REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

VIVETECH CORPORATION/ EDWIN B. LUMAGUE (President), and **ROEDEL R. LUMAGUE** (Treasurer),
Bldg. 2A Sunyu Compound
Veterans Center, Sta. Cruz
Taguig City,
Accused.

CTA Crim. Case No. O-666
(NPS Docket No. XVI-INV-15C-00079)
For: Violation of Section 255 of the NIRC of 1997, as amended

x- -x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

VIVETECH CORPORATION/ EDWIN B. LUMAGUE (President), and **ROEDEL R. LUMAGUE** (Treasurer),
Bldg. 2A Sunyu Compound
Veterans Center, Sta. Cruz
Taguig City,
Accused.

CTA Crim. Case No. O-667
(NPS Docket No. XVI-INV-15C-00079)
For: Violation of Section 255 of the NIRC of 1997, as amended

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

11 DEC 2019 8:40 a.m.

x- x

DECISION

MANAHAN, *J.*:

Accused Vivetech Corporation, Edwin B. Lumague, and Roedel R. Lumague (collectively, accused) are charged for violations of Section 255 of the 1997 National Internal Revenue Code, as amended (NIRC), in the two Informations quoted below:

CTA Crim. Case No. O-666

"The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **VIVETECH CORPORATION**, a domestic corporation, and **EDWIN B. LUMAGUE**, being the President and **ROEDEL R. LUMAGUE**, being the Treasurer thereof, for wilful failure to pay national internal revenue taxes for taxable year 2007 (*sic*), in violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about January 2013, in Quezon City, and within the jurisdiction of this Honorable Court, accused **VIVETECH CORPORATION**, a domestic corporation and **EDWIN B. LUMAGUE**, being the President and **ROEDEL R. LUMAGUE**, being the Treasurer thereof, required by law to file income tax return and to pay the corresponding tax, did then and there wilfully, unlawfully and feloniously fail to pay the aggregate deficiency **Value-Added Tax (VAT)** for taxable year 2009 in the amount of Seven Million Nine Hundred Ninety Thousand Five Hundred Thirty Two Pesos and Ninety Centavos (P7,990,532.90), exclusive of surcharges and interests, corresponding to the four (4) quarters of taxable year 2009, despite receipt of final assessment notice, including prior and post notices and final demands to pay the last being in the form of final notice before seizure issued on January 16, 2013, to the damage and prejudice of the government.'
>
> **CONTRARY TO LAW**."[1]

CTA Crim. Case No. O-667

"The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **VIVETECH CORPORATION**, a domestic corporation, and **EDWIN B. LUMAGUE**, being the President and **ROEDEL R. LUMAGUE**, being the Treasurer thereof, for wilful failure to pay national internal revenue taxes for taxable year 2007 (*sic*), in violation of Section 255, in relation to Sections 253(d) and 256, of the National Internal

[1] Docket, CTA Crim. Case No. O-666, Vol. I, pp. 6-7.

Revenue Code (NIRC) of 1997, as amended, committed as follows:

> 'That on or about January 2013, in Quezon City, and within the jurisdiction of this Honorable Court, accused **VIVETECH CORPORATION**, a domestic corporation and **EDWIN B. LUMAGUE**, being the President and **ROEDEL R. LUMAGUE**, being the Treasurer thereof, required by law to file income tax return and to pay the corresponding tax, did then and there wilfully, unlawfully and feloniously fail to pay the aggregate **deficiency income tax** for taxable year 2009 in the amount of Twelve Million Five Hundred Twelve Thousand One Hundred Nine Pesos and Twenty Six Centavos (P12,512,109.26), exclusive of surcharges and interests, despite receipt of final assessment notice, including prior and post notices and final demands to pay the last being in the form of final notice before seizure issued on January 16, 2013, to the damage and prejudice of the government.'
>
> **CONTRARY TO LAW.**"[2]

Antecedents

The above-quoted Informations were filed with the Court on March 5, 2018 and were raffled to the Second and First Divisions, respectively.

On March 19, 2018, the Second Division found probable cause for the issuance of warrants of arrest in CTA Crim. Case No. O-666.[3] Likewise, the First Division found probable cause in CTA Crim. Case No. O-667.[4]

On April 19, 2018, accused Edwin B. Lumague and Roedel R. Lumague voluntarily appeared and submitted to the Court's jurisdiction, posting their respective cash bail bonds for each of the cases.[5]

---

[2] Docket, CTA Crim. Case No. O-667, pp. 6-7.
[3] Docket, CTA Crim. Case No. O-666, Vol. I, pp. 205-207.
[4] Docket, CTA Crim. Case No. O-667, Resolution dated March 23, 2018, pp. 105-106.
[5] Docket, CTA Crim. Case No. O-666, Vol. I, p. 211; CTA Crim. Case No. O-667, pp. 131-132.

On May 7, 2018, accused Edwin B. Lumague and Roedel R. Lumague were arraigned, with both pleading not guilty in CTA Crim. Case No. O-666.[6]

CTA Crim. Case No. O-667 was consolidated with CTA Crim. Case No. O-666, the case bearing the lower docket number.[7]

On June 20, 2018, accused Edwin B. Lumague and Roedel R. Lumague were arraigned in CTA Crim. Case No. O-667, with both pleading not guilty.[8]

The Court issued the Pre-Trial Order (PTO)[9] on July 13, 2018. The parties agreed to the following stipulated facts:

1. That the accused, EDWIN B. LUMAGUE and ROEDEL R. LUMAGUE are the same persons charged in the Information;

2. That the Court of Tax Appeals has jurisdiction over the case;

3. That the accused, EDWIN B. LUMAGUE and ROEDEL R. LUMAGUE are the President and Treasurer, respectively, of VIVETECH CORPORATION.

4. That VIVETECH CORPORATION is a Philippine corporation primarily engaged in the business of trading metal products, jigs, filters and peripherals used in the semi-conductor and electronics industries. It is registered with the BIR with Tax Identification No. 207-516-393-000. Its registered business address is at Building 2A Sunyu Compound, Veterans Center, Sta. Cruz, Taguig City;

5. That VIVETECH CORPORATION, EDWIN B. LUMAGUE and ROEDEL R. LUMAGUE are sued by the BIR for its deficiency income tax, value-added tax, expanded withholding tax, documentary stamp tax and compromise penalty

---

[6] Docket, CTA Crim. Case No. O-666, Vol. I, pp. 239-240.
[7] Docket, Vol. I, First Division Resolution dated May 15, 2018, pp. 249-250, in relation to Second Division Resolution dated June 6, 2018, pp. 255-256.
[8] Docket, Vol. I, pp. 295-296.
[9] Docket, Vol. I, pp. 298-307.

for taxable year 2009 in the total amount of THIRTY TWO MILLION NINE HUNDRED SIXTY TWO THOUSAND EIGHTY ONE PESOS AND 35/100 CENTAVOS (Php32,962,081.35), inclusive of surcharge and interest;

6. Vivetech Corporation is a BIR registered company with address at Bldg. 2A Sanyu Compound, Veterans Center, Sta. Cruz, Taguig City.[10]

During trial, the prosecution presented its witnesses:

(1) Revenue Officer Marcelo A. Blancaflor[11] on July 16, 2018[12] to prove that Vivetech Corporation and its responsible officers, Edwin B. Lumague (President) and Roedel R. Lumague (Treasurer) willfully and deliberately failed to pay the BIR its deficiency taxes due (i.e. income tax, income tax (MCIT), value-added tax, expanded withholding tax, documentary stamp tax, improperly accumulated earnings tax and compromise penalty) for taxable year 2009, despite repeated BIR demands through the issuance of a Preliminary Collection Letter, Final Notice Before Seizure and Warrant of Distraint and/or Levy, and that the said accused are clearly guilty beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code of 1997 in relation to Sections 253(d) and 256 of the same Code; to identify, authenticate and attest to the existence, genuineness and due execution of his Judicial Affidavit and other documentary evidence marked as exhibits for the prosecution; and to support such other relevant matters in the Information subject of the instant case.[13] He was subjected to cross and re-direct examinations.[14]

(2) Revenue Officer Rhodora C. Balazo[15] on July 16, 2018[16] to prove that Vivetech Corporation and its responsible officers, Edwin B. Lumague (President) and Roedel R. Lumague (Treasurer) willfully and deliberately failed to pay the BIR its deficiency taxes due (i.e. income tax, income tax (MCIT), value-added tax, expanded withholding tax, documentary stamp tax,

---

[10] Docket, Vol. I, PTO, pp. 298-299.
[11] Docket, Vol. I, Exhibit "P-21", Judicial Affidavit (Direct Examination of Revenue Officer Marcelo A. Blancaflor), pp. 352-360.
[12] Docket, Vol. I, Order dated July 16, 2018, p. 391.
[13] Docket, Vol. 1, Compliance, p.350.
[14] Transcript of Stenographic Notes (TSN), Hearing on July 16, 2018.
[15] Docket, Vol. I, Exhibit "P-22", Judicial Affidavit (Direct Examination of Revenue Officer Rhodora C. Balazo), pp. 310-320.
[16] Docket, Vol. I, Order dated July 16, 2018, p. 391.

improperly accumulated earnings tax and compromise penalty) for taxable year 2009, despite repeated BIR demands through the issuance of a Preliminary Collection Letter, Final Notice Before Seizure and Warrant of Distraint and/or Levy, and that the said accused are clearly guilty beyond reasonable doubt for violation of Section 255 of the National Internal Revenue Code of 1997 in relation to Sections 253(d) and 246 of the same Code; to identify, authenticate and attest to the existence, genuineness and due execution of her Judicial Affidavit and other documentary evidence marked as exhibits for the prosecution; and to support such other relevant matters in the Information subject of the instant case.[17] She was subjected to cross, re-direct, and re-cross examinations.[18]

(3) Revenue Officer Mohaimin M. Abedin[19] on August 13, 2018[20] to prove that he has personal knowledge on the investigation of the deficiency tax assessments of Vivetech Corporation for taxable year 2009; to prove the factual and legal bases on how and why the assessed deficiency income tax, income tax (MCIT), value-added tax, expanded withholding tax documentary stamp tax, improperly accumulated earnings tax and compromise penalty of Vivetech Corporation for taxable year 2009 were arrived at by the BIR, and that Vivetech Corporation is liable to pay the same; to prove that the Formal Assessment Notices (FAN) bearing the deficiency taxes of Vivetech Corporation for taxable year 2009 has already become final, executory and demandable for failure of the said taxpayer to file an administrative protest against the subject FAN within the 30-day reglementary period under Section 228 of the 1997 Tax Code; to prove that Vivetech Corporation and its responsible officers, Edwin B. Lumague (President) and Roedel R. Lumague (Treasurer) willfully and deliberately failed to pay the said deficiency taxes due (i.e. income tax, income tax (MCIT), value-added tax, expanded withholding tax, documentary stamp tax, improperly accumulated earnings tax and compromise penalty) for taxable year 2009, despite repeated demands made by the BIR; to identify, authenticate and attest to the existence, genuineness and due execution of his Judicial Affidavit and other documentary evidence marked as exhibits for the prosecution; and, to support such other relevant matters

---

[17] Docket, Vol. I, Compliance, p. 308.
[18] TSN, Hearing on July 16, 2018.
[19] Docket, Vol. I, Exhibit "P-25", Judicial Affidavit (Direct Examination of Revenue Officer Mohaimin M. Abedin), pp. 397-409.
[20] Docket, Vol. I, Order dated August 13, 2018, p. 460-A.

in the Information subject of the instant case.[21] He was subjected to cross and re-direct examinations.[22]

The prosecution filed its Formal Offer of Evidence[23] through registered mail on September 3, 2018, and received by the Court on September 7, 2018. All of the prosecution's evidence were admitted in the Court's Resolution dated October 23, 2018.[24]

For the defense, accused presented the following witnesses:

(1) Mr. Edwin B. Lumague[25] on November 21, 2018[26] to testify on the lack of due process in the issuance of assessment notices for failure of the plaintiff to prove that Revenue Officer Mohaimin Abedin is authorized under a Letter of Authority to proceed with the examination of the books of accounts and other accounting records of the accused; and for the BIR's failure to comply with the mandatory requirement of Informal Conference under RR 12-99 as restored by RR 7-2018; to testify on the lack of willful intent on the part of the accused; to prove that the criminal charges against the accused should be dismissed for failure to establish the elements of Section 255 and the guilt of the accused beyond reasonable doubt; to prove that there were several defects in the service of notices to the accused; to prove that the deficiency assessment is void and thus rendering void any collection enforcement thereon; and, to identify documents relative to his testimony.[27] He was subjected to cross, re-direct, and re-cross examinations.[28]

(2) Mr. Roedel R. Lumague[29] on November 21, 2018[30] to testify on the lack of due process in the issuance of assessment notices for failure of the plaintiff to prove that Revenue Officer Mohaimin Abedin is authorized under a Letter of Authority to proceed with the examination of the books of accounts and other accounting records of the accused; and for the BIR's failure to comply with the mandatory requirement of Informal

[21] Docket, Vol. I, Compliance, pp. 395-396.
[22] TSN, Hearing on August 13, 2018.
[23] Docket, Vol. I, pp. 464-476.
[24] Docket, Vol. I, pp. 512-514.
[25] Docket, Vol. II, Exhibit "A-51", pp. 660-672.
[26] Docket, Vol. II, Order dated November 21, 2018, pp. 677-678.
[27] Docket, Vol. II, Submission of Judicial Affidavit of Edwin B. Lumague and Offer of Testimony, pp. 657-658.
[28] Docket, Vol. II, Order dated November 21, 2018, pp. 677-678.
[29] Docket, Vol. I, Exhibit "A-53", pp. 518-534.
[30] Docket, Vol. II, Order dated November 21, 2018, pp. 677-678.

Conference under RR 12-99 as restored by RR 7-2018; to testify on the lack of willful intent on the part of the accused; to prove that the criminal charges against the accused should be dismissed for failure to establish the elements of Section 255 and the guilt of the accused beyond reasonable doubt; to prove that there were several defects in the service of notices to the accused; to prove that the deficiency assessment is void and thus rendering void any collection enforcement thereon; and, to identify documents relative to his testimony.[31] He was subjected to cross and re-direct examinations.[32]

(3) Mr. Antonio T. Iloseo[33] on April 10, 2019[34] to establish the financial condition of Vivetech Corporation from 2009 onwards; to prove the financial incapacity of Vivetech to pay the entire amount of its alleged deficiency tax liability, if any; to testify on the lack of due process in the issuance of assessment notices for failure of the plaintiff to prove that Revenue Officer Mohaimin Abedin is authorized under a Letter of Authority to proceed with the examination of the books of accounts and other accounting records of the accused, and for the BIR's failure to comply with the mandatory requirement of Informal Conference under RR 12-99 as restored by RR 7-2018; to testify on the lack of willful intent on the part of the accused; to prove that the criminal charges against the accused should be dismissed for failure to establish the guilt of the accused beyond reasonable doubt; to prove that the deficiency assessment is void and thus rendering void any collection enforcement thereon; and, to identify documents relative to his testimony.[35]

On April 12, 2019, Formal Offer of Evidence for the Accused[36] was filed. All of accused's evidence were admitted.[37]

On October 8, 2019, the case was deemed submitted for decision,[38] taking into consideration the Memorandum for the Accused[39] filed on August 15, 2019, and Records Verification[40]

---

[31] Docket, Vol. I, Submission of Judicial Affidavit of Roedel R. Lumague and Offer of Testimony, pp. 515-516.
[32] Docket, Vol. II, Order dated November 21, 2018, pp. 677-678.
[33] Docket, Vol. II, Exhibit "A-52", pp. 707-725.
[34] Docket, Vol. II, Order dated April 10, 2019, pp. 704-705.
[35] Docket, Vol. II, Submission of Judicial Affidavit of Antonio T. Iloseo and Offer of Testimony, pp. 688-689.
[36] Docket, Vol. II, pp. 924-941.
[37] Docket, Vol. II, Resolution dated July 10, 2019, pp. 951-953.
[38] Docket, Vol. II, Resolution dated October 8, 2019, p. 980.
[39] Docket, Vol. II, pp. 954-977.
[40] Docket, Vol. II, p. 978.

dated September 24, 2019 stating that plaintiff failed to file a memorandum.

Issues[41]

1. Whether or not the accused can be held criminally liable for the offense charged as narrated in the two Informations filed before this Court; and

2. Whether or not accused Edwin B. Lumague and Roedel R. Lumague, in their respective capacities as President and Treasurer of Vivetech Corporation are liable to pay the deficiency income tax, value-added tax, expanded withholding tax, documentary stamp tax and compromise penalty for taxable year 2009 due to willful non-payment of taxes pursuant to Section 255 in relation to Sections 253(d) and 256 of the 1997 Tax Code.

Ruling of the Court

In the Informations, accused are charged with violations of Section 255 of the NIRC, in relation to Sections 253(d) and 256 of the same Code, for alleged willful failure to pay deficiency income tax and deficiency VAT for taxable year 2009 despite receipt of final assessment notices, including prior and post notices and final demands to pay the last being in the form of final notice before seizure.

Section 255 of the NIRC provides:

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

[41] Docket, Vol. I, PTO, pp. 300-301.

suffer imprisonment of not less than one (1) year but not more than ten (10) years.

xxx xxx xxx

From the foregoing, in order to sustain a conviction for **willfully failing to pay the correct tax** under Section 255 of the NIRC, the following elements must be established beyond reasonable doubt:

1. Accused are **required** under the NIRC or its rules and regulations **to pay any tax**;

2. Accused **failed to pay the required tax** at the time required by law or rules and regulations; and

3. Accused's **failure to pay the required tax** at the time required by law or rules and regulations **is willful**.

The Court will now determine if the foregoing elements have been sufficiently proven by the prosecution.

1st element: Required to pay the correct tax

Section 253(d) and 256 of the NIRC, provide as follows:

SEC. 253. *General Provisions.* –

xxx xxx xxx

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

xxx xxx xxx

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

> hundred thousand pesos (P100,000). (*Emphasis supplied*)

Accused Vivetech Corporation is a Philippine corporation, registered with the BIR with Tax Identification No. 207-516-393-000[42] and registered address at Building 2A Sunyu Compound, Veterans Center, Sta. Cruz, Taguig City,[43] and/or Bldg. 2A Sanyu Compound, Veterans Center, Sta. Cruz, Taguig City.[44]

It is also stipulated that accused Edwin B. Lumague and Roedel R. Lumague are the President and Treasurer, respectively of Vivetech Corporation.[45]

The requirement for the filing of returns is provided in Section 52(A) of the NIRC, as follows:

> SEC. 52. *Corporation Returns.* –
>
> (A) *Requirements.* – Every corporation subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines, shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title. **The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer**. (*Emphasis supplied*)

Based on the foregoing, there is no doubt that accused Vivetech Corporation is required to pay tax at the time required by law, and that accused Edwin B. Lumague and Roedel R. Lumague are responsible officers of Vivetech Corporation. Thus, the first element is established.

2nd element: Failure to pay the correct tax at the time required by law

The Informations state that there is a willful and unlawful failure to pay internal revenue tax liabilities of (1) basic deficiency VAT in the amount of Php7,990,532.90 under CTA

---

[42] Docket, Vol. I, JSFI, pp. 298-299, par. II.A.4.
[43] *Id.*
[44] Docket, Vol. I, JSFI, p. 299, par. II.A.6.
[45] Docket, Vol. I, JSFI, p. 298, par. II.A.3.

Crim. Case No. 666, and (2) basic deficiency income tax in the amount of Php12,512,109.26 under CTA Crim. Case No. 667, exclusive of interests and surcharges, for taxable year 2009. The relevant provisions for the filing of returns and payment of income tax and VAT are as follows:

> SEC. 52. *Corporation Returns.* –
>
> xxx
>
> (B) *Taxable Year of Corporation.* – A corporation may employ either calendar year or fiscal year as a basis for filing its annual income tax return: *Provided*, That the corporation shall not change the accounting period employed without prior approval from the Commissioner in accordance with the provisions of Section 47 of this Code.
>
> SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
>
> (A) *Place of Filing.* – Except as the Commissioner otherwise permits, the quarterly income tax declaration required in Section 75 and the final adjustment return required in Section 76 shall be filed with the authorized agent banks or Revenue District Officer or Collection Agent or duly authorized Treasurer of the city or municipality having jurisdiction over the location of the principal office of the corporation filing the return or place where its main books of accounts and other data from which the return is prepared are kept.
>
> *(B) Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.
>
> *(C) Time of Payment of the Income Tax.* – The income tax due on the corporate quarterly returns and the final adjustment income tax returns computed in accordance with Sections 75 and 76 shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner.
>
> SEC. 114. *Return and Payment of Value-Added Tax.* –
>
> (A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly

> return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

Generally, presentation of the income tax and VAT returns filed by accused Vivetech Corporation for the subject year would show that it filed the required returns and paid the tax within the time required by law or rules and regulations. However, the income tax and VAT returns for taxable year 2009 were not presented.

Despite this failure to present the returns for taxable year 2009, it must be noted that the Informations are based on failure to pay deficiency VAT and income tax arising from an assessment. Thus, there is a need to determine if there is a valid assessment which would give rise to accused's obligation to pay deficiency taxes.

The prosecution presented the following documents with respect to the assessments for taxable year 2009: Notice of Informal Conference dated May 7, 2012;[46] Preliminary Assessment Notice (PAN) Part I and II dated September 7, 2012;[47] Formal Assessment Notice (FAN) Part I and II dated October 11, 2012;[48] Assessment Notices;[49] Preliminary Collection Letter;[50] Final Notice Before Seizure;[51] and, Warrants of Distraint and/or Levy.[52]

Accused questions the validity of the assessment on the following grounds: (1) the assessment is void because Revenue Officer (RO) Mohaimin M. Abedin is not named in the Letter of Authority; and (2) there was improper service of notices.

As to his authority, RO Abedin testified as follows:

> Q8: What is your participation in this case?
>
> A8: I am the Revenue Officer who was authorized to investigate the books of accounts and other

[46] BIR Records, Exhibit "P-20" and submarkings, pp. 184-189.
[47] BIR Records, Exhibit "P-4" and submarkings, pp. 230-243.
[48] BIR Records, Exhibit "P-5" and submarkings, pp. 244-250.
[49] BIR Records, Exhibits "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", and "P-18", pp. 251-257.
[50] BIR Records, Exhibit "P-12" and submarkings, p. 275.
[51] BIR Records, Exhibit "P-13" and submarkings, p. 276.
[52] BIR Records, Exhibits "P-14" and "P-15", including submarkings, pp. 277-278 and p. 289.

accounting records of VIVETECH CORPORATION, to determine all its internal revenue tax liability for taxable year ending December 31, 2009, pursuant to BIR Letter of Authority No. 00003959 dated May 20, 2010, which led to the issuance of the subject BIR Preliminary Assessment Notice (PAN) dated September 7, 2012 and BIR Formal Letter of Demand and Assessment Notices (FLD/AN) dated October 11, 2012, bearing the assessed deficiency income tax, income tax (MCIT), value-added tax, expanded withholding tax, documentary stamp tax, improperly accumulated earnings tax and compromise penalty of VIVETECH CORPORATION for taxable year 2009.

Q9: Prior to the issuance of the subject PAN and FLD/AN, can you briefly explain the procedures made by the BIR to investigate the internal revenue tax case of VIVETECH CORPORATION for taxable year 2009, if any?

A9: At first, the BIR issued a Letter of Authority No. 00003959 dated May 20, 2010 to VIVETECH CORPORATION which authorized the investigation of its books of accounts and other accounting records, to determine all its internal revenue taxes for taxable year 2009. After issuance of the said LOA, the BIR subsequently served to the subject taxpayer a BIR First Notice for Presentation of Records dated 20 April 2010, and then, a BIR Final Notice for Presentation of Records dated February 7, 2011, both requiring VIVETECH CORPORATION to produce and submit to the BIR its books of accounts and other accounting records for tax audit/examination of its internal revenue tax liability for taxable year 2009.

Q10: Would you know when did VIVETECH CORPORATION receive the said Letter of Authority No. 00003959 dated May 20, 2010, BIR First Notice for Presentation of Records dated 20 April 2010, and BIR Final Notice for Presentation of Records dated February 7, 2011?

A11: Yes, Atty. Based on BIR records, VIVETECH CORPORATION through its representative duly received these Letter of Authority No. 00003959 dated May 20, 2010, on <u>May 24, 2010</u>; BIR First Notice for Presentation of Records dated 20 May 2010, on <u>May 24, 2010</u>; and BIR Final Notice for

Presentation of Records dated February 7, 2011, on February 14, 2011.[53]

Accused states that RO Abedin is not named in any of the LOAs issued in the instant case. Accused offered in evidence Exhibit "A-54"[54] which is LOA No. eLA201000004689 dated September 15, 2010 and Exhibit "A-56"[55] which is LOA No. 00003959 dated May 20, 2010.

LOA No. 00003959 is a manual LOA, while LOA No. eLA201000004689 is an electronic LOA (eLOA), both covering taxable year 2009. Both LOAs authorize only Revenue Officer Joseph Tejada and Group Supervisor Melba Gador to examine accused's books of accounts and other accounting records.

Clearly, RO Abedin is not one of those named in the LOAs. The prosecution also failed to present evidence to show RO Abedin's authority to continue the audit in place of RO Joseph Tejada.

The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated RO to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[56] An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records for the purpose of collecting the correct amount of tax.[57] In the absence of such an authority, the assessment or examination is a nullity.[58]

Due to RO Abedin's lack of authority, the assessments against accused for taxable year 2009 are void, correspondingly, there is no obligation on the part of the accused to pay the assessed deficiency taxes. Without the obligation to pay,

---

[53] Docket, Vol. I, Exhibit "P-25" Judicial Affidavit (Direct Examination of Revenue Officer Mohaimin M. Abedin), pp. 398-399.
[54] BIR Records, p. 3.
[55] BIR Records, p. 1.
[56] *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[57] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[58] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

accused did not fail to pay the assessed deficiency taxes at the time required by law.

The Court will no longer discuss the other defects in the notices raised by the accused.

Based on the foregoing, the prosecution failed to establish the existence of the second and third elements of the crimes charged. There is no need to discuss the third element, which is the determination of willfulness of the alleged failure to pay the correct taxes, since, as discussed above, there is no valid assessment giving rise to the obligation to pay.

Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right.[59]

Considering that the assessment is void for lack of authority of the investigating revenue officer, there can be no civil liability imposed against accused.

WHEREFORE, accused Vivetech Corporation, Edwin B. Lumague, and Roedel R. Lumague are **ACQUITTED** in CTA Case Nos. O-666 and O-667 for failure of the prosecution to establish accused's guilt beyond reasonable doubt.

The cash bail bonds posted by the accused are hereby **CANCELLED** and **ORDERED RELEASED** to the accused upon presentation of the proper documents, in accordance with usual accounting rules and regulations.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

[59] *People of the Philippines v. Generosa P. Ortega, et al.*, CTA Crim. Case Nos. O-606 and O-607, February 20, 2019 citing *People v. Richard C. Santos, Instantaneous Fast Construction Services*, CTA Crim. Case No. O-171, June 10, 2015.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice