REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

PETER QUE GARCIA,
95 P. Florentino Street corner Sto. Domingo Street, Quezon City
Accused.

CTA CRIM. CASE NO. O-874

For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

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

Promulgated:

NOV 2 8 2023

4:11 p.m.

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RESOLUTION

For resolution is the accused's Demurrer to Evidence filed on August 22, 2023.

Accused Peter Que Garcia was charged with the crime of violation of Section 255 of the NIRC for willful failure to pay deficiency income tax for taxable year 2010, allegedly committed as follows:

> "That on or about January 25, 2016 and thereafter, in Manila, and within the jurisdiction of this Honorable Court, accused Peter Que Garcia, the proprietor of Foot Haven Shop, which is registered at BIR RDO No. 29, Tondo-San Nicolas, Manila, with Tax Identification Number 107-191-148-000, did then and there, willfully, unlawfully and feloniously fail to pay the basic income tax deficiencies for taxable year 2010 in the amount of Two Million Two Hundred Ninety Three Thousand Seventy Six Pesos and Sixteen Centavos (Php2,293,076.16), exclusive of surcharge and interest, despite final assessment, including prior and post notices, and formal demands to pay, the latest being in

the nature of Final Notice Before Seizure issued on January 25, 2016, to the damage and prejudice of the government."

It may be recalled that the accused filed its Motion for Leave to File Demurrer to Evidence via registered mail on October 28, 2022 which this Court granted in a Resolution dated July 31, 2023. Accordingly, the accused filed his Demurrer to Evidence on August 22, 2023. On the other hand, the prosecution filed its Opposition (Re: Accused's Demurrer to Evidence) on October 19, 2023.

The accused submits his Demurrer to Evidence on the basis of the following grounds:

1. The plaintiff and/or prosecution failed to prove the essential elements of the crime charged;
2. The criminal intent to commit the alleged crime was not proven;
3. The evidence on record shows that the action has prescribed;
4. The filing of the present case was not approved by the BIR Commissioner pursuant to Sections 220 and 221 of the NIRC;
5. The three (3) year assessment period has already prescribed; and
6. The filing of the present case is premature.

The accused asserts that there is no proof that he or Foot Haven Shop is the person required to pay tax. He contends that the assessment notices for both income tax and value-added tax (VAT) are "self-serving and without any legal and factual bases" as the prosecution failed to submit any evidence establishing that he or Foot Haven Shop was the one who transacted with Kloms Corporation.

The accused also maintains that the Letter Notice dated October 20, 2011 and the Details of Taxpayer's Record attached therein which supposedly indicated that the accused or Foot Haven Shop had sales in the year 2010 in the amount of ₱7,325,238.00 are not admissible as evidence and cannot be given any probative value for being mere photocopies and for having no witness who has personal knowledge and responsible in the preparation thereof was presented during trial to authenticate the same.

The accused likewise points out that the BIR did not get any confirmation from Kloms Corporation even after sending a confirmation letter thereto regarding the supposed purchases mentioned in the Letter Notice and Details of Taxpayer's Record as duly indicated in the Memorandum dated September 19,

2017. This only shows, according to the accused, that neither he nor Foot Haven Shop has any dealing or transaction with Kloms Corporation.

In support of his argument that the criminal intent to commit the crime charged was not proven, the accused further states that there is no direct proof that he or Foot Haven Shop had any sales or transactions with Kloms Corporation. Neither was there any proof that he or Foot Haven Shop received the following documents:

1. Electronic Letter of Authority dated September 2, 2013
2. Checklist of Presentation of the Requirements for the Audit dated September 4, 2013
3. First Request for Presentation of Records dated October 2, 2013
4. Second and Final Request for Presentation of Records dated October 22, 2013
5. Letter Notice dated October 20, 2011
6. Preliminary Assessment Notice dated May 22, 2015
7. Assessment Notice No. 29-10-IT-15-0154 dated July 30, 2015
8. Assessment Notice No. 29-10-VT-15-0155 dated July 30, 2015
9. Formal Letter of Demand dated July 30, 2015
10. Warrant of Distraint and/or Levy
11. Warrants of Garnishment

Moreover, the accused claims that the registry receipts presented by the prosecution cannot be treated as competent evidence to prove that he or Foot Haven Shop actually received the assessment notices sent by registered mail. He posits that registry receipts are mere proof of mailing while it is the registry return card which serves as competent evidence of receipt by the addressee of the documents sent by registered mail. The accused submits that since he was denied due process, the assessments issued against him are considered void and thus no cause of action can ever emanate from a void assessment. He added that no inference of criminal intent to commit the crime can be drawn from such mere failure to pay the assessments given that he had no knowledge or was not aware of the existence of such obligation to pay.

The accused also points out that since the assessments covering taxable year 2010 were issued only on July 30, 2015, the same are already prescribed as they were issued beyond the three-year prescriptive period.

The accused likewise avers that there is no proof that the filing of the present case was approved by the BIR Commissioner pursuant to Section 220 and 221 of the National Internal Revenue Code of 1997, as amended (1997 NIRC).

Finally, the accused submits that the filing of the present case is premature given the pendency of his protest against the assessments.

On the other hand, the prosecution submits that it has successfully proven the guilt of the accused beyond reasonable doubt. To prove its case, the prosecution presented the following evidence, to wit:

Electronic Letter of Authority SN: Ela201100048389 (LOA-029-2013-00000627) dated September 2, 2013	P-1
Checklist of Presentation of the Requirements for the Audit dated September 4, 2013	P-2
First Request for Presentation of Records dated October 2, 2013	P-3
Registry Receipt No. 908042	P-3-a
Second & Final Request for Presentation of Records dated October 22, 2013	P-4
Registry Receipt No. 910233	P-4-a
Memorandum Report of Investigation dated May 20, 2014	P-5
Memorandum dated October 23, 2014	P-6
Confirmation Letter dated October 29, 2014	P-7
PhIPost Tracking No. R1412759393147	P-7-a
Letter Notice LN: 029-RLF- 10-00-00061 dated October 20. 2011	P-8 and P-8-a
Preliminary Assessment Notice with attached Details of Discrepancy dated May 22, 2015	P-9 and P-9-a
Registry Receipt No. 908428 (Proof of Service of PAN)	P-9-b
Affidavit of Service of the PAN	P-10
Assessment Notice Nos. 29-10-IT- 15-0154 dated July 30, 2015	P-11
Assessment Notice Nos. 29-10-VT- 15-0155 dated July 30, 2015	P-12
Formal Letter of Demand dated July 30, 2015 with Details of Discrepancies	P-13 and P-13-a
Registry Receipt No. 912854 (Proof of Service of FAN)	P-13-b
Affidavit of Service of the FAN	P-14
Memorandum of Assignment dated April 12, 2016	P-15
Warrant of Distraint and/or Levy	P-16
Warrants of Garnishments (5X)	P-17
	P-18
	P-19
	P-20
	P-21
Authorization Letter dated November 9, 2016	P-22
Memorandum dated September 19, 2017	P-23
Joint Complaint-Affidavit	P-24
CIR Referral Letter to DOJ	P-25
Judicial Affidavit of Revenue Officer Jane G. Lazam	P-26
Signature atop the printed name " Jane G. Lazam"	P-26-a
Judicial Affidavit of Revenue Officer Kristine Jyka C. Mengullo	P-27
Signature atop the printed name " Kristine Jyka C. Mengullo"	P-27-a

The prosecution insists that all the elements of the crime charged are present. It asserts that the accused was required to pay his deficiency taxes for taxable year 2010 amounting to ₱7,521,704.32, inclusive of increments. Despite his receipt of the assessment notices, the accused failed and refused to pay said tax liabilities.

The prosecution also maintains that the accused's submission that the Letter Notice dated October 20, 2011 and the Details of Taxpayer's Record attached therein are not admissible as evidence for being mere photocopies and for having no witness who has personal knowledge and responsible in the preparation thereof was presented during trial to authenticate the same is already moot and academic given that these pieces of evidence were already admitted by this Court. The prosecution also claims that these documents have probative value pursuant to Section 3(a) & 3(d), Rule 130 of the Rules of Court.

Citing the case of *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*,[1] the prosecution counters that the accused's claim of non-receipt of the correspondences from the BIR is self-serving since the same was not accompanied by indubitable evidence. Accordingly, the prosecution submits that the presumption that the accused received the correspondences in the regular course of the mail applies. Moreover, that the accused was able to file his protest belies his argument that his right to due process was violated.

With respect to the argument that the assessments issued are already prescribed, the prosecution counters that the ten-year prescriptive period under Section 222 of the 1997 NIRC applies to the present case. Thus, the assessments were timely issued.

The prosecution also points out to the Referral Letter to the DOJ issued by the Commissioner of Internal Revenue (CIR) marked as Exhibit "P-25". Thus, it is not true, according to the prosecution, that the filing of the present case was not approved by the CIR.

Lastly, the prosecution stated that non-payment of deficiency taxes within the specified period or after the same became final and unappealable is an offense criminal in nature.

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

A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue.[2] The party

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[1] G.R. No. 225809, March 17, 2021 ("*South Entertainment Gallery*").
[2] *Katigbak v. The Sandiganbayan*, G.R. No. 140183, July 10, 2003.

demurring challenges the sufficiency of the whole evidence to sustain a verdict.[3] In criminal cases, this remedy is provided by Section 23, Rule 119 of the Rules of Court which states:

> **SEC. 23.** *Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
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> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
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> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment.

In consonance with the foregoing, when the accused files a demurrer to evidence, the role of the trial court is to ascertain, based on the exercise of its sound discretion, whether there is competent or sufficient evidence to support a verdict of guilt.[4]

In the present case, the acused is charged with willful failure to pay tax under Section 255 of the 1997 NIRC, which reads as follows:

> SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* - **Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax,** make a return, keep any record, or supply correct and accurate information, **who willfully fails to pay such tax,** make such return, keep such record, or supply such correct and accurate information, or

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[3] *JCLV Realty & Development Corporation v. Phil Galicia Mangali*, G.R. No. 236618, August 27, 2020; *Go-Yu v. Yu*, G.R. No. 230443, April 3, 2019.
[4] *Singian, Jr. v. Sandiganbayan (3rd Division) et. al.*, G.R. Nos. 195011-19, September 30, 2013.

> withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.** *(Emphasis supplied)*

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

1. A person is required under the 1997 NIRC, or its rules and regulations, to pay any tax;

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

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

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

Section 56 of the 1997 NIRC, in relevant part, states:

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

Based on the above provision, the legal obligation to pay tax under the 1997 NIRC arises from two (2) specific instances, namely: (1) at the time required by law to pay a particular tax; and (2) upon being informed of a tax assessment issued by the BIR requiring the taxpayer to pay the same within a specified period, as indicated in the notice of assessment. In *People v. Cross Country Oil & Petroleum Corp., et. al.,*[5] this Court previously explained these instances as follows:

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

In addition to Section 56 of the 1997 NIRC, the second instance where a taxpayer is legally obligated to pay tax as mentioned above likewise finds support from Section 6 of the 1997 NIRC, which provides:

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

[5] CTA Crim. Case No. O-620, May 19, 2021.

> **<u>The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.</u>**
>
> Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided,* That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further,* That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer. *(Emphasis and underscoring supplied)*

A perusal of the Information dated July 8, 2019 filed against the accused reveals that the alleged legal obligation of the accused to pay taxes under the 1997 NIRC was derived from the second instance, *i.e.*, upon being informed of a deficiency tax assessment issued by the BIR requiring the taxpayer to pay the same within a specified period, as indicated in the notice of assessment. Accordingly, to satisfy the first element of the crime charged, the prosecution must be able to establish the existence of a valid assessment notice and demand duly issued to the accused thereby legally obligating the latter to pay deficiency taxes. The validity of the assessment would, in turn, depend on whether the same was issued strictly in accordance with the requirements of the 1997 NIRC and its relevant rules and 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:

> "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 provisions, Revenue Regulations (RR) No. 12-99[6] specifies the due process requirement to be observed in issuing deficiency tax assessments. The relevant portion of the said issuance reads:

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

"**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:

xxx xxx xxx

3.1.2 ***Preliminary Assessment Notice (PAN).*** — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.4 ***Formal Letter of Demand and Assessment Notice.*** — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

xxx xxx xxx

3.1.7 ***Constructive Service.*** If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two

(2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case (see illustration in ANNEX D hereof)."

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[7] the Supreme Court categorically held that failure to strictly comply with the notice requirements prescribed under Section 228 of the 1997 NIRC and RR No. 12-99 is tantamount to denial of due process. As aptly explained by the Supreme Court:

> "**Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made.** The law imposes a substantive, not merely a formal, requirement. **<u>To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.</u>**
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> xxx xxx xxx
>
> **From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities.** The use of the word *'shall'* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. **<u>Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void</u>**." *(Emphasis and underscoring supplied; Citations omitted)*

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*,[8] 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

[7] G.R. No. 185371, December 8, 2010, 637 SCRA 644, 646.
[8] G.R. No. 155541, January 27, 2004, 421 SCRA 275.

least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:

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

Thus, it is not simply a question of whether the assessment notices were sent to the taxpayer by the BIR. 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.*,[9] the Supreme Court enunciated the rule to be observed in cases where the taxpayer denies the receipt of assessment notices. The Supreme Court held:

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

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

In the present case, the accused vehemently denies having received the assessment notices, among others. In response, the prosecution counters that such denial is self-serving as it was not accompanied by indubitable evidence, citing *South Entertainment Gallery* to buttress its position. The prosecution thus maintains that it was able to establish the application to the present case of the disputable presumption that a letter duly directed and mailed is presumed to have been received by the addressee thereof in the regular course of the mail.

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[9] G.R. No. 202695, February 29, 2016, 785 SCRA 258-259.

At the outset, it must be pointed out that the Supreme Court's ruling in *South Entertainment Gallery* finds no application to the present case due to variance in their respective factual milieu.

In *South Entertainment Gallery*, the Supreme Court ruled that the taxpayer's bare and belated denial did not overcome the totality of the testimonial and documentary evidence presented by the BIR showing that the Final Assessment Notice (FAN) was released, mailed, and sent to the taxpayer. The Supreme Court held that the requirements of Rule 131, Section 3(v) of the Rules of Court were adequately shown by the BIR based on the pieces of evidence it presented. Since the taxpayer failed to present evidence to overcome the presumption, it was deemed to have received the assessment notice. Notably, the pieces of evidence upon which the Supreme Court based its ruling are as follows:

> "Here, petitioner presented the **registry receipts** and **return card** along with the **testimony of the Bureau of Internal Revenue personnel who prepared the mail matter and personally delivered it to the Post Office of San Fernando, Pampanga**. In addition, petitioner also presented **Postman II Emelito M. Victoria who delivered the mail**. He testified that all mail matters addressed to tenants of SM City Pampanga are received through SM Warehouse by Warehouse Assistant Brian David, who receives such mail matters for the tenants. For this, the Postman issued a Certification dated February 7, 2012 stating that he delivered Registered Mail No. 853, addressed to respondent and posted on April 10, 2008, and was received by Brian David on April 14, 2008 in SM City Pampanga. **Warehouse Assistant Brian David, in turn, testified that as part of his functions, he receives mail matters and other documents for distribution to tenants of SM City Pampanga, and confirmed his receipt of the mail matter on April 14, 2008 and his handwriting on the Registry Return Card**. He also confirmed that respondent is one of the tenants of SM City Pampanga.
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> It was then incumbent upon respondent to overcome the presumption that the Final Assessment Notice, which petitioner sent by registered mail, was received in the regular course of mail. Bare denial of receipt of the Final Assessment Notice will not suffice. x x x" *(Emphasis supplied)*

To reiterate, the pieces of evidence presented by the BIR in the above-cited case consisted of the following: (1) registry receipts; (2) return card; (3) testimony of the BIR employee who mailed the notice; (4) testimony of the postman who delivered the mail; and (5) testimony of the person who received the mail and signed the return card.

In stark contrast, the only evidence presented by the prosecution in the present case to prove that the assessment notices and other documents are received by the accused consist only of the registry receipts and the affidavits of service. These documents are simply not enough to support the presumption that the assessment notices were received by the accused in the regular course of the mail. The accused is, therefore, correct in pointing out that registry receipts merely evidenced the mailing of the notices and not his receipt thereof. In the present case, there is no other evidence to prove that the assessment notices were *actually received* by the accused.

It is worthy to note that in the similarly-titled April 2023 case of *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.,*[10] the Supreme Court emphatically ruled that the CIR failed to prove that the assessment notice was properly served by registered mail, notwithstanding the presentation of the following pieces of evidence: (1) registry receipt; (2) certification issued by the Philippine Postal Corporation; (3) testimony of the person mailing; and (4) testimony of the postman who delivered the mail. The Supreme Court likewise pointed out that the presumption that a letter duly directed and mailed was received in the regular course of the mail is merely a disputable presumption which may be controverted. **A direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed matter was indeed received by the addressee.**

Even considering that the above presumption applies to the present case, the fact that the accused directly denies having received the assessment notices shifts the burden to the prosecution to prove that the same was indeed received by the accused. Its failure to do so is fatal to its cause.

Verily, the prosecution's failure to establish that the service of the assessment notices strictly complied with the requirements of Section 228 of the 1997 NIRC and RR No. 12-99 is tantamount to violation of the accused's due process rights effectively rendering the assessment void. In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.,*[11] the Supreme Court held as follows:

> "This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99.
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> In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,* this Court held that failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void. This Court explained:
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>> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with

[10] G.R. No. 223767, April 24, 2023.
[11] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

> tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence. (Citation omitted)
>
> In *Commissioner of Internal Revenue v. Reyes*, this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.
>
> In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, this Court ruled, among others, that the taxpayer was deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice as required by Revenue Regulations No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.
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> x x x x x x x x x
>
> In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void."

Moreover, in *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*,[12] the Supreme Court held that, by its nature the offense of failure to pay deficiency tax after repeated demands by the taxing authority could only be committed after service of the FAN and demand for payment of the deficiency taxes upon the taxpayer. According to the Supreme Court:

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

A taxpayer who has not received a valid FAN is under no obligation to pay the deficiency taxes assessed thereon. The taxpayer does not commit any violation of Section 255 of the 1997 NIRC for refusal to pay the said assessed deficiency taxes without receiving the valid FAN.

Second & Third Elements: Failure to pay the required tax at the time required by law, or the rules and

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

regulations; Such failure to pay the required tax is willful

The presence of the 2nd and 3rd elements of the crime charged essentially depends on the existence of the 1st element. Put differently, the showing of failure to pay the pertinent tax and the willfulness of such failure rest on whether the taxpayer is required to pay the said tax in the first place. It is only when the 1st element is shown to exist that the remaining elements might logically be established. There can be no willful failure to pay tax if there is no requirement to pay the same at all.

Since the subject assessments are void, it cannot be said that the accused was required to pay tax. Accordingly, the accused cannot be said to have failed to pay the deficiency taxes (2nd element) much more to have done so willfully (3rd element).

"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.[13] 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.

Having failed to establish the validity of the assessments, the accused cannot be deemed to have willfully failed to pay the alleged deficiency taxes. In sum, the prosecution's failure to prove all the elements of the offense charged, the accused becomes entitled to an acquittal.

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

> **"RULE 111**
> **Prosecution of Civil Action**
>
> x x x x x x x x x
>
> **SEC. 2.** *When separate civil action is suspended.* –
>
> x x x x x x x x x
>
> The extinction of the penal action does not carry with it extinction of the civil action. **However, the civil action based**

[13] 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.

> **on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist."** *(Emphasis supplied)*

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

WHEREFORE, the accused's Demurrer to Evidence filed on August 22, 2023 is **GRANTED.** Accordingly, CTA Crim. Case No. O-874 is **DISMISSED** for insufficiency of evidence.

The cash bail bond of accused Peter Que Garcia 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

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)
CORAZON G. FERRER-FLORES
Associate Justice