REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-809**
- versus -	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** and **FERRER-FLORES,** *JJ.*
CHOW MASTER CORPORATION and its responsible officers, REBECCA ANN K. SY, JOJO CANDELARIO and ALICE LAO YAP, Accused.	Promulgated: AUG 14 2025 9:13 Am

x - x

DECISION

FERRER-FLORES, J.:

On February 18, 2020, an **Information** was filed against **Rebecca Ann K. Sy**, **Jojo Candelario**, and **Alice Lao Yap**, as Chairman/CEO, Treasurer and Chief Financial Officer, respectively, of **Chow Master Corporation** (CMC), for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, the accusatory portion of which reads:

> That on or about 16 September 2015 and continuously up to the present, in the City of Pasay, and within the jurisdiction of this Honorable Court, said accused, Chow Master Corporation, and Rebecca Ann K. Sy, Jojo Candelario and Alice [Lao] Yap, being then its Chairman/CEO, Treasurer and Chief Financial Officer, respectively, and therefor responsible officers, to whom notices and demands were made by the Bureau of Internal Revenue (BIR), to pay the corporation's income tax obligations for the year 2011, *to wit*: Five Million Eight Hundred Nineteen Thousand Eight Hundred Fifty-Nine Pesos and Fifty Four Centavos, exclusive of surcharges and interest under BIR Assessment Notice No. IT-ELA13610-11-15-101, did then and there, willfully, unlawfully and knowingly fail, refuse and neglect to pay the BIR the said amount despite due notice and demand and without formally protesting and appealing the

same with the proper authority, which demand has already become final, to the damage and prejudice of the government.

CONTRARY TO LAW.[1]

FACTUAL ANTECEDENTS

Accused CMC is a Philippine corporation primarily engaged in restaurant business, registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 233-580-523-000 and registered business address at No. 2, Ortigas St., Roxas Blvd., Pasay City.[2]

Accused Sy and Yap are charged in this case pursuant to Section 253(d) of the NIRC of 1997, as amended, being the then President and Corporate Secretary, respectively, of CMC based on its 2010 General Information Sheet (GIS).[3]

On December 6, 2012, the Letter of Authority (LOA) No. SN: eLA201100013610/LOA-051-2012-00000393[4] was issued to accused CMC by then Regional Director (RD) of Revenue Region (RR) No. 008 – Makati City, Nestor S. Valeroso, authorizing Revenue Officer (RO) Josefina Tallada and Group Supervisor (GS) Aurora Balisacan to examine the books of accounts and other accounting records for all internal revenue taxes of the accused CMC, for the period from January 1, 2011 to December 31, 2011. The said LOA was received by a certain "Joseph N. Hebres" on December 7, 2012.[5]

Relative thereto, the First Request for Presentation of Records dated January 8, 2013[6] and Second and Final Notice dated February 4, 2013[7] were received by a certain "Evie Aquino" on January 9, 2013[8] and a certain "Julius Hernandez" on February 5, 2013,[9] respectively.

On December 22, 2014, the Commissioner of Internal Revenue (CIR), through Jona DP. Amora, then RD of RR No. 008, issued the Preliminary Assessment Notice (PAN) with Details of Discrepancies against accused CMC.[10]

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1 Docket – Vol. I, pp. 5 to 6.
2 Par. 5, *Joint Stipulation of Facts* (JSF), Docket – Vol. I, p. 141.
3 Pars. 1 and 2, JSF, Docket – Vol. I, p. 140.
4 Exhibit "P-1", Docket – Vol. I, p. 275.
5 Exhibit "P-1-a", Docket – Vol. I, p. 275.
6 Exhibit "P-2", Docket – Vol. I, p. 276.
7 Exhibit "P-3", Docket – Vol. I, p. 277.
8 Exhibit "P-2-a", Docket – Vol. I, p. 276.
9 Exhibit "P-3-a", Docket – Vol. I, p. 277.
10 Exhibit "P-4", Docket – Vol. I, pp. 278 to 282.

Subsequently, on January 14, 2015, the Formal Assessment Notice (FAN) with Details of Discrepancies and Assessment Notices,[11] were issued by the BIR and received by a certain "Julie Anne Mellosin" on even date.[12] Details are as follows:

Assessment No.	Tax Type	Basic Tax Due	Surcharge	Interest (as of Feb. 27, 2015)	Amount Due
IT-ELA13610-11-15-101	**Income Tax**	**₱5,819,859.54**		**₱3,338,845.45**	**₱9,158,704.99**
VT-ELA13610-11-15-101	Value-added Tax (VAT)	3,427,153.57		2,118,262.59	5,545,416.16
WE-ELA13610-11-15-101	Expanded Withholding Tax (EWT)	93,837.91		58,513.72	152,351.63
DS-ELA13610-11-15-101	Documentary Stamp Tax (DST)	21,039.00	₱10,519.50	13,234.40	44,792.90
				TOTAL	**₱14,901,265.68**

On September 1, 2015, the Preliminary Collection Letter (PCL) was issued against accused CMC.[13] Thereafter, the Final Notice Before Seizure (FNBS) dated September 16, 2015, [14] covering the said amounts of assessments, was served to a certain "Julius" on November 9, 2015.[15]

Accused CMC then paid the EWT and DST amounting to ₱152,351.63 and ₱44,792.90, respectively, on December 1, 2015.[16]

On May 11, 2016, the Warrant of Distraint and/or Levy (WDL) was issued by the BIR against accused CMC,[17] and received by a certain "Glenn C. Briñosa Jr." [18]

A Memorandum was issued by RO Rhodora C. Balazo on October 24, 2016,[19] recommending that the present case be forwarded to the Regional Investigation Division for proper evaluation and appropriate action.

Consequently, the Joint Complaint-Affidavit dated March 9, 2017[20] was executed by ROs Maria Consuelo G. Degollado, Marcelo A. Blancaflor, Rosita S. Item and Rhodora C. Balazo against accused CMC.

[11] Exhibit "P-6", Docket – Vol. I, pp. 284 to 292.
[12] Exhibit "P-6-b", Docket – Vol. I, p. 284.
[13] Exhibit "P-8", Docket – Vol. I, p. 294.
[14] Exhibit "P-9", Docket – Vol. I, p. 295.
[15] Exhibit "P-9-b", Docket – Vol. I, p. 295.
[16] Exhibit "P-10". Docket – Vol. I, p. 296.
[17] Exhibit "P-12", Docket – Vol. I, p. 298.
[18] Exhibit "P-12", Docket – Vol. I, p. 298.
[19] Exhibit "P-13", Docket – Vol. I, pp. 299 to 300.
[20] Exhibit "P-14", Docket – Vol. I, pp. 301 to 303.

On March 9, 2017, then CIR Caesar R. Dulay referred the case to the then Secretary of the Department of Justice (DOJ) Vitaliano N. Aguirre II, for preliminary investigation and the filing of Information in court, if the evidence so warrants.[21]

PROCEEDINGS BEFORE THIS COURT

On February 18, 2020, the prosecution filed the present *Information* before this Court,[22] charging accused CMC and its responsible corporate officers, accused Sy, Candelario, and Yap, for the crime of willful failure, refusal and neglect to pay its income tax liability for taxable year (TY) 2011, despite due notice and demand, to the damage and prejudice of the government, in violation of Section 255 of the NIRC of 1997, as amended.

In its Resolution dated March 10, 2020, the Court found the existence of probable cause to issue a warrant of arrest against accused and directed the issuance of the same against accused Sy, Candelario, and Yap.[23] Thus, Warrants of Arrest dated March 11, 2020 were issued against the responsible corporate officers of accused CMC.[24]

On January 4, 2021, considering that the Warrants of Arrest for accused Sy, Candelario, and Yap have been returned unserved, on the ground that "said accused could not be found at said given address despite diligent efforts exerted" and considering that Alias Warrants of Arrest were already issued, the Court issued a Resolution stating that the case will be archived, without prejudice to its revival immediately upon apprehension of the accused.[25]

Thereafter, accused Sy[26] and Yap,[27] voluntarily appeared and submitted their person to the jurisdiction of the Court and posted cash bonds in the amount of ₱60,000.00 each for their respective provisional liberty on August 17, 2022. Hence, in the Resolution dated August 18, 2022,[28] the Court reinstated the case, approved the cash bonds and set the Arraignment and Pre-Trial Conference on October 19, 2022.

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[21] Exhibit "P-15", Docket – Vol. I, p. 326; Refer also to Docket – Vol. I, p. 15.
[22] Docket – Vol. I, pp. 5 to 6.
[23] Docket – Vol. I, pp. 42 to 44.
[24] Docket – Vol. I, pp. 45 to 47.
[25] Docket – Vol. I, p. 81.
[26] *Certification* dated August 17, 2022, Docket – Vol. I, p. 87; and *Undertaking* signed by the accused Rebecca Ann K. Sy, Docket – Vol. I, pp. 90 to 91.
[27] *Certification* dated August 17, 2022, Docket – Vol. I, p. 96; and *Undertaking* signed by the accused Alice Lao Yap, Docket – Vol. I, pp. 99 to 100.
[28] Docket – Vol. I, pp. 85 to 86.

Accused Sy and Yap's *Pre-Trial Brief* was filed on October 14, 2022,[29] while the *Pre-Trial Brief for the Plaintiff* was submitted on October 17, 2022.[30]

During the Arraignment and Pre-Trial Conference on October 19, 2022,[31] accused Sy[32] and Yap,[33] duly assisted by counsel, entered a plea of "Not Guilty" of the crime charged.

Preliminary Conference was then set and held on October 20, 2022.[34]

The parties filed their *Joint Stipulation of Facts* on November 18, 2022,[35] which was admitted and approved by the Court in its Resolution dated December 1, 2022,[36] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order (as regards accused Rebecca Ann K. Sy and Alice Lao Yap only) dated January 25, 2023 was then issued.[37]

On April 3, 2023, the prosecution filed a *Motion to Waive Presentation of Witness (Revenue Officers Josefina Tallada and Aurora Balisacan)*,[38] which was granted by the Court in the Minute Resolution dated April 18, 2023.[39]

As trial ensued, the prosecution presented their documentary and testimonial evidence. The prosecution presented the testimony of its lone witness, RO Balazo[40] of the Collection Division of RR No. 8B – South National Capital Region (NCR).

On September 29, 2023, the prosecution filed via registered mail its *Formal Offer of Evidence*,[41] to which accused Sy and Yap filed their

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29 Docket – Vol. I, pp. 107 to 110.

30 Docket – Vol. I, pp. 112 to 116.

31 Minutes of the hearing held on, and Order dated, October 19, 2022, Docket – Vol. I, p. 118 and pp. 125 to 127, respectively.

32 *Certificate of Arraignment* dated October 19, 2022, Docket – Vol. I, p. 123.

33 *Certificate of Arraignment* dated October 19, 2022, Docket – Vol. I, p. 121.

34 Minutes of the hearing held on, and Order dated, October 19, 2022, Docket – Vol. I, p. 118 and pp. 125 to 127, respectively; Minutes of Preliminary Conference dated October 20, 2022, Docket – Vol. I, pp. 128 to 131.

35 Docket – Vol. I, pp. 140 to 142.

36 Docket – Vol. I, p. 143.

37 Docket – Vol. I, pp. 144 to 150.

38 Docket – Vol. I, pp. 167 to 169.

39 Docket – Vol. I. p. 172.

40 Exhibit "P-20", Docket – Vol. I, pp. 173 to 185, offered as Exhibit "P-20" although not marked, refer to Resolution dated January 10, 2024, Docket – Vol. I, at p. 378; Minutes of the hearing held on, and Order dated, September 19, 2023, Docket – Vol. I, p. 264 and 265 to 266 (375 to 376), respectively.

41 Docket – Vol. I, pp. 267 to 273.

Comment/Opposition [To: Prosecution's Formal Offer of Evidence] on October 31, 2023.[42]

In the Resolution dated January 10, 2024,[43] the Court admitted the prosecution's offered exhibits.

On February 5, 2024, accused Sy and Yap, through counsel, filed a *Demurrer to Evidence*,[44] to which the prosecution filed its *Comment/Opposition [To: Accused's Demurrer to Evidence dated February 5, 2024]* on March 13, 2024.[45]

Subsequently, the Court issued its Resolution dated July 29, 2024 denying the said *Demurrer to Evidence.*[46] The Court also ruled that, considering that accused's *Demurrer to Evidence* was filed without leave of court, pursuant to Section 23, Rule 119 of the *Revised Rules of Criminal Procedure*, the accused are deemed to have waived their right to present evidence.

Accused Sy and Yap filed via accredited courier an *Urgent Motion for Reconsideration* and *Supplemental Urgent Motion for Reconsideration* on August 16, 2024,[47] and August 20, 2024,[48] respectively, to which the prosecution filed via registered mail its *Comment/Opposition (To Accused's Urgent Motion for Reconsideration dated August 16, 2024)* on September 18, 2024.[49]

On March 17, 2025, the Court issued its Resolution denying both accused's *Urgent Motion for Reconsideration* and *Supplemental Urgent Motion for Reconsideration.*[50]

The *Memorandum (For the Prosecution)* was filed via accredited courier on September 5, 2024,[51] while the *Memorandum* for the accused Sy and Yap was filed via registered mail on May 2, 2025.[52]

On May 19, 2025, the case was considered submitted for decision.[53]

[42] Docket – Vol. I, pp. 359 to 371.
[43] Docket – Vol. I, pp. 378 to 379.
[44] Docket – Vol. I, pp. 383 to 397.
[45] Docket – Vol. I, pp. 401 to 406.
[46] Docket – Vol. I, pp. 409 to 417.
[47] Docket – Vol. I, pp. 418 to 423.
[48] Docket – Vol. II, pp. 428 to 431.
[49] Docket – Vol. II, pp. 446 to 450.
[50] Docket – Vol. II, pp. 454 to 458.
[51] Docket – Vol. II, pp. 438 to 442.
[52] Docket – Vol. II, pp. 460 to 481.
[53] Docket – Vol. II.

EVIDENCE FOR THE PROSECUTION

To establish the culpability of the accused, the prosecution presented its lone witness, RO Balazo,[54] whose testimony during her direct examination, cross-examination and/or responses to clarificatory questions posed by the Court are summarized below.

RO Balazo testified, by way of *Judicial Affidavit*, that, from 2019 to present, she is assigned at the Collection Division of RR No. 8B – South NCR. Prior to that, or from 2017 to 2018, she was assigned as RO III at the Collection Division of RR No. 8 – Makati.[55]

Her duties and responsibilities include, among others, the enforcement of collection of delinquent accounts through summary remedies, as well as the preparation of PCL, FNBS, WDL, Warrants of Garnishment, Notice of Levy and/or Notice of Tax Lien and Notice of Encumbrance for delinquent taxpayers within the jurisdiction of the Regional Office. She is likewise tasked to investigate certain individuals and entities who committed certain violations of the NIRC of 1997, as amended, and to recommend and execute a civil and/or criminal complaint for such violations.[56]

She further testified that she was assigned to enforce collection through the issuance of WDL against accused CMC for the unpaid deficiency income tax, VAT, EWT, and DST due amounting to ₱14,901,265.68, inclusive of interest and surcharge, for TY 2011.[57]

She prepared the Memorandum dated October 24, 2016 addressed to the Chief, Collection Division, summarizing the case and recommending that the case be forwarded to the Regional Investigation Division for proper evaluation and for appropriate action.[58]

Thereafter, she, together with ROs Degollado, Blancaflor, and Item, executed their Joint Complaint-Affidavit dated March 9, 2017 for the institution of a criminal complaint against accused CMC and its responsible officers for violation of Section 255 of the NIRC of 1997.[59] The same was referred to the DOJ for preliminary investigation and filing of an Information, as necessary, through the CIR's Referral Letter dated March 9, 2017.[60]

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54 Docket – Vol. I, pp. 173 to 185.
55 Q&A No. 4, Exhibit "P-20", Docket – Vol. I, p. 174.
56 Q&A No. 6, Exhibit "P-20", Docket – Vol. I, p. 174.
57 Q&A No. 35, Exhibit "P-20", Docket – Vol. I, p. 179.
58 Q&A No. 38, Exhibit "P-20", Docket – Vol. I, p. 179; Exhibit "P-13", Docket – Vol. I, pp. 299 to 300.
59 Exhibit "P-14", Docket – Vol. I, pp. 301 to 303.
60 Exhibit "P-15", Docket – Vol. I, p. 326.

On cross-examination, when RO Balazo was asked if she was present when the accused received the LOA, First Request for Presentation of Records, Second and Final Notice, PAN with Details of Discrepancy, FAN, Memorandum of Assignment and Preliminary Collection Letter, she answered that she was only present during the service of the WDL, while the service of the other documents were handled by other RO/s.[61]

<u>Admitted evidence of the prosecution</u>

To establish the guilt of the accused beyond reasonable doubt, the prosecution presented the following documentary evidence, which have been admitted by the Court in its Resolution dated January 10, 2024,[62] to wit:

Exhibits	Description
"P-1"	Letter of Authority No. 201100013610 dated December 6, 2012
"P-1-a"	Name and signature of Joseph N. Hebres
"P-2"	First Request for Presentation of Records dated January 8, 2013
"P-2-a"	Name and signature of Evie Aquino
"P-3"	Second and Final Notice for Presentation of Records dated February 4, 2013
"P-3-a"	Name and signature of Julius Hernandez
"P-4"	PAN with Details of Discrepancies dated December 22, 2014
"P-4-a"	Name and signature of Regional Director Jonas DP Amora (last page of the PAN)
"P-5"	LBC Receipt dated December 22, 2014
"P-6"	FAN with Details of Discrepancies and Assessment Notices all dated January 14, 2015
"P-6-a"	Name and signature of Regional Director Jonas DP Amora (last page of the FAN)
"P-6-b"	Name and signature of Julie Anne Mellosin
"P-7"	Memorandum of Assignment (MOA) dated August 17, 2015
"P-8"	PCL dated September 1, 2015
"P-9"	FNBS dated September 16, 2015
"P-9-a"	Name and signature of Gilda B. Iglesias
"P-9-b"	Receipt of Julius dated November 9, 2015
"P-10"	RCBC Deposit Slips
"P-10-a"	Date 01-December-2015
"P-11"	MOA dated April 8, 2016
"P-12"	WDL dated May 11, 2016

[61] TSN taken at the hearing held on September 19, 2023, pp. 7 to 8.
[62] Docket – Vol. I, pp. 378 to 379.

Exhibits	Description
"P-12-a"	Name and signature of Glenn C. Briñosa Jr.
"P-13"	Memorandum (Report) of Rhodora C. Balazo dated October 24, 2016
"P-13-a"	Name and signature of Rhodora C. Balazo
"P-14"	Joint Complaint Affidavit dated March 9, 2017, executed by Revenue Officers Maria Consuelo G. Degollado, Marcelo A. Blancaflorm, Rosita S. Item and Rhodora C. Balazo
"P-14-a"	Name and signature of Maria Consuelo G. Degollado
"P-14-b"	Name and signature of Rhodora C. Balazo
"P-15"	Referral Letter of the CIR Caesar Dulay dated March 9, 2017
"P-15-a"	Name and signature of Caesar R. Dulay
"P-16"	Investigation Data Form dated March 9, 2017
"P-17"	DOJ Resolution dated August 14, 2019
"P-18"	General Information Sheet of Chow Master Corporation
"P-19"	Sales Certificate of Chow Master Corporation for the period of January 1 to 15, 20[11][63]
"P-19-a"	Name of Jojo I. Candelario – Franchisee/MD
"P-20"	Judicial Affidavit of Rhodora C. Balazo
"P-20-a"	Name and Signature of Rhodora C. Balazo

THE ISSUES

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

1. Whether or not accused CMC and its responsible officers, Sy, Candelario, and Yap are guilty beyond reasonable doubt of the offense charged; and,

2. Whether or not accused CMC and its responsible officers, Sy, Candelario, and Yap are liable to pay deficiency income tax for TY 2011 in the total amount of Php9,158,704.99.[64]

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[63] Although offered as "for the period January 1 to 15, 2022", the document marked is actually for January 1 to 15, 2011, Docket – Vol. I, p. 344, which was noted in the Resolution dated January 10, 2024, Docket – Vol. I, at p. 378.

[64] Par. II.B. Issues, Pre-Trial Order (as regards accused Rebecca Ann K. Sy and Alicia Lao Yap) dated January 25, 2023, Docket – Vol. I, p. 145.

ARGUMENTS OF THE PARTIES

Prosecution's arguments:

The prosecution argues that accused Sy and Yap, being then accused CMC's Chairman/CEO and Chief Financial Officer, respectively, are required by the NIRC of 1997, as amended, to pay tax, and that accused CMC willfully failed to pay its deficiency taxes as required by the NIRC of 1997, as amended, despite repeated demands.

Accused's counter-arguments:

Accused Sy and Yap contend that the prosecution failed to prove that the accused were the corporate officers required to submit the documents at the time of the commission of the crime on September 16, 2015 and onwards; that it was not proven that herein accused failed to pay the required tax, or make a return at the time required, since there is no proof that they were properly notified of the same; and, that it was not proven that herein accused's failure to pay, assuming they were responsible officers, was willful.

THE COURT'S RULING

The Court finds that the prosecution failed to establish the guilt of accused CMC, Sy, and Yap beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended.

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

> SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — **Any person required under this Code** or by rules and regulations promulgated thereunder **to pay any tax, make a return**, keep any record, **or supply correct and accurate information, who willfully** fails to pay such tax, make such return, keep such record, or **supply such correct and accurate information**, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. *(Emphasis supplied)*

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

> SECTION 253. *General Provisions.*
>
> xxx xxx xxx
>
> (d) In the case of associations, partnerships or **corporations**, the **penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation**.
>
> xxx xxx xxx
>
> SECTION 256. *Penal Liability of Corporations.* — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (₱50,000) but not more than One hundred thousand pesos (₱100,000). *(Emphasis supplied)*

Accused Sy and Yap, as Chairman/CEO and CFO of the accused CMC, respectively, are being held responsible for CMC's alleged violation of the NIRC of 1997, as amended.

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

1. the corporate taxpayer is required by law to pay the tax;
2. the corporate taxpayer failed to pay the tax at the time or times required by law or rules and regulations; and,
3. the accused, as the employee responsible for the violation, willfully failed to pay such tax at the time or times required by law or rules and regulations.[65]

As in all criminal cases, all the foregoing elements of the crime charged must concur to seal a conviction. The lack or absence of *any* of the enumerated elements warrants the exoneration of the accused. It is indubitably incumbent upon the prosecution then, on which the burden of

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[65] *People vs. E & D Parts Supply, Inc.*, G.R. No. 259284, January 24, 2024, citing *Suarez vs. People*, G.R. No. 253429, October 6, 2021.

evidence lies, to establish by proof beyond moral certainty each and every element enumerated above. Failure to discharge this burden warrants the acquittal of the accused.

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

First and Second Elements – ***The prosecution failed to prove that the accused is required to pay deficiency income tax for TY 2011 and that accused failed to do so despite notice and demand.***

As established earlier, accused CMC is a Philippine corporation primarily engaged in restaurant business, which is registered with the BIR whose registered business address is at No. 2, Ortigas St., Roxas Blvd., Pasay City.[66] Consequently, accused CMC is required under the NIRC of 1997, as amended, to pay income tax and file an income tax return, pursuant to Sections 27[67] and 52(A)[68] of the NIRC of 1997, as amended.

Notably, the income tax liability in this case stemmed from an assessment.

Pertinent thereto, Sections 6(A) and 56(B) of the NIRC of 1997 provide for tax obligations arising from deficiency tax assessments, *viz.*:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the

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66 Par. 5, JSF, Docket – Vol. I, p. 141.

67 SEC. 27. *Rates of Income Tax on Domestic Corporations.* -
(A) *In General.* - Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: *Provided*, That effective January 1, 2009, the rate of income tax shall be shall be thirty percent (30%).

68 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.

examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid <u>upon notice and demand</u> from the Commissioner or from his duly authorized representative.

xxx xxx xxx

SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporations. –*

xxx xxx xxx

(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 <u>upon notice and demand</u> from the Commissioner**. *(Emphasis and underscoring added)*

Based on the aforecited provisions, once a tax or deficiency tax assessment has been issued by the BIR after the examination of the taxpayer, such taxpayer so assessed, upon notice and demand from the CIR or his duly authorized representative, is under obligation to pay the said assessment.

In *Tupaz vs. Ulep, et al.*,[69] the Supreme Court ruled that the offense of willful failure to pay tax may be committed as follows:

xxx Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In *Lim, Sr. v. Court of Appeals*, we stated that by its nature the violation could only be committed **after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. xxx **This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax**. The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period. *(Emphasis supplied)*

Here, the *Information* states that the notice and demand were purportedly issued to collect the deficiency income tax, which demand has already become final, but the accused willfully failed to pay the same.

On the other hand, accused Sy and Yap argue that the proper service of notice upon herein accused was miserably lacking proof and failure of the prosecution to prove service of the subpoena and other processes upon the person/s of the accused is fatal to the criminal action.

69 G.R. No. 127777, October 1, 1999.

At the outset, Section 3.1.6 of Revenue Regulations No. 12-99,[70] as amended by Revenue Regulations No. 18-2013,[71] prescribes the rules on how notices are served, to wit:

> SEC. 3. Due Process Requirement in the Issuance of a Delinquency Tax Assessment. —
>
> 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 <u>personal service</u> 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 <u>substituted service</u> or by <u>mail</u>.**
>
> (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

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[70] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[71] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> 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.** *(Emphasis supplied)*

Based on the foregoing, notices are generally served through personal service. If personal service is not practicable, notice shall be served by substituted service or by mail, subject to the above-stated conditions.

Upon closer scrutiny of the testimony of the prosecution's sole witness, RO Balazo, the Court notes that she only made a general and sweeping statement in her Judicial Affidavit that the LOA dated December 6, 2012, *First Request for Presentation of Records* dated January 8, 2013, Second and Final Notice dated February 4, 2013, PAN with Details of Discrepancies dated December 22, 2014, FAN with Details of Discrepancies and Assessment Notices dated January 14, 2015, Memorandum of Assignment dated August 17, 2015, PCL dated September 1, 2015 and FNBS dated September 16, 2015 issued by the BIR were all duly received by accused CMC's authorized representative.[72] Such statement was based only on her examination of the BIR Records. Further, she likewise admitted that she was not present when the documents, other than the WDL, were allegedly served upon the accused.

Although the evidence of the prosecution mentioned individuals such as Joseph N. Hebres, Evie Aquino, Julius Hernandez, Julie Anne Mellossin, and Glenn C. Briñosa Jr., as having allegedly received the LOA, First Request for Presentation of Records, Second and Final Notice, FAN and WDL, respectively, RO Balazo failed to testify on how these were served (i.e.,

[72] Q&A No. 13, Exhibit "P-20", Docket – Vol. I, pp. 175 to 176.

personal or substituted service) and/or the circumstances upon which the said documents were served and received. A thorough review of the evidence reveals that there is no other evidence showing that these individuals were duly authorized to receive the notices. Stated otherwise, the Court cannot determine from the evidence on record whether the notices were properly served in accordance with the prescribed rules.

Moreover, as to the PAN, the prosecution merely presented an LBC Receipt dated December 22, 2014,[73] to "prove service of the subject PAN with Details of Discrepancies dated December 22, 2014 to herein accused",[74] but did not present proof as to compliance with Section 3.1.6(iii) of Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-2013. When RO Balazo was asked of the steps taken to ensure that the PAN was received by the accused, she admitted that she only referred to the records of the docket, as she was not the one who mailed the PAN since she is assigned at the Collection Division.[75]

With the foregoing, the Court finds that the prosecution failed to prove that the PAN and FAN were properly served upon and received by accused CMC or its duly authorized representative. Consequently, accused cannot be said to have been required to pay the deficiency income tax and to have failed to pay the taxes when they were not properly notified of the notice and demand thereof.

Clearly, the prosecution failed to establish the *first* and *second* elements of the crime charged. On this score alone, the acquittal of the accused is already warranted.

Granting, for argument's sake that the *first* and *second* elements are present, the prosecution still failed to prove the *third* element.

***Third Element* – The prosecution failed to prove that accused Sy and Yap are the responsible officers of accused CMC who willfully failed to pay the subject taxes.**

Accused Sy and Yap argue that, absent any positive evidence that they were actually the officers of accused CMC at the time the crime was

73 Exhibit "P-5", Docket – Vol. I, p. 283.
74 Docket – Vol. I, p. 268.
75 TSN taken at the hearing held on September 19, 2023, p. 6.

committed, they cannot possibly be deemed as the responsible officers answerable to the crime charged.

Notably, Section 253 of the NIRC of 1997, as amended, imposes the penalty on the officers and/or employees **responsible for the violation**.

The prosecution charged accused Sy and Yap as the "responsible officers" of accused CMC, based on its 2010 GIS,[76] which shows accused Sy as the President and accused Yap as the Corporate Secretary[77] (not as Chief Financial Officer as stated in the *Information*).

Note, however, that the Supreme Court, in *Geneva S. Suarez vs. People of the Philippines and the Bureau of Internal Revenue*,[78] held that being an officer *per se* will not make one liable for the failure of the corporation to pay its tax liabilities, as the employee's or officer's criminal liability stems from his/her active participation in the commission of the wrongful act. The Supreme Court further clarified that, to be criminally liable for the acts of a corporation, there must be a showing that its officers, directors, and shareholders actively participated in or had the power to prevent the wrongful act. In the words of Section 253 of the NIRC of 1997, as amended, the accused must have been the employee or officer <u>responsible for the violation</u>.

Based on the foregoing, to be criminally liable for the acts of a corporation, there must be a showing that the accused officer or employee actively participated in or had the power to prevent the wrongful act.

In this case, aside from the 2010 GIS, the prosecution did not present any other evidence that would prove accused Sy and Yap's role, duties, and responsibilities in the corporation when the crime was supposedly committed. The prosecution likewise failed to show that accused Sy and Yap had knowledge of the criminal act or that they actively participated or had the power to prevent the wrongful act, thereby being responsible for the violation.

Absent proof that accused Sy and Yap had any direct and active participation in the non-payment of accused CMC's tax liabilities, the Court cannot convict them of violation of Section 255 of the NIRC of 1997.

76 Exhibit "P-18", Docket Vol – I, pp. 335 to 343.
77 *Id.*, at p. 338.
78 G.R. No. 253429, October 6, 2021, citing *ABS-CBN Corp. vs. Gozon*, G.R. No. 195956, March 11, 2015 and *Securities and Exchange Commission vs. Price Richardson Corp.*, G.R. No. 197032, July 26, 2017.

In criminal cases, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his/her guilt. If there exists even one iota of doubt, this Court is under a longstanding legal injunction to resolve the doubt in favor of the accused.[79]

Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.[80]

Here, the prosecution has not shown proof beyond reasonable doubt that accused Sy and Yap are guilty of the crime penalized under Section 255 of the NIRC of 1997, for TY 2011.

Correspondingly, accused Sy and Yap must perforce be acquitted.

CIVIL ASPECT

While accused Sy and Yap's acquittal in the criminal case does not necessarily result in the obliteration of the civil liability of the accused CMC, if any, such civil liability may not be imposed on accused CMC in this case, since there is no clear showing that the subject tax assessments were received by the accused CMC or its duly authorized representative.

In *People of the Philippines vs. E & D Parts Supply, Inc. and Margaret L. Uy,*[81] the Supreme Court ruled that the acquittal of the taxpayer-accused in the criminal case for tax laws violation will not necessarily result in the obliteration of the civil liability for deficiency taxes relative to the criminal case since the duty to pay the tax is imposed by law prior to and independently of any attempts of the taxpayer to evade payments. The taxpayer's obligation to pay the tax is created by law; it does not arise from the offense of tax evasion. Accordingly, acquittal of the accused or the dismissal of the criminal case for tax laws violation will not result in the extinction of their civil liability for deficiency taxes.

Similarly, the acquittal of accused Sy and Yap in this criminal case did not release accused CMC from its obligation to pay the deficiency income tax, if any, as this obligation did not arise from delict but is based on law.

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[79] *Suarez vs. People of the Philippines, et al.*, G.R. No. 253429, October 6, 2021.
[80] *Daayata, et al.* vs. *People of the Philippines*, G.R. No. 205745, March 8, 2017.
[81] G.R. No. 259284, January 24, 2024.

Therefore, the government is not precluded from taking action to collect any deficiency tax that may be due from accused CMC.

Nevertheless, as earlier pointed out, the obligation to pay deficiency taxes emanates from the alleged assessment, the notices of which were not established to have been served upon and received by accused CMC or its duly authorized representatives. Specifically, while it may be true that the subject FAN with Details of Discrepancies and Assessment Notices were received by a certain "Julie Anne Mellosin" on January 14, 2015,[82] the prosecution failed to show that the latter is a duly authorized representative of accused CMC who can bind the latter. Such being the case, for failure of the prosecution to show receipt of accused CMC of the subject tax assessments, the obligation to pay the same on the part of accused CMC has effectively *not* yet arisen.

In fine, there is no competent evidence to establish the accused's civil liability. Correspondingly, no civil liability may be imposed on accused CMC.

WHEREFORE, premises considered, the accused Chow Master Corporation, Rebecca Ann K. Sy, and Alice Lao Yap, are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.

Accordingly, the respective cash bail bonds of the accused for this case are likewise **CANCELLED** and ordered **RELEASED** to them upon presentation of proper documents, in accordance with the usual accounting rules and regulations.

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

Insofar as the case against accused Jojo Candelario, who, to date, remains at large, let the same be **ARCHIVED**, to be revived upon his arrest or voluntary surrender.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

[82] Exhibit "P-6-b", Docket – Vol. I, p. 284.

WE CONCUR:

(On leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice