REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. NO. 077
(CTA Crim. Case No. O-660)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

- versus –

JOSE EDUARDO C. DELGADO, DELBROS, INC.,
CBW 124 District, 888 Delbros Avenue, Pascor Drive, Parañaque City,
Respondents.

Promulgated:
JUN 09 2021 3:50pm

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DECISION

CASTAÑEDA, JR., *J.:*

This is a Petition for Review,[1] filed by petitioner People of the Philippines under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) of the Decision dated October 23, 2019 (Assailed Decision)[2] and the Resolution dated February 17, 2020 (Assailed Resolution)[3] both rendered by the First Division of this Court (Court in Division) in CTA Crim. Case No. O-660. In the Assailed Decision, the Court in Division

[1] Court *En Banc's* Docket, pp. 5-15.
[2] Penned by Associate Justice Catherine T. Manahan, concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Esperanza R. Fabon-Victorino; Court *En Banc*'s Docket, pp. 20-37.
[3] Penned by Associate Justice Associate Justice Catherine T. Manahan, concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Esperanza R. Fabon-Victorino; Court *En Banc*'s Docket, pp. 39-42.

acquitted respondents Jose Eduardo C. Delgado and Delbros, Inc. for failure of the prosecution to prove their guilt beyond reasonable doubt. Moreover, no civil liability was imposed on the respondents. This present Petition for Review seeks the review of the civil aspect of the case.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

<u>Assailed Decision</u>:

> "**WHEREFORE**, accused Jose Eduardo C. Delgado and Delbros, Inc. are **ACQUITTED** in CTA Case No. O-660 for failure of the prosecution to establish the accused's guilt beyond reasonable doubt.
>
> The cash bail bond posted by accused is hereby **CANCELLED** and **ORDERED RELEASED** to the accused upon presentation of the proper documents, in accordance with usual accounting rules and regulations.
>
> **SO ORDERED**."

<u>Assailed Resolution</u>:

> "**WHEREFORE**, plaintiff's *Motion for Reconsideration on the Civil Aspect of the Decision* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

The facts of the present case, as culled from the records, are as follows:[4]

> "Accused Jose Eduardo C. Delgado and Delbros, Inc. (collectively, accused) are charged for violation of Section 255, in relation to Sections 253(d) and 256 of the 1997 National Internal Revenue Code (NIRC), in an Information quoted below:
>
> 'The undersigned accuses **JOSE EDUARDO C. DELGADO and DELBROS, INC.** of Violation of Section 255 in rel. to Secs. 253(d) and 256 of the National Internal

[4] Court *En Banc*'s Docket, pp. 20-27 (Citations omitted).

Revenue Code of 1997 as amended by REP ACT 8424, committed as follows:

That sometime in June 2012, and subsequently thereafter, in the City of Manila, Philippines, the said accused, **JOSE EDUARDO C. DELGADO** being then the President and responsible officer of **DELBROS, INC.**, a duly organized domestic corporation with business address then located at *Delbros Building, Atlanta Street corner 17th and 18th Streets, Port Area, this City*, did then and there willfully and unlawfully fail, refuse and neglect, to pay the internal revenue tax liabilities of **DELBROS, INC.** for the year 2008, to wit:

Kind of Tax	Assessment No./ Demand Letter	Year	Date	Amount
Basic Income Tax	32-08-IT-3464	2008	06-28-2012	Php19,924,744.39
Basic Value-Added Tax	32-08-VT-03465	2008	06-28-2012	12,235,357.59

or in the total amount of **Php32,160,101.98**, as well as the computed interest therefor in the amount of **Php12,762,864.76 (Income Tax) and Php8,381,213.83 (Value Added Tax)** despite notice and service of said assessment and Warrants of Garnishment, without formally protesting against or appealing the same, and despite repeated demands made upon him to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the total amount of **Php53,304,180.57**, Philippine currency.

Contrary to law.'

Antecedents

The above-quoted Information was filed with the Court on January 15, 2018. On February 1, 2018, the Court found probable cause for the issuance of a warrant of arrest against accused Jose Eduardo C. Delgado (Delgado) and set the bail at Php20,000.00.

Accused Delgado voluntarily appeared and submitted to the Court's jurisdiction by posting a cash bond in the amount of Php20,000.00, which was accepted and approved by the Court.

On May 9, 2018, the arraignment pushed through with the accused Delgado for himself and on behalf of Delbros, Inc. pleading 'Not Guilty.'

In the same hearing, the parties admitted: Jr

1) The identity of the accused as the same person charged in the Information;

2) Accused Delgado is the President of Delbros, Inc. in 2008 and 2012;

3) The address of Delbros, Inc. indicated in the purported PAN is at 'Delbros Bldg., Atlanta St. cor. 17th and 18th Sts. Port Area, Manila'; and

4) The purported PAN and Preliminary Collection Letter (Annex M of the Complaint) were issued only on May 30, 2012 and November 20, 2013, respectively.

The Pre-Trial Order (PTO) was issued governing the proceedings.

During trial, the prosecution presented its witnesses:

(1) Group Supervisor (GS) Minda A. Cayago on May 30, 2018 to prove that the tax audit and investigation of Delbros, Inc. for taxable year 2008 was by virtue of a valid Letter of Authority; that notices/requests for presentation of accounting records were served to Delbros, Inc.; that a summons and/or *Subpoena Duces Tecum* was issued and served upon accused to compel him to submit to the BIR the corporation's accounting records for taxable year 2008; to prove other material allegations in the Information; and, to identify documents mentioned in her judicial affidavit. After which, the witness was subjected to cross-examination and re-direct examinations.

(2) Revenue Officer Ma. Paz Arcilla on June 13, 2018 to prove that the BIR issued Assessment Notices and Formal Letter of Demand with Details of Discrepancies, all dated June 28, 2012 to Delbros, Inc. for taxable year 2008; to prove other material allegations in the Information; and, to identify documents mentioned in her judicial affidavit. After which, the witness was subjected to cross, re-direct, and re-cross examinations.

(3) Revenue Officer Dennis V. Ruelo on June 20, 2018 to prove that he served to Delbros, Inc., by registered mail, the Preliminary Collection Letter and Final Notice Before Seizure; to prove other material allegations in the Information; and, to identify documents mentioned in his judicial affidavit. After which, the witness was subjected to cross-examination and redirect examinations. 92

(4) Ms. Edna A. Ortalla on July 4, 2018 to prove that the BIR has issued Preliminary Assessment Notice with Details of Discrepancies, dated May 30, 2012 to Delbros, Inc. for taxable year 2008; to prove other material allegations in the Information; and, to identify documents mentioned in her judicial affidavit. After which, the witness was subjected to cross, re-direct, and re-cross examinations.

(5) Mr. Benhur C. Nacorda on July 11, 2018 to prove that witness Mr. Nacorda is a BIR employee designated as Mailing In-Charge of the Administrative Division, BIR Manila; to prove that based on the BIR Records, a Preliminary Assessment Notice and Final Assessment Notice/Demand Letter were sent by the Administrative Division, BIR Manila to Delbros, Inc. by registered mail on May 30, 2012 and June 28, 2012, respectively; to prove other material allegations in the Information; and, to identify documents mentioned in his judicial affidavit. After which, the witness was subjected to cross, re-direct, and re-cross examinations.

(6) Revenue Officer Romualdo R. Cabubas on August 1, 2018 to prove that the internal revenue tax case of Delbros, Inc. for taxable year 2008 was assigned to RO Cabubas for enforcement of collection; to prove that RO Cabubas served Warrant of Distraint and/or Levy to Delbros, Inc.; to prove that RO Cabubas served Warrant of Garnishment to different banks; to prove other material allegations in the Information; and, to identify documents mentioned in his judicial affidavit. After which, the witness was subjected to cross-examination.

The prosecution filed its 'Plaintiff's Formal Offer of Evidence' on August 13, 2018. All of the prosecution's documentary evidence were admitted.

Accused filed their Demurrer to Evidence which was denied on December 28, 2018. Accused's Motion for Reconsideration (of the Resolution dated December 28, 2019) was likewise denied.

For the defense, accused presented the following witnesses:

(1) Atty. Arnel P. Kho on February 13, 2019 to prove that accused Delbros, Inc. (Delbros) and accused Jose Eduardo C. Delgado (Delgado) cannot be held liable for the alleged violations of Section 255 in relation to Sections 253(d) and 256 of the NIRC because the purported subject assessments, supposedly based on best evidence obtainable, have no legal and

factual basis, inapplicable, and clearly arbitrary; to prove that the Bureau of Internal Revenue Manila (BIR-Manila) filed a complaint against Delgado before the Office of the City Prosecutor of Manila (OCP-Manila) for alleged failure to obey the BIR-Manila's *subpoena* under Section 266 of the NIRC (Non-compliance case), which was eventually filed and assigned to the Metropolitan Trial Court of Manila, Branch 15 (MTC-Manila) as Delbros supposedly failed to submit its books of accounts, vouchers, returns and other documents for the taxable period 2008; to prove that on May 24, 2012, Delbros submitted to the BIR-Manila the subject documents as required by the BIR-Manila for the taxable period 2008; to prove that in view of the submission of the subject documents, the BIR-Manila, filed with the MTC-Manila and OCP-Manila a Manifestation with Motion to Withdraw Complaint dated May 28, 2012 in favor of Delgado; to prove that Delbros filed a Manifestation with Motion dated July 6, 2012 for the dismissal of the complaint against Delgado; to prove that, in view of the Manifestation with Motion to Withdraw Complaint and Manifestation with Motion, MTC-Manila issued an Order dated August 31, 2012 dismissing the Non-compliance case; to prove that OCP-Manila did not conduct the proper preliminary investigation in connection with the present case; to prove that accused Delgado, through his undersigned counsel, filed a Motion to Re-Open the Preliminary Investigation Proceedings before the OCP-Manila; to prove that accused Delgado, through his counsel filed his Comment/Opposition (to the Motion for Reconsideration filed by BIR-Manila) before the OCP-Manila; to prove that OCP-Manila recommended the filing of the information of the present case without considering the (i) Comment/Opposition filed by accused to the Motion for Reconsideration dated October 4, 2017 filed by BIR-Manila of the earlier resolution dismissing the present case, and (ii) Counter-Affidavit submitted by the accused before the OCP-Manila in connection with the present case; to prove that the Motion for Reconsideration filed by Delbros before the Honorable BIR Commissioner vis-à-vis the assessments, has remained pending as of this date; and to identify relevant documents.

(2) Accused Delgado on February 20, 2019 to prove that accused Delbros and accused Delgado cannot be held liable for the alleged violations of Section 255 in relation to Sections 253(d) and 256 of the NIRC, because the purported subject assessments issued by the BIR-Manila supposedly based on Best Evidence Obtainable, have no legal and factual basis, inapplicable, and clearly arbitrary; to prove that BIR-Manila filed a complaint against Delgado before the Office of the City Prosecutor of Manila (OCP-Manila) for alleged failure to obey

the BIR-Manila's *subpoena* under Section 266 of the NIRC (Non-Compliance Case), which was eventually filed and assigned to the Metropolitan Trial Court of Manila, Branch 15 (MTC-Manila) as Delbros supposedly failed to submit its books of accounts, vouchers, returns and other documents (Subject Documents) for the taxable period 2008 (Subject Taxable Period); to prove that on May 24, 2012, Delbros submitted to the BIR-Manila the Subject Documents as required by the BIR-Manila for the Subject Taxable Period; to prove that in view of the submission of the Subject Documents, the BIR-Manila, through Atty. Mario A. Saldevar and Atty. Leonardo B. Quanico, Jr., filed with the MTC-Manila and OCP-Manila a Manifestation with Motion to Withdraw Complaint dated May 28, 2012, in favor of Delgado; to prove that Delgado filed a Manifestation with Motion dated July 6, 2012 for the dismissal of the complaint against him; and, to prove that, in view of the Manifestation with Motion to Withdraw Complaint and Manifestation with Motion, the MTC-Manila issued an Order dated August 31, 2012 dismissing the Non-Compliance Case.

Accused Delgado's testimony is also offered to prove that the OCP-Manila did not conduct the proper preliminary investigation in connection with the present case; to prove that Delgado, through Atty. Kho, filed a Motion to Re-Open the Preliminary Investigation Proceedings dated August 18, 2018 with the attached Counter-Affidavit of Delgado before the OCP-Manila; to prove that Delgado, through Atty. Kho, filed his Comment/Opposition (to the Motion for Reconsideration filed by BIR-Manila) dated August 18, 2017 before the OCP-Manila; to prove that the OCP-Manila recommended the filing of the Information of the present case without considering the (i) Comment/Opposition dated October 26, 2017 filed by Delgado to the Motion for Reconsideration dated October 4, 2017 filed by BIR-Manila of the earlier resolution dismissing the present case; and (ii) Counter-Affidavit submitted by Delgado before the OCP-Manila in connection with the present case.

Accused Delgado's testimony is further offered to prove that the Motion for Reconsideration dated February 18, 2014 filed by Delbros before the Honorable BIR Commissioner in connection with the denial of the Protest dated December 18, 2013 filed by Delbros with respect to the Preliminary Collection letter dated November 20, 2013 issued by the BIR-Manila, has remained pending as of this date; to prove that Delbros and Delgado did not receive any Letter of Authority, Request for Presentation of Records, Notice of Informal Conference, Preliminary Assessment Notice, Final Assessment Notice, Final Letter of Demand, Final Notice Before Seizure, Warrant of Levy

> and/or any other notices/assessments in connection with the Assessments from the BIR-Manila, except the Preliminary Collection Letter issued by Ms. Ceferinia M. Ong, Chief of the Collection Division BIR-Manila, which was received sometime in December 2013; to prove that the assessments are void for the three-year period to assess or audit the books and accounting records of Delbros by BIR-Manila for the Subject Taxable Period had already prescribed in the year 2011; to prove that Delgado did not execute any waiver of prescription with respect to the Subject Taxable Period; and to identify relevant documents.
>
> Accused's Formal Offer of Exhibits was filed on March 5, 2019, and resolved by the Court on April 29, 2019, with all of accused's evidence being admitted.
>
> On July 10, 2019, the case was deemed submitted for decision."

On October 23, 2019, the Court in Division rendered the Assailed Decision.

Aggrieved, petitioner filed a Motion for Reconsideration but the Court in Division likewise denied the same for lack of merit in the Assailed Resolution.

On June 30, 2020, petitioner filed the present Petition for Review.

In a Resolution[5] dated September 10, 2020, the Court *En Banc* directed the respondents to file a Comment to the Petition for Review within ten (10) days from notice.

Respondents filed their Comment on October 16, 2020.[6]

Thus, in a Resolution[7] dated January 12, 2021, the present Petition for Review was submitted for decision. Jr

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[5] *Id.*, pp. 51-52.
[6] *Id.*, pp. 54-55.
[7] *Id.*, pp. 64-65.

THE ISSUE

As stated earlier, petitioner seeks the review of the Assailed Decision and Resolution of the Court in Division insofar as it imposed no civil liabilities on the respondents based on the sole issue stated below:[8]

> **"WITH ALL DUE RESPECT, THE HONORABLE COURT *A QUO* ERRED IN NOT RULIN G THAT THE RIGHT OF BIR TO COLLECT THE DEFICIENCY TAXES IS BASED ON A VALID ASSESSMENT WHICH IS FINAL, EXECUTORY AND DEMANDABLE AND WHICH CAN NO LONGER BE DISTURBED."**

THE COURT *EN BANC*'S RULING

After thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* finds that the present Petition for Review should be denied for lack of merit. There is no substantial matter much less compelling reason to disturb the findings of the Court in Division in the Assailed Decision and Resolution.

Section 205 of the National Internal Revenue Code of 1997, as amended, provides the requisites for the award of civil liability in criminal cases, to wit:

> "SEC. 205. *Remedies for the Collection of Delinquent Taxes.* — The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> (a) x x x
>
> (b) By civil or criminal action.
>
> Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however,* That the remedies of distraint and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).
>
> **The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes**

[8] *Id.*, p. 9.

> **subject of the criminal case as finally decided by the Commissioner.**
>
> The Bureau of Internal Revenue shall advance the amounts needed to defray costs of collection by means of civil or criminal action, including the preservation or transportation of personal property distrained and the advertisement and sale thereof, as well as of real property and improvements thereon." *(Emphasis supplied)*

The above provision mandates that before the civil liability for the payment of taxes may be included in the judgment, there must be a final determination of such liability by the Commissioner. This determination of civil liability for the payment of taxes by the Commissioner refers to a formal assessment.

Section 228 of the National Internal Revenue Code of 1997, as amended (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, as amended,[9] specifies the due process requirement to be observed in issuing deficiency tax assessments. The relevant portion of the said issuance reads:

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

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

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

3.1.1 ***Preliminary Assessment Notice (PAN).*** — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in 'ANNEX A' hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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

xxx xxx xxx

3.1.3 ***Formal Letter of Demand and Final Assessment Notice (FLD/FAN).*** — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX 'B' hereof).

xxx xxx xxx

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

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

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

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

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

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

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

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

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

'Disinterested witnesses' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer."

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,*[10] 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. The Supreme Court further stressed that the absence of PAN will render nugatory any assessment made by the tax authorities. 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. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that

[10] G.R. No. 185371, December 8, 2010, 637 SCRA 644, 646.

> taxpayers should be able to present their case and adduce supporting evidence.
>
> 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. **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.**" *(Emphasis supplied and citations omitted)*

In the case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue,*[11] the Supreme Court held that it is a requirement of due process that the taxpayer must **actually receive the assessment**, to wit:

> "x x x It must be noted, however, that the foregoing rule requires that the notice be sent to *the taxpayer*, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
>> An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer**." *(Emphasis supplied)* gn

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

Thus, it is not simply a question of whether the assessment notices were sent to respondent by petitioner. It is imperative that the taxpayer *actually* received such tax assessment notices.

Meanwhile, in the case of *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*,[12] the Supreme Court enunciated the rule in cases where the taxpayer denies the receipt of assessment notices and also the requisite proof to show the fact of mailing 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.**
>
> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention.** The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices." *(Emphasis supplied)*

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. It is also clear that to prove the fact of mailing, it is essential

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

for the petitioner to present the registry receipt issued by the Bureau of Posts or the Registry return card signed by the taxpayer or its authorized representative or at least a certification issued by the Bureau of Posts attesting to the same fact.

In the Assailed Decision, however, the Court in Division found as follows:[13]

> "In the instant case, there is no dispute that assessments were issued by the BIR against accused Delbros. However, both accused Delbros and Delgado deny receipt of the notices sent by the BIR.
>
> According to the prosecution's evidence, the following notices were issued and sent to accused Delbros:
>
> (1) Letter of Authority and List of Audit Requirements Per Tax Type dated July 24, 2009 — with address reflected as Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila. These documents were personally received on August 17 with no year indicated.
>
> (2) Second Request for Presentation of Records, undated — with address reflected as #888 Delbros Ave., Pascor Drive, Bo. Sto. Niño, Parañaque City. This document was personally received with no date.
>
> (3) Final Request for Presentation of Records, undated — sent by registered mail to #888 Delbros Ave., Pascor Drive, Bo. Sto. Niño, Parañaque City on May 5, 2010.
>
> (4) Summons and/or Subpoena Duces Tecum dated October 11, 2010 — with address reflected as Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila. This document was personally received on November 11, 2010.
>
> (5) Notice of Informal Conference dated April 7, 2011 — with address reflected as Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila. This document was personally received on May 13, 2011.
>
> (6) Preliminary Assessment Notice dated May 30, 2012 — sent by registered mail to Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila under Registry Receipt No. 919143.
>
> (7) Formal Letter of Demand and Assessment Notices dated June 28, 2012 — sent by registered mail to Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila under Registry Receipt No. 921761.

[13] Court *En Banc*'s Docket, pp. 32-36.

(8) Preliminary Collection Letter — sent by registered mail to Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila under Registry Receipt No. 912141.

(9) Final Notice Before Seizure — sent by registered mail to #888 Delbros Ave., Pascor Drive, Bo. Sto. Niño, Parañaque City under Registry Receipt No. R1412771247814.

From the foregoing, among others, the PAN, and the FLD with assessment notices were sent via registered mail to Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila.

Section 3(v), Rule 131 of the Rules of Court provides for the disputable presumption 'that a letter duly directed and mailed was received in the regular course of the mail.' But, in order to raise this presumption the following must be established: (1) that the letter was properly addressed with postage pre-paid; and (2) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of mail.

In the instant case, the accused allege that Delbros' address is no longer at Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila but is instead at #888 Delbros Ave., Pascor Drive, Bo. Sto. Niño, Parañaque City.

There is no evidence presented that Delbros officially informed the BIR of its change of address during this period of investigation. Instead, the BIR was officially informed only on November 13, 2015 via a letter 'Re: Notice of Change of Address for Delbros, Inc.'

However, despite the absence of a formal written notice of Delbros' change of address, the fact remains that the BIR became aware of Delbros' new address <u>even prior to the issuance of the PAN, FAN/FLD</u>, as shown by the various documents submitted by the prosecution wherein it reflected Delbros' address as #888 Delbros Ave., Pascor Drive, Bo. Sto. Niño, Parañaque City:

(1) Second Request for Presentation of Records;

(2) Final Request for Presentation of Records; and

(3) Memorandum dated May 28, 2012.

Significantly, it has been held that if the BIR is already aware of the new location of the taxpayer, even in the absence of any formal application for change of address, the BIR cannot simply pretend lack of knowledge of the change of address and is bound to send any issuances or notice to such new location of the taxpayer.

Based on the foregoing, it cannot be said that the PAN, FLD and assessment notices were 'properly addressed' in order for the disputable presumption to arise.

On the other hand, even if the Court considered that the PAN, FLD and assessment notices were sent to the registered address at Delbros Bldg. Atlanta St. cor. 17th and 18th Sts., Port Area, Manila, the prosecution still failed to prove that accused Delbros received the foregoing notices. No registry return cards were offered in evidence and such fact was confirmed by the prosecution's own witness:

JUSTICE DEL ROSARIO

Just point of clarification Mr. Nacorda. Since you testified on the basis of records, would you know based on records whether the return card was actually received by your office? The return card of the mail matter that was sent to the Accused in this case.

MR. NACORDA

No return card bearing return by the Post Master, your Honors.

JUSTICE DEL ROSARIO

I see. So, let's clarify that. So, with respect to the Preliminary Assessment Notice that was sent to the Accused supposedly pertaining to registry receipt 921761, is that the number kindly check? Or is it 919143, you have your Judicial Affidavit? There's so many stamp mark here.

MR. NACORDA

Yes, your Honors.

JUSTICE DEL ROSARIO

The ones sent to Delbros is what particular registry receipt number in so far as the Preliminary Assessment Notice is concerned? Is it 919143?

MR. NACORDA

Yes, your Honors.

JUSTICE DEL ROSARIO

So, in so far as that mail matter is concerned, there was no registry return card that the BIR eventually received?

MR. NACORDA

Yes, your Honors.

JUSTICE DEL ROSARIO

Now, with respect to the Final Assessment Notice, this is your Exhibit 'P-42', do I understand that there was also no registry return card that was eventually received by the BIR?

MR. NACORDA

Yes, your Honors.

As shown by the foregoing discussion, the prosecution failed to prove that accused Delbros received the assessment notices. Thus, it cannot be concluded that the failure of the accused to pay the assessed deficiency taxes was willful." *(Citations omitted)*

The Court *En Banc* concurs with the Court in Division's findings. Indeed, petitioner failed to establish that respondents *actually* received the assessment notices.

Guided by the aforequoted doctrinal pronouncements by the Supreme Court, the Court *En Banc* finds that petitioner's evidence miserably failed to satisfactorily prove that respondents *actually* received the PAN, FLD and Assessment Notices. Hence, the failure of petitioner to prove actual receipt of the assessment notices by respondents leads to the conclusion that no assessment was validly issued.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

See Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

With due respect, I concur with the Concurring and Dissenting Opinion of Justice Bacorro-Villena
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With due respect, please see Concurring and Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

-versus-

JOSE EDUARDO C. DELGADO, DELBROS, INC.,
CBW 124 District, 888 Delbros Avenue, Pascor Drive, Parañaque City,
Respondents.

CTA EB CRIM. NO. 077
(CTA Crim. Case No. O-660)

PRESENT:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

PROMULGATED:
JUN 09 2021 3:50 pm

x- -x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the present Petition for Review for lack of merit.

With due respect, I wish to address the points raised in the Concurring and Dissenting Opinion of my esteemed colleague, Honorable Associate Justice Jean Marie A. Bacorro-Villena. Citing *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue,*[1] the aforesaid Concurring and Dissenting Opinion, in *esse*, states that *"a declaration touching upon the assessment's validity is improper in criminal cases for tax evasion."*

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[1] G.R. No. 222837, July 23, 2018 (which also cited Republic of the Philippines vs. Pedro B. Patanao, G.R. No. L-22356, July 21, 1967 and Proton Pilipinas Corporation vs. Republic of the Philippines, G.R. No. 165027, October 12, 2006).

I submit that when the criminal indictment alleges **<u>failure to pay tax deficiencies incorporated in a final assessment notice (FAN)</u>**, as in the present case, **it is indispensable for the Court to determine whether the FAN was validly issued and received by the concerned taxpayer**.

In *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*,[2] 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**. Said 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 <u>after receipt</u> was <u>coupled with the wilful refusal to pay</u> the taxes due within the alloted period.** xxx." *(Boldfacing supplied)*

Clearly, a taxpayer who has not received a FAN is under no obligation to pay the deficiency taxes assessed thereon. The taxpayer does not commit any violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, for refusal to pay the said assessed deficiency taxes without receiving the valid FAN.

Undeniably, **proper service of the FAN to the taxpayer is indispensable to its validity**. In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[3] *and Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue,*[4] the Supreme Court declared that tax assessments issued in violation of the due process rights of taxpayers are null and void, to wit:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void.** While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic

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[2] G.R. Nos. L-48134-37, October 18, 1990; cited also in Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City, Branch 105, and People of the Philippines, G.R. No. 127777, October 1, 1999.
[3] G.R. Nos. 201398-99, October 3, 2018.
[4] G.R. Nos. 201418-19, October 3, 2018.

tenets of due process.

xxx

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 Regulation No. 12-99." *(Boldfacing supplied)*

In the present case, with the glaring failure of the prosecution to prove that respondents received the assessment notices, the Court in Division correctly found that respondents had no obligation to pay assessed deficiency taxes covered by a void FAN. Stated differently, **the failure of respondents to pay the deficiency taxes for the year 2008 did not give rise to any criminal liability.**

All told, I VOTE to DENY the Petition for Review and AFFIRM the assailed Decision and Resolution of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

CTA EB CRIM. No. 077
(CTA Crim. Case No. O-660)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

\- **versus** -

JOSE EDUARDO C. DELGAGO AND DELBROS, INC.,
Respondents.

Promulgated:
JUN 09 2021 3:50

x - x

CONCURRING AND DISSENTING OPINION

Bacorro-Villena, J.

I concur with the *ponencia* of our esteemed colleague, Hon. Justice Juanito C. Castañeda, Jr., denying the Petition for Review seeking the reversal of the 23 October 2019 Decision and 17 February 2020 Resolution of the First Division of this Court (**the Division**) in CTA Crim. Case No. O-660, entitled *People of the Philippines v. Jose Eduardo C. Delgado, Delbros, Inc.* However, with all due respect, I take exception from the ratio relied upon in the *ponencia*.

It appears that in upholding the Division's Decision, the *ponencia* expounds on the original ratio for the case's dismissal. In the Assailed Decision, the Division in *esse* acquitted respondents on account of the prosecution's failure to prove the element of "willfulness" as a requirement for conviction of the crime tax evasion. The lack of "willfulness" on respondents' part was particularly drawn from findings that the Bureau of Internal Revenue (**BIR**) despite having actual knowledge of the former's change of address nevertheless, sent the Preliminary Assessment Notice (**PAN**) and subsequent notices to Delbros, Inc.'s previous office. Thus, having no knowledge of the assessment against it, the Division reached the conclusion that respondents' act of non-payment of taxes were deliberate.

However, the *ponencia* goes further to conclude that, "no assessment was validly issued". To my mind, such a declaration touching upon the assessment's validity is improper in criminal cases for tax evasion. Criminal cases for tax evasion must be distinguished from petitions for review of disputed assessments, and it must be clarified that the civil liability deemed instituted with the criminal action is only the civil liability *ex delito*, and should not be confused with the civil liability arising out of tax assessments. Accordingly, in the 2018 case of *Macario Lim Gaw, Jr. v. CIR*[1] (***Gaw***), the Supreme Court explains:

> ...
>
> Rule 111, Section 1 (a) of the Rules of Court provides that **what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.**
>
> It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.
>
> ....
>
> ...**what is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**[2]
>
> ...

In *Gaw*, the Supreme Court cited its decision in *Republic of the Philippines v. Pedro B. Patanao*[3] stating:

> ...
>
> **Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.** The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. x x x Considering that <u>the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or, otherwise stated, since the said civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes</u>. It is error to hold, as the lower court has held that the judgment in the criminal cases Nos. 2089 and 2090 bars the action in the present case. **The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and**

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[1] G.R. No. 222837, 23 July 2018.
[2] Citations omitted and emphasis supplied.
[3] G.R. No. L-22356, 21 July 1967.

> **independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of nonexistence of the criminal acts charged.**[4]
>
> ...

The Supreme Court quotes further its decision in *Proton Pilipinas Corporation v. Republic of the Philippines*[5], to wit:

> ...
> While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it.** It should be borne in mind that **the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.**[6]
>
> ...

The foregoing principles undoubtedly delineate a stark difference between a criminal action for tax evasion liabilities and a case for disputed assessment as well as the variance in liabilities resulting therefrom. It is thus, with all due respect, my opinion that a declaration *apropos* the assessment's validity without a judicial protest thereto having been elevated to this Court by the taxpayer is improper.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[4] Emphasis in the original text and underscoring supplied.
[5] G.R. No. 165027, 12 October 2006.
[6] Citations omitted and emphasis supplied.