that the violation of Section 255 had been committed. **Consequently, the government had five years therefrom, or until February 10, 2018, within which to file an Information before the Court.**

Clearly, when the instant *Information* was filed before this Court on **January 28, 2020**, one year and 11 months had passed since the government's right to institute a criminal action prescribed.

Even assuming *arguendo* that the Court has jurisdiction over the case, the plaintiff was not able to prove the guilt of the accused beyond reasonable doubt, thereby, acquittal of the accused will be order.

Plaintiff failed to prove beyond reasonable doubt the elements of the crime charged against accused Cosco and Co Say.

Accused Cosco is charged with violation of Section 255 of the NIRC of 1997, as amended, which provides 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

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

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).

3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.**

> penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. *(Emphasis supplied)*

In cases where the accused is a corporation, Sections 253 and 256 of the NIRC of 1997, as amended, provide the persons can be held responsible or criminally liable and how the resulting penal liability shall be imposed, to wit:

> SECTION 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.**
>
> xxx xxx xxx
>
> SECTION 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 (₱50,000) but not more than One hundred thousand pesos (₱100,000). *(Emphasis supplied)*

Accused Co Say, as president of the accused corporation, is being held responsible for Cosco's alleged violation of the NIRC of 1997, as amended.

Based on the aforecited provisions, to sustain a conviction for the offense of willful failure to file return, pay tax and failure to supply correct and accurate information, the following elements must be satisfied:

1. The accused is a person required under the NIRC of 1997, as amended, or rules and regulations to pay any tax or make a return or supply correct and accurate information;

2. The accused failed to pay such tax, make such return or supply correct and accurate information, at the time or times required by law or rules and regulations; and,

3. Such failure to pay such tax, make such return or supply correct and accurate information is willful.

The Court finds that the elements were not established in this case.

As to the *first* element, accused cannot be considered required to pay the deficiency VAT arising from the FLD considering that the examination was conducted without authority. We expound.

Sections 6, 10(c), and 13 of the NIRC of 1997, as amended, provide as follows:

> **SECTION 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **the Commissioner or <u>his duly authorized representative</u> 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.
>
> xxx xxx xxx
>
> **SECTION 10.** ***Revenue Regional Director.*** — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others:
>
> xxx xxx xxx
>
> (c) **Issue Letters of Authority for the examination of taxpayers within the region**
>
> xxx xxx xxx
>
> **SECTION 13.** ***Authority of a Revenue Officer.*** — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a <u>Letter of Authority</u> 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 due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. *(Emphasis and underscoring supplied)*

From the foregoing provisions, it is clear that, before an examination can be conducted by an RO, he must first be authorized through an <u>LOA</u> issued by the CIR or his duly authorized representative.

A cursory reading of the PAN[55] and FLD[56] reveals that the said assessments were the result of the investigation conducted by "**Revenue Officer Manolito B. Galagac**". To recall, LOA No. LOA200900012154[57] only authorized **RO El-Se H. Vida** to examine the books of accounts and other accounting records of accused Cosco for TY 2008. Notably, RO Galagac was neither named in the LOA presented in evidence nor was any other LOA presented to show RO Galagac's authority to conduct the examination. Verily, the assessment herein was illegally conducted in clear violation of accused's right to due process.

Elementary is the rule that tax assessments issued in violation of the due process rights of a taxpayer are null and void.[58] To stress, a void assessment bears no valid fruit.[59] Such being the case, the BIR cannot enforce the subject tax assessments against the accused and demand payment thereof.

Inasmuch as the assessment is void, there is also no deficiency VAT liability which accused is required to pay, thereby negating the *first* element.

Consequently, with regard the *second* element, accused cannot be said to have failed to pay the taxes since there is no deficiency VAT liability arising from a valid assessment to speak of. Hence, the *second* element is likewise absent in this case.

Finally, with the *second* element not proven, there is likewise no act or omission which the Court may characterize as willful. As such, the *third* element is also not satisfied herein.

Granting, for argument's sake that the *first* and *second* elements are present, this Court finds that the *third* element is still lacking.

In *People vs. Joel C. Mendez*[60] (*Mendez* case), the Supreme Court discussed that the term *willful* as defined in the Ninth Edition of Black's Law Dictionary means voluntary and intentional, but not necessarily malicious. The term *willfully* was also construed as voluntary, intentional violation of a known legal duty. Hence, the Supreme Court held that the prosecution must prove that the taxpayer knew his legal duty to file an ITR, yet, the taxpayer knowingly, voluntarily, and intentionally neglected to do so. It must be stressed that the willful neglect to file the required tax return cannot be

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[55] Page 2 of the PAN, Exhibit "P-7" and Exhibit "A-11", Docket, p. 262.
[56] Page 2 of the FLD, Exhibit "P-8" and Exhibit "A-12", Docket, p. 265.
[57] Exhibit "P-2" and Exhibit "A-7", Docket, p. 257.
[58] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[59] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, July 9, 2018.
[60] G.R. Nos. 208310-11 & 208662, March 28, 2023.

presumed. It must be established fully as a fact and cannot be attributed to a mere inadvertent or negligent act.

In order for accused's non-payment to be considered willful, plaintiff must show that accused was aware of the demand for payment of the deficiency VAT covered by FLD.

Plaintiff maintains that accused was notified of the assessments through the assessment notices. Accused, however, denied having received the PAN, FLD and subsequent notices. The burden of proving the receipt of the notices thus shifted to the plaintiff.

In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[61] (*Barcelon* case), the Supreme Court ruled that, if the taxpayer denies the receipt of an assessment notice from the BIR, the burden shifts to the BIR to prove that the notice was indeed received by the addressee. In the said case, the BIR presented its record book where the name of the taxpayer, the kind of tax assessed, the registry receipt number, and the date of mailing were indicated. The Supreme Court deemed the same insufficient as the entries therein were not based on the personal knowledge of the custodian. The Supreme Court further held that the BIR must present independent evidence, such as the registry receipt issued by the Bureau of Posts or the registry return card signed by the taxpayer.

In *Commissioner of Internal Revenue vs. Arturo E. Villanueva, Jr.*,[62] the Supreme Court reiterated the doctrine in the *Barcelon* case and further clarified that the mere presentation of registry receipts, absent any authentication or identification that the signature appearing therein is the taxpayer's or his or her authorized representative's, is insufficient to prove actual receipt by the taxpayer. We quote:

> As applied to issuance of deficiency tax assessments, the Court, in *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue (Barcelon)*, ruled that **if the taxpayer denies ever having received an assessment notice from the BIR, it becomes incumbent upon the latter to prove *that such notice was, in fact, received by the addressee.*** To discharge this burden, it is essential for the BIR to present independent evidence, such as the registry receipt issued by the Bureau of Posts, or the registry return card *which would have been signed by the taxpayer or the latter's authorized representative*, showing that the assessment notice was released, mailed, or sent to the taxpayer. If such document cannot be located, the BIR may submit a certification issued by the Bureau of Posts and other pertinent document which is executed with the latter's intervention. Thus, in *Barcelon*, the Court found the BIR record book showing the name of the taxpayer, the kind of tax assessed, the registry

[61] G.R. No. 157064, August 7, 2006.
[62] G.R. No. 249540, February 28, 2024.

> receipt number, and the date of mailing of the assessment as incompetent evidence to prove actual receipt by the taxpayer.
>
> In the more recent case of *Commissioner of Internal Revenue v. T Shuttle Services, Inc. (T Shuttle)* where the taxpayer also denied receipt of the PAN and FAN, the Court, reiterating the doctrine in *Barcelon*, clarified that **mere presentation of registry receipts, absent any authentication or identification that the signature appearing therein is the taxpayer's or his or her authorized representative's, is insufficient to prove actual receipt by the taxpayer**.
>
> > As ruled by the CTA *En Banc, the CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN.* It held that the witnesses for *the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives. It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent.* xxx xxx xxx *(Boldfacing supplied; Citations omitted; Italics in original text)*

Applying the above to the present case, accused consistently denied the receipt of the notices issued by the BIR. As such, the burden of proof to prove the same shifted to the plaintiff. Plaintiff, however, failed to present any concrete evidence establishing the actual receipt of accused. The Court cannot simply rely on the registry receipts without any authentication or identification that the signature appearing therein is the accused's or its authorized representative's. Glaringly, there were no registry return cards offered in evidence to prove actual receipt by the accused. In fact, even plaintiff's witness, Ms. Moroña, admitted that no return cards were found in the case docket,[63] to wit:

JUSTICE LIBAN:

Okay. So you're testifying based on the record because this happens a long time ago so you have to review the records. And in the record, you did not find any registry receipt for the PAN that you said you served through registered mail the PAN, there is none?

A:

None on the record, your Honors.

JUSTICE LIBAN:

And there is no return card on record of the said PAN?

A:

Yes.

[63] TSN dated July 11, 2023, pp. 14 to 15.

JUSTICE LIBAN:
You also served the FLD and there is a registry receipt for that on record?

A:
Yes, your Honors.

JUSTICE LIBAN:
But there is no return card?

A:
Yes, your Honors.

In fine, plaintiff failed to overcome its burden to prove the receipt of the PAN and FLD.

All told, plaintiff failed to prove beyond reasonable doubt that accused willfully refused to pay the deficiency VAT assessed by the BIR. Accordingly, acquittal of the accused is in order.

CIVIL ASPECT

Anent the civil aspect of the case, the Supreme Court had already settled in the *Mendez* case[64] that the government must prove by competent evidence, other than assessment, the amount to which the civil liability for unpaid taxes may be based, viz.:

> The foregoing provision has long existed in the 1939, 1973, and 1977 Tax Codes. Indeed, the tax laws expressly allowed the institution of court proceedings, whether by civil or criminal action, for the collection of tax without assessment in three cases: (1) the taxpayer filed a false return; (2) the taxpayer filed a fraudulent return with the intent to evade taxes; and (3) in case of willful neglect to file a return. Nevertheless, **the government must prove by competent evidence (other than an assessment) the amount on which the civil liability for unpaid taxes may be based.** (*Emphasis supplied*)

Clearly, plaintiff must present competent and sufficient proof of the tax liability of the accused other than an assessment.

In a more recent case, *People vs. Rebecca S. Tiotangco*,[65] the Supreme Court, citing the *Mendez* case,[66] further clarified the necessity of presenting competent evidence to prove the civil liability of the accused, to wit:

> At this juncture, we clarify that the order for payment of taxes in the criminal case despite the absence of a valid assessment is not a violation of

[64] *Supra*, at note 59.
[65] G.R. No. 264192, November 13, 2023.
[66] *Supra*, at note 59.

> the taxpayer-accused's right to due process. The essence of due process is that taxpayers are able to present their case and adduce supporting evidence. Since both the civil and criminal liabilities will be tried jointly, the taxpayer-accused can dispute the alleged deficiency taxes in the same criminal action by presenting competent evidence. **Unlike in a civil case for collection, where notices of the assessment are part of the due process requirement, a precise computation and final determination of a deficiency tax is not required in a criminal case for tax violations.** As decreed in Mendez, **in a criminal action for tax violation, the government must prove not only the guilt of the accused by proof beyond reasonable doubt, but also the civil liability for taxes by competent evidence (other than an assessment).** *(Emphasis supplied)*

In this case, however, the plaintiff failed to present competent evidence to establish the accused's civil liability, apart from the documentary and testimonial evidence stemming from the void assessment.

Thus, the Court has no basis upon which it can determine the civil liability of the accused.

WHEREFORE, premises considered, CTA Crim. Case No. O-805 is **DISMISSED** on the ground of prescription.

Accordingly, the cash bail bond posted by accused Michael T. Co Say is hereby **DISCHARGED** and shall be **RELEASED** to him upon presentation of the proper documents, in accordance with the usual accounting rules and regulations.

No pronouncement on the civil liability *ex delicto* for failure of plaintiff to prove by competent evidence the basis thereof.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Division Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified 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.

ROMAN G. DEL ROSARIO
Presiding Justice