REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,*	**CTA Crim. No. A-5** *(Criminal Case No. 01-194392)*
	For violation of Section 254 of the Tax Code of 1986, as amended
-versus-	**Members:** **Del Rosario,** *P.J., Chairperson,* **Fabon-Victorino**, *and* **Manahan,** *JJ.*
ENGR. REYNALDO A. MATANGUIHAN, *Accused-Appellant.*	**Promulgated:** MAR 07 2019 ; 1:41pm

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DECISION

DEL ROSARIO, P.J.:

THE CASE

This is an appeal by accused-appellant, Engr. Reynaldo A. Matanguihan, by way of a Notice of Appeal, filed on November 2, 2017, assailing the Decision of the Regional Trial Court (RTC), Branch 21, Manila, dated February 9, 2017, which convicted him of the offense charged under Section 254 in relation to Sections 252(d) and 255 of the National Internal Revenue Code (NIRC) of 1986, as amended.

FACTS

The records of the case disclose that accused-appellant was charged in an Information filed before the RTC Branch 21, Manila of an offense for violation of Section 254 of the NIRC of 1986, as amended, the accusatory portion of which reads:

"That on or about June 6, 1997, and continuously up to the present, in the City of Manila, Philippines, the said accused, being then the President and responsible officer of the ALMAREY CONSTRUCTION CO., INC., a duly registered business entity with principal place of business at No. 1658 Bulacan St., Sta. Cruz, this city, did then and there willfully, unlawfully and knowingly fail and neglect to pay deficiency income tax and VAT due from said corporation for the taxable year 1994 in the amount of P1,429,649.46 under BIR Assessment Notice No. 031-1-000531-94, despite notice of said assessment, without formally protesting against or appealing the same, and repeated demands made upon him to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid sum of P1,429,649.46, Philippine currency.

CONTRARY TO LAW."[1]

Upon arraignment, accused-appellant entered a plea of not guilty to the offense charged in the Information.[2]

During pre-trial, the parties manifested that there is nothing to stipulate. As a consequence thereof, their motion for the termination of pre-trial was granted.[3] Trial proceeded, during which both parties presented their respective evidence.

The prosecution presented as its sole witness, Atty. Yolanda Magsumbol.[4] On March 13, 2013, the Plaintiff's Formal Offer of Evidence with Motion to Mark Documents was filed[5] while accused's Comment/Opposition thereto was filed on March 21, 2013.[6] Plaintiff's formally offered exhibits consist of the following:

Exhibit	Nature
A	Demand letter dated March 9, 2000 addressed to Engr. Reynaldo A. Matanguihan, President of Almarey Construction Co., Inc. with business address at 1658 Bulacan Street, Sta. Cruz, Manila
A-1	Signature of Mario A. Saldevar, Chief of the Legal Division
A-2	Post Office Registry Receipt No. 79470 dated March 10, 2000

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[1] RTC Records, p. 1.
[2] RTC Records, p. 39.
[3] September 24, 2003 Order, RTC Records, p. 94.
[4] RTC Records, p. 110.
[5] RTC Records, p. 430.
[6] RTC Records, p. 450.

A-3	Name of the addressee Engr. Reynaldo A. Matanguihan and his address at 1658 Bulacan Street, Sta. Cruz, Manila
B	Assessment Notice No. 31-1-000531-94 dated June 6, 1997 for deficiency value-added tax in the amount of P575,098.71
B-1	Assessment amount of P575,098.71
B-2	Name of the taxpayer Almarey Construction Co., Inc.
B-3	Address of Almarey Construction Co., Inc. which is 1658 Bulacan Street, Sta. Cruz, Manila
C	Assessment Notice No. 31-1-000531-94 dated June 6, 1997 for deficiency income tax in the amount of P854,550.75
C-1	Assessment amount of P854,550.75
C-2	Name of the taxpayer Almarey Construction Co., Inc.
C-3	Address of Almarey Construction Co., Inc. which is 1658 Bulacan Street, Sta. Cruz, Manila
D	Annual Income Tax Return (BIR Form No. 1702) of Almarey Construction Co., Inc. for taxable year 1994
D-1	Signature above the printed name "ENGR. REYNALDO MATANGUIHAN", taxpayer/authorized agent signature
D-2	Title/Position of signatory indicating that Engr. Reynaldo Matanguihan is the President of the corporation
E	Letter of Engr. Reynaldo A. Matanguihan, President of Almarey Construction Co., Inc. dated October 24, 2000
E-1	Stamp mark of the Legal Division, BIR Manila
F	Transmittal Letter for mailing of Assessment Notices for taxable year 1994 issued to Almarey Construction Co., Inc.
G	Post Office Registry Return Receipt
G-1	Signature acknowledging receipt of the mail matter
H	Complaint-Affidavit of Atty. Yolanda C. Magsumbol filed before the City Prosecutor's Office of Manila
H-1	Page 2 of the affidavit
H-2	Signature of Atty. Yolanda C. Magsumbol
I	Warrant of Distraint and/or Levy
I-1	Bottom portion of the WDL which is "Service of the Warrant"
I-2	Signature above the printed name "Romeo S. Panganiban", Deputy Commissioner (Operation)

The prosecution's formally offered exhibits were admitted in evidence, except Exhibit I and its submarkings.[7]

[7] March 26, 2013 Order, RTC Records, p. 000452; Assailed Decision, RTC Records, p. 599.

Accused-appellant filed his Motion to Admit Demurrer to Evidence on April 23, 2015,[8] but the same was denied by the RTC on June 18, 2015.[9]

Accused-appellant himself and Atty. Ernesto Pagdanganan were presented as witnesses for the defense.[10] The Formal Offer of Documentary Exhibits of accused-appellant was filed on March 1, 2016,[11] with plaintiff-appellee's comment filed on April 20, 2016.[12] Accused-appellant's formally offered exhibits consist of the following:

Exhibit	Description
1 and submarkings	Contract and Agreement for the Construction of Phase 2 of the National Headquarters of the Bureau of Fire Protection along Agham Road, Diliman, Quezon City
2 and submarkings	Third Party Complaint which the accused caused to be filed in Civil Case No. Q-10-67883 before Branch 91 of the Regional Trial Court of Quezon City
3	Cost Adjustment and Variation Order dated March 17, 2008
4	Memorandum dated May 15, 2008 to the Chief of the Bureau of Fire Protection from the Chief of the Legal Affairs Service of the said Bureau
5	Accused Demand Letter dated August 25, 2010 claiming for the payment of the amount of P3,068,835.25 which represents the amount retained by the Bureau of Fire Protection from the construction of its National Headquarter by the accused's company
6	Demand Letter dated May 14, 2012 of the company of the accused
7	Formal Demand Letter of the company of the accused dated September 2, 2013
8	Inspection Report of the Bureau of Fire Protection Anent the 100% Completion of the Construction of the San Lazaro Fire Station Building at the total cost of P33,262,463.88 wherein the company of the accused has still a collectible and/or receivable from the Bureau of Fire Protection in the amount of P23,262,463.88

[8] RTC Records, p. 503.
[9] RTC Records, p. 513.
[10] RTC Records, pp. 544, 546, 560.
[11] RTC Records, p. 561.
[12] RTC Records, p. 566.

The RTC admitted in evidence accused-appellant's Exhibits 5, 6, 7, 8 with submarkings but denied Exhibits 1, 2, 3 and 4 for being mere photocopies.[13]

The case was submitted for decision on November 24, 2016.[14] On February 9, 2017, the RTC promulgated the assailed Decision,[15] the dispositive portion of which reads:

> "WHEREFORE, accused ENGR. REYNALDO A. MATANGUIHAN is hereby declared GUILTY beyond reasonable doubt of the crime of Violation of Section 254 in relation to Sections 252(d) and 255 of the Tax Code, as amended, and accused is hereby sentenced to suffer the indeterminate imprisonment ranging from one (1) year and one (1) month, as minimum, to three (3) years and two (2) months, as maximum and to pay the amount of SIXTY THOUSAND PESOS (P60,000.00), Philippine currency, as FINE.
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> Accused is ordered to pay the Government of the Republic of the Philippines thru the Bureau of Internal Revenue the amount of ONE MILLION FOUR HUNDRED TWENTY NINE THOUSAND SIX HUNDRED FORTY NINE PESOS AND FORTY SIX CENTAVOS (P1,429,649.46), Philippine currency, as deficiency income tax and VAT obligations for taxable year 1994 under BIR Assessment Notice No. 31-1-000531-94 dated January 6, 1997 plus 25% penalty on P1,429,649.46 and 20% interest per annum on the total amount due from August 17, 2001 until full payment, pursuant to Sections 248 and 249 of the Tax Code, as amended.
>
> SO ORDERED."[16]

The RTC found that the evidence for the prosecution proves beyond reasonable doubt that accused-appellant is criminally and civilly liable for violation of Section 254 in relation to Sections 252(d) and 255 of the NIRC of 1986, as amended. In summary, the RTC declared the following:[17]

> (i) Almarey Construction Co., Inc. failed to pay its deficiency income tax and VAT obligations totaling P1,429,649.46 for 1994 as evidenced by assessment notices as well as demand letter which were sent to ACCI at its registered address at 1658 Bulacan St., Sta. Cruz, Manila through mail. The mailing of the assessment notices and demand letter were evidenced by the transmittal of the two letters, one of which is addressed to Almarey Construction Co., Inc.

[13] May 18, 2016 Order, RTC Records, pp. 571-572.
[14] RTC Records, p. 593.
[15] RTC Records, pp. 596-605.
[16] RTC Records, p. 605.
[17] RTC Records, p. 602-603.

as well as a registry return receipt with Almarey Construction Co. Inc. as addressee;

(ii) The assessment notices and demand letter were definitely received by ACCI as shown in a Reply Letter dated October 24, 2000 by accused-appellant to BIR Regional Director, Port Area, Manila.

(iii) accused-appellant is an accountable officer of ACCI based on BIR Records, one of which is ACCI's Corporation/Partnership Annual Income Tax Return for 1994 bearing the name of accused-appellant as the President of ACCI.

(iv) the assessments became final and unappealable since ACCI did not file any protest, and accused-appellant admitted that ACCI is a tax delinquent for taxable year 1994 as stated in the Reply Letter.

(v) ACCI, as represented by accused-appellant, willfully, voluntarily and intentionally failed to pay its deficiency income tax and VAT obligations totaling P1,429,649.46 for taxable year 1994 knowing such obligation way back year 2000 as evidenced by accused-appellant's Reply Letter.

Accused-appellant filed his Motion for Reconsideration of aforesaid February 9, 2017 Decision on February 23, 2017,[18] but the same was denied by the RTC in its Order dated September 29, 2017,[19] the dispositive part of which reads:

"WHEREFORE, the Court finds no cogent reason to reverse its earlier ruling and the Motion for Reconsideration of the Decision dated February 9, 2017 is hereby DENIED.

SO ORDERED."

Subsequently, accused-appellant filed his Notice of Appeal before the RTC on November 2, 2017.[20] On November 3, 2017, the RTC gave due course to the Notice of Appeal and ordered that the entire records of the case be forwarded to the Court of Tax Appeals (CTA) for disposition pursuant to Section 7 [b(2a)] of Republic Act No. 1125, as amended.[21]

The CTA Second Division received the transmitted records of the appealed case on January 16, 2018.[22]

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[18] RTC Records, pp. 611-614.
[19] RTC Records, pp. 641-644.
[20] RTC Records, pp. 645-646.
[21] November 3, 2017 Order, RTC Records, p. 650.
[22] CTA Crim. Case No. A-5 Records, p. 6.

Within the extended period to file an appellant's brief, accused-appellant filed his Petition for Review on April 20, 2018. Applying the rules on liberality, the CTA Second Division granted accused-appellant a period of five (5) days from receipt of the April 26, 2018 Resolution to properly comply with the requirement of filing his Appellant's Brief.[23]

On May 22, 2018, accused-appellant filed his Appellant's Brief.[24]

In a Resolution dated May 29, 2018, the CTA Second Division directed plaintiff-appellee to file its brief within thirty (30) days from receipt of accused-appellant's brief.[25]

Accused-appellant filed his Motion to Allow Submission of Supplemental Appellant's Brief on June 21, 2018,[26] and his Supplemental Appellant's Brief on June 29, 2018.[27]

On August 1, 2018, plaintiff-appellee filed its Appellee's Brief.[28]

In a Resolution dated August 10, 2018, the CTA Second Division granted accused-appellant's Motion to Allow Submission of Supplemental Appellant's Brief, and admitted accused-appellant's Supplemental Appellant's Brief, there being no objection from plaintiff-appellee, and admitted Appellee's Brief, albeit filed late, in the interest of justice.[29]

Meanwhile, in an Order issued on September 24, 2018, the CTA Second Division transferred this case to the CTA First Division in line with CTA Administrative Circular No. 02-2018 dated September 18, 2018 which reorganized the three (3) Divisions of the CTA.[30]

Accused-appellant filed his Reply Brief on September 27, 2018.[31]

On October 25, 2018, this case was submitted for decision.[32]

[23] CTA Crim. Case No. A-5 Records, pp. 79-80.
[24] CTA Crim. Case No. A-5 Records, pp. 81-85.
[25] CTA Crim. Case no. A-5 Records, p.110.
[26] CTA Crim. Case No. A-5 Records, p. 113.
[27] CTA Crim. Case No. A-5 Records, p. 124.
[28] CTA Crim. Case No. A-5 Records, p. 152.
[29] CTA Crim. Case No. A-5 Records, pp. 167-168.
[30] CTA Crim. Case No. A-5 Records, p. 169.
[31] CTA Crim. Case No. A-5 Records, p. 170.
[32] CTA Crim. Case No. A-5 Records, p. 180.

PARTIES' ARGUMENTS

In his Brief,[33] accused-appellant argues that the prosecution has not substantiated its claim that it has served to the appellant the questioned two (2) Assessment Notices (both numbered 031-00531-94) and the related demand letter dated March 9, 2000. He claims that his right to due process was violated since he did not receive any final assessment notice.[34] He also asserts that the lone witness of the prosecution has not indicated her authority nor presented any documentary exhibit to prove that she has the authority to represent the complainant.[35]

In his Supplemental Appellant's Brief,[36] he ascribed the following serious and reversible errors allegedly committed by the RTC in - -

1. Failing to dismiss the complaint despite the absence of authority to file the same;

2. Finding that he received the Assessment Notices despite the admission of complainant that there was no registry receipt; and,

3. Ruling that he willfully did not pay the company's alleged deficiency taxes.[37]

He emphasized that no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty, or forfeiture under the Tax Code shall be filed in court without the approval of the Commissioner of Internal Revenue (CIR).[38]Thus, in the absence of any authority from the CIR to file the complaint, all subsequent proceedings that arose therefrom are null and void.

With respect to the elements of the offense charged, he claims that ACCI is not obliged to pay the deficiency taxes since the Assessment notices were not received by ACCI. He asserts that the prosecution has the burden of proof to establish that the Assessment Notices were received by the ACCI or by him on behalf of ACCI. In view of the prosecution's failure to present the registry return card establishing that the Assessment Notices were received by the ACCI,

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[33] CTA Crim. Case No. A-5 Records, p. 81.
[34] CTA Crim. Case No. A-5 Records, p. 83.
[35] CTA Crim. Case No. A-5 Records, p. 84.
[36] CTA Crim. Case No. A-5 Records, p. 124
[37] CTA Crim. Case No. A-5 Records, p. 125.
[38] CTA Crim. Case No. A-5 Records, p. 125.

accused-appellant insists that he must be acquitted of the offense charged.[39]

He further claims that the element of "willfulness" is not present for the following reasons: (1) the company had no capability to settle the tax assessment made against it; otherwise, the Bureau of Internal Revenue (BIR) would have already succeeded collection of the tax assessments by levying the assets of the company; (2) he already manifested his intention to settle the tax assessments against the company as soon as the receivables from the Bureau of Fire Protection (BFP) are collected, and is amenable to offsetting said collectible to the amount assessed by the BIR; and (3) that during the hearing before the RTC, he was able to pay small amounts of money to the BIR, which proves his intent to settle the tax obligation of ACCI.[40]

In its Appellee's Brief,[41] plaintiff-appellee counter-argues that the RTC committed no reversible error when it proceeded with the trial and eventually decided the case on the merit. Contrary to accused-appellant's claim, plaintiff-appellee insists that a Referral Letter dated June 29, 2000 filed with the City Prosecutors Office of Manila, together with the Complaint-Affidavit of Atty. Magsumbol, was signed by Acting Regional Director Lucien E. Sayuno. Plaintiff-appellee further states that accused-appellant is estopped from raising this issue for the first time on appeal.[42]

Plaintiff-appellee also states that the RTC committed no reversible error in ruling that accused-appellant received the Assessment Notices. It contends that the RTC correctly found that the Assessment Notices and demand letter were sent to ACCI at its registered address thru mail as evidenced by the transmittal, and said registered mail matter was actually received by ACCI as indicated in the Registry Return Receipt.[43]

Plaintiff-appellee further states that the RTC committed no reversible error in ruling that accused-appellant willfully failed to pay the deficiency tax liabilities of ACCI; and that the prosecution has proven beyond reasonable doubt the elements of the offense.[44]

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[39] CTA Crim. Case No. A-5 Records, pp. 128-129.
[40] CTA Crim. Case No. A-5 Records, pp. 129-130.
[41] CTA Crim. Case No. A-5 Records, p. 152.
[42] CTA Crim. Case No. A-5 Records, pp. 157-159.
[43] CTA Crim. Case No. A-5 Records, p. 159.
[44] CTA Crim. Case No. A-5 Records, pp. 159-161.

In his Reply Brief,[45] accused-appellant reiterates that there is absolutely no evidence on record that would establish the element that the failure to pay the deficiency taxes was willful. He states that the intention to pay is already evident from the Reply Letter dated 24 October 2000, and plaintiff-appellee did not deny the fact that he has stated in open court that he is amenable to offsetting (compensation) the collectibles he has against the BFP to the deficiency assessment. He asserts that in the absence of the element of willfulness, he is entitled to an acquittal.[46]

ISSUES

(1) Whether or not the RTC erred in not dismissing outright the complaint due to the alleged failure of the complainant to submit the authority issued by the CIR to file the complaint.

(2) Whether or not the RTC is correct in convicting the accused-appellant of the offense charged for violation of Section 254 of the Tax Code of 1986, as amended, and in imposing the corresponding criminal and civil liability.

THE COURT'S RULING

Authority to file complaint before the RTC

To begin with, this Court is not precluded from addressing an issue even if the same was not raised before the lower court. It is well-established rule that an appeal in a criminal proceeding throws the whole case open for review of all its aspects, including those not raised by the parties.[47] Thus, albeit the issue on the authority to file the complaint was raised by accused-appellant for the first time on appeal, the Court shall rule on the same.

An authority from the CIR to file a complaint for the recovery of taxes is a mandatory requirement pursuant to Section 220 of the NIRC, which provides:

> SEC. 220. *Form and Mode of Proceeding in Actions Arising under this Code.* - Civil and criminal actions and proceedings

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[45] CTA Crim. Case No. A-5 Records, p. 170.
[46] CTA Crim. Case No. A-5 Records, pp. 170-172.
[47] Lim vs. Court of Appeals, G.R. No. 147524, June 20, 2006.

> instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but **no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner**. (Emphasis supplied)

The absence of such an authority from the CIR to institute a criminal case constitutes a valid ground to quash the complaint or information, upon motion of the accused, pursuant to Section 3, Rule 117 of the Rules of Court, *viz.*:

> Sec. 3. *Grounds.* – The accused may move to quash the complaint or information on any of the following grounds:
>
> (a) Xxx;
>
> (d) **That the officer who filed the information had no authority to do so**;
>
> (i) xxx. (Boldfacing supplied)

The failure, however, to assert any ground of a motion to quash before accused pleads to the complaint or information, either because accused did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of Rule 117.[48]

The records of the case show that accused-appellant pleaded to the offense charged **without filing a motion to quash**. In consequence, accused-appellant is deemed to have waived and abandoned his right to move for the quashal of the Information on the ground that the officer who filed the Information had no authority to do so.[49]

Besides, records disclose that there was a letter dated June 29, 2000 to The City Prosecutor of Manila, signed by Lucien E. Sayuno,

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[48] Sec. 9, Rule 117 provides:
Sec. 9. *Failure to move to quash or to allege any ground therefore.* – The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.
[49] People of the Philippines vs. Nitafan, G.R. No. 107964-66, February 1, 1999.

Acting Regional Director of BIR Region No. 6, recommending for the immediate criminal prosecution of accused-appellant for failure to pay the deficiency income tax and VAT of ACCI under Assessment No. 031-1-000531-94.[50]

The foregoing letter of the BIR Acting Regional Director constitutes sufficient compliance with the requirement of Section 220 of the NIRC, as amended.

While Section 220 of the NIRC, as amended, states that *"no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under [the] Code shall be filed in court without the approval of the Commissioner"*, the power, however, of the CIR to approve the filing of a case is one that can be delegated.

In ***Oceanic Wireless Network vs. Commissioner of Internal Revenue***,[51] the Supreme Court declared the following:

> **The general rule is that the Commissioner of Internal Revenue may delegate any power vested upon him by law to Division Chiefs or to officials of higher rank. He cannot, however, delegate the four powers granted to him under the National Internal Revenue Code (NIRC) enumerated in Section 7.**
>
> As amended by Republic Act No. 8424, **Section 7 of the Code authorizes the BIR Commissioner to delegate the powers vested in him under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher**, except the following:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
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> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
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> (c) The power to compromise or abate under Section 204(A) and (B) of this Code, any tax deficiency: Provided, however, that assessments issued by the Regional Offices involving basic deficiency taxes of five hundred thousand pesos (P500,000) or less, and minor criminal violations as may be determined by rules and regulations to be

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[50] RTC Records, p. 4.
[51] G.R. No. 148380, December 9, 2005.

promulgated by the Secretary of Finance, upon the recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept. (Boldfacing supplied)

The general rule is that the power vested by law upon the CIR can be delegated to the BIR Division Chiefs or to officials of higher rank, except those four powers enumerated in Section 7 of the NIRC. In truth, the BIR Assistant Regional Director is himself authorized to institute the criminal prosecution of accused-appellant as it is not one of those powers listed in Section 7 of the NIRC which only the CIR may perform.

Relatedly, Revenue Administrative Order No. 10-95[52] issued by the CIR provides:

"III. FUNCTIONS:

A. **OFFICE OF THE REGIONAL DIRECTOR AND THE ASSISTANT REGIONAL DIRECTORS shall**:

1. **Implement** laws, **policies**, plans programs, rules and regulations **of the Bureau within the revenue region**;

2. xxx;

10. Perform such other related functions as may be assigned by the Commissioner.

xxx xxx xxx

D. **LEGAL DIVISION shall**:

[52] Subject: Statement of Functions of the Revenue Regional Office Including the Divisions and Revenue District Office Under it Down to Section Level

1. Serve as the legal counsel in cases involving assessment and collection of internal revenue taxes, fees, etc. within the region;

2. xxx;

10. **Perform such other related functions as may be assigned.**

D.1. **Litigation and Prosecution Section shall**:

1. Represent the Regional Director in the upper and lower courts as well as in quasi-judicial and administrative offices in the investigation, trial or hearing of internal revenue civil and criminal cases as well as cases filed against officials and employees of the revenue regions and tax informers;

2. **Institute civil and criminal cases/actions to effect collection of delinquent internal revenue taxes and punishment of tax violators thereof on cases within their area of jurisdiction**;

3. Act as government counsel in the investigation, hearing and trial of civil and criminal actions and file pleadings necessary for the prosecution of internal revenue tax cases within their area of jurisdiction;

4. Assist and coordinate with the Legal Service in the National Office with respect to litigation and prosecution work;

5. Assist the Provincial Prosecutors or State Prosecutors of the Department of Justice in criminal prosecution of violators of the National Internal Revenue Code (NIRC) and related statutes; and

6. Perform such other related functions as may be assigned." *(Boldfacing supplied)*

In ***Republic of the Philippines vs. Hizon***,[53] the Supreme Court recognized that Revenue Administrative Order No. 10-95 specifically authorizes the Litigation and Prosecution Section of the Legal Division of regional district offices to institute the necessary civil and criminal actions for tax collection, viz.:

> First. In sustaining respondent's contention that petitioner's complaint was filed without the authority of the BIR Commissioner, the trial court stated:
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> > There is no question that the National Internal Revenue Code explicitly provides that in the matter of filing cases in Court, civil or criminal, for the collection of taxes, etc., the approval of the commissioner must first

[53] G.R. No. 130430, December 13, 1999.

> be secured. . . . [A]n action will not prosper in the absence of the commissioner's approval. Thus, in the instant case, the absence of the approval of the commissioner in the institution of the action is fatal to the cause of the plaintiff . . . .

The trial court arrived at this conclusion because the complaint filed by the BIR was not signed by then Commissioner Liwayway Chato.

Sec. 221 of the NIRC provides:

> *Form and mode of proceeding in actions arising under this Code.* Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by the provincial or city fiscal, or the Solicitor General, or by the legal officers of the Bureau of Internal Revenue deputized by the Secretary of Justice, <u>but no civil and criminal actions for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be begun without the approval of the Commissioner</u>. (Emphasis supplied)

To implement this provision Revenue Administrative Order No. 5-83 of the BIR provides in pertinent portions:

> The following civil and criminal cases are to be handled by Special Attorneys and Special Counsels assigned in the Legal Branches of Revenue Regions:
>
> . . . .
>
> II. Civil Cases
>
> 1. Complaints for collection on cases falling within the jurisdiction of the Region . . . .
>
> In all the abovementioned cases, the Regional Director is authorized to sign all pleadings filed in connection therewith which, otherwise, requires the signature of the Commissioner.
>
> . . . .

Revenue Administrative Order No. 10-95 specifically authorizes the Litigation and Prosecution Section of the Legal Division of regional district offices to institute the necessary civil and criminal actions for tax collection. As the complaint filed in this case was signed by the BIRs Chief of Legal Division for Region 4 and verified by the Regional Director, there was, therefore, compliance with the law. *(Boldfacing supplied)*

As there was a complaint in this case by way of Affidavit signed by Atty. Magsumbol of the Legal Division, and subscribed and sworn to by the Chief of the Legal Division, coupled with a Letter of Acting Regional Director Sayuno recommending the immediate criminal prosecution of accused-appellant, there was therefore sufficient compliance with the requirement of Section 220 of the NIRC, as amended.

Determination of the presence of the elements of the offense charge

Section 254 of the National Internal Revenue Code (NIRC), as amended by Republic Act No. 7497, provides:

> Sec. 254. 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 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 regulations shall, in addition, to other penalties provided by law, upon conviction thereof, be fined of not less than Ten thousand pesos (P10,000) and imprisonment of not less than one (1) year but not more than ten (10) years.

To sustain a conviction for willful failure to pay a tax under the aforequoted provision, the following elements are indispensable:

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

2. Such person has failed to pay the required tax; and

3. The person's failure to pay the required tax was willful.

Clearly, the second and third elements are dependent on the first element as there can be no willful failure to pay a tax *sans* a requirement to pay the same at all.

The requirement to pay a tax under the NIRC may arise from either of two specific instances: (1) when a taxpayer is required by a provision of the NIRC to pay a specific tax within a certain period, or

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(2) when a tax assessment is issued by the BIR demanding from a taxpayer the payment of the assessed deficiency tax within a specific period.

The first instance is known as self-assessment by the taxpayer as evidenced by a tax return. Under this process, the tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government.[54]

The second instance, on the other hand, stems from the CIR's power to assess the correct amount of tax after a return is filed. The assessed deficiency tax shall be paid upon notice and demand from the CIR.[55] The legal obligation to pay the assessed tax arises upon notice and demand.

In the present case, the accusation against accused-appellant relates to the second instance of failure to pay the alleged deficiency income tax and VAT of ACCI for taxable year 1994 under Assessment Notice No. 031-1-000531-94 issued by the BIR.

Parenthetically, accused-appellant was implicated for being then the President and responsible officer of ACCI, a juridical person required to pay the alleged deficiency income tax and VAT for taxable year 1994 in the amount of P1,429,649.46 under BIR Assessment Notice No. 031-1-000531-94. Allegedly, there was failure and neglect to pay the subject deficiency taxes despite notice of the assessment, without protest or appeal, and repeated demands upon accused-appellant. The prosecution has characterized such failure or neglect to pay the alleged deficiency taxes of ACCI as willful.[56]

Although the alleged deficiency income tax and VAT due for taxable year 1994 are actually the liability of the taxpayer - ACCI, the accusation against the accused-appellant for violation of Section 254 of the NIRC, as amended, relates to his position as the President of ACCI. Truth to tell, in case of a corporation, like ACCI, the penalty for

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[54] CIR vs. Fitness By Design, Inc., G.R. No. 215957, November 9, 2016.
[55] Sec. 16 of the NIRC of 1977, as amended, provides:
Section 16. Power of the Commissioner to make assessments. — (a) Examination of returns and determination of tax. — After a return is filed as required under the provisions of this Code, the Commissioner shall examine it and assess the correct amount of the tax. The tax or deficiency tax so assessed shall be paid upon notice and demand from the Commissioner. Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, that the same may be modified or changed by filing another amended return, statement or declaration.
[56] RTC Records, p. 1.

violation of the crimes penalized by the NIRC shall be imposed on the president, and employees responsible for its violation, *among others,* pursuant to Section 252 of the NIRC.[57]

Hence, anent the first element, this Court needs to determine whether the prosecution has proven beyond reasonable doubt the existence of a valid tax assessment against ACCI.

The records of the case disclose that the prosecution presented two (2) Assessment Notices *(both numbered 31-1-000531-94)*, dated June 6, 1997, issued by Erlinda A. Simple, Chief, Assessment Division of the BIR marked as Exhibits "B" and "C", assessing ACCI of VAT and income tax of P575,098.71 and P854,550.75, respectively, inclusive of surcharge, interest and compromise penalty.[58] Also, there was a letter of Mario A. Saldevar, Chief, Legal Division of Revenue Region No. 6, Manila to accused-appellant dated March 9, 2000, sent through registered mail on March 13, 2000 per Registry Receipt, marked as Exhibit "A", requesting payment of ACCI's tax liabilities for taxable year 1994 under Assessment No. 031-1-000531-94, otherwise, a judicial action to enforce collection thereof will be filed.[59]

As earlier stated, the RTC, in the assailed Decision, declared that ACCI failed to pay the deficiency income tax and VAT totaling P1,429,649.46 for 1994 as evidenced by the aforesaid assessment notices and demand letter. The assessment notices were allegedly sent to ACCI by registered mail as evidenced by a transmittal and a registry return receipt. The RTC further declared that the assessment notices and demand letter were definitely received by ACCI as shown in a Reply Letter dated October 24, 2000 by accused-appellant to the BIR.

Accused-appellant, however, denies that he or ACCI received the aforesaid Assessment Notices. He further claims that the prosecution has failed to present the registry return card establishing that the Assessment Notices were received by ACCI.

[57] Sec. 252. General Provisions. – 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.
[58] Exhibits "B" and "C"; RTC Records, pp. 437-438.
[59] Exhibits "A" and "A-2"; RTC Records, p. 436.

In ***Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue***,[60] the Supreme Court emphasized the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice, which was timely released, mailed and sent. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this remains merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee, thus:

> In *Protectors Services, Inc. v. Court of Appeals*, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. **While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee**. (Boldfacing supplied)

In view of accused-appellant's vehement denial of receipt of the Assessment Notices and demand letter,[61] the burden was shifted upon the plaintiff-appellee to prove that the Assessment Notices and demand letter were indeed mailed and received by the addressee.

Interestingly, the **Registry Return Receipt** marked as Exhibit "G", which purportedly confirms receipt by accused-appelant of the Assessment Notices bears an unidentified and unauthenticated signature of supposed addressee. Since the identity and authority of the person whose signature appears on the Registry Return Receipt was not established, it may not reasonably be said that accused-appellant indeed received the Assessment Notices.

The registry return receipt itself provides that '[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly

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[60] G.R. No. 157064, August 7, 2006, citing Protector's Services, Inc. vs. Court of Appeals, 386 Phil. 611, 623 (2000).
[61] October 1, 2015 Transcript, RTC TSN Folder, Criminal Case no. 01-194392.

his own signature below it. [62] Truth to tell, the presentation of the registry return receipt with an unauthenticated signature is not equivalent to proof that a letter sent through registered mail was actually received by the addressee.

In ***Ting vs. Court of Appeals***,[63] the Supreme Court held:

> Given petitioners denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners. This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was received by petitioners. **Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters** (*Central Trust Co. v. City of Des Moines*, 218 NW 580).
>
> Likewise, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. Xxx.
>
> In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. **All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery. From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt**. There being insufficient proof that petitioners received notice that their checks had been dishonored, the presumption that they knew of the insufficiency of the funds therefor cannot arise. (Boldfacing supplied)

Moreover, pursuant to Section 13, Rule 13 of the 1997 Rules on Civil Procedure, it is the registry receipt issued by the mailing office **and** the affidavit of the person who mailed the letter that proves service made through registered mail. *Republic of the Philippines vs. Resins, Incorporated*[64] cannot be any clearer:

> When service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its

[62] Suarez vs. People, G.R. No. 172573, June 19, 2008, citing Ting vs. Court of Appeals, G.R. No. 140665, November 13, 2000.
[63] G.R. No. 140665, November 13, 2000.
[64] G.R. No. 175891, January 12, 2011.

> existence. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 13, Rule 13 of the 1997 Rules on Civil Procedure.
>
> xxx xxx xxx
>
> OSGs denial of receipt of the 17 March 1993 Judgment required Resins, Inc. to show proof that the Judgment was sent through registered mail ***and*** that it was received by the Republic. While the certification from the RTC Clerk of Court and photocopies of the return slips prove that the Republic was served the judgment, it does not follow that the Republic, via the OSG, actually received the judgment. **Receipts for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters. Resins, Inc. also did not show a certification from the postmaster that notice was duly issued and delivered to the OSG such that service by registered mail may be deemed completed. It cannot be stressed enough that *it is the registry receipt issued by the mailing office and the affidavit of the person mailing*, which proves service made through registered mail. Absent one or the other, or worse both, there is no proof of service.**
>
> xxx xxx xxx
>
> While we concede that there may be a presumption of regularity, in the ordinary course of events, that the RTC Clerk of Court sent the 17 March 1993 Judgment to the OSG, such presumption should fail when the OSG itself denies receipt. **When the service of the judgment is questioned, such as in the present case, there is a need to present *both the registry receipt issued by the mailing office and the affidavit of the person mailing.*** Since the OSG presented proof of non-receipt, it became incumbent upon Resins, Inc. to prove receipt, which Resins, Inc. failed to do.

The Registry Return Receipt alone without the Affidavit of the person mailing is insufficient to prove service of mail matter. Worse, there was also no Certification secured from the post office to prove that the notices were actually sent to accused-appellant, as testified to by the prosecution's witness, Atty. Yolanda C. Magsumbol.[65]

Incidentally, the court *a quo* also used as basis the **October 24, 2000 Letter** of accused-appellant to BIR Regional Director, Port Area, Manila, marked as Exhibit "E", in concluding that the Assessment Notices and demand letter were received by ACCI. The Letter reads:

[65] Decision, RTC Records, p. 597.

"OCTOBER 24, 2000

TO : BIR REGIONAL DIRECTOR
PORT AREA, MANILA

RE : **TAX DELINQUENT, YEAR 1994**

FIRM : ALMAREY CONSTRUCTION CO. INC.

SIR,

With reference to our construction company that has been idle for past 6 years without infrastructure project due to tight competition in construction industry and also a victim of price inflation of materials in the market, we suffer a great loss. **Our company would like to pay this tax but unfortunately we were not able to raise enough funds intended for fiscal year 1994 and remain delinquent.** Looking forward your honorable Regional Director will apply the Revenue Memorandum order No. 42-2000 to our firm and seeking to grant us tax amnesty.

Hoping your good office could help us with respect to this matters especially now a days in the field of crisis.

We Remain

Respectfully yours,

ENGR. REYNALDO A. MATANGUIHAN
President ACCI"

During the August 31, 2016 hearing before the court *a quo*, accused-appellant's counsel asked the prosecution's witness, Atty. Magsumbol, as to who sent the aforesaid Letter to the BIR. Atty. Magsumbol intimated that it was accused-appellant, albeit she was not really familiar with the signature of the accused-appellant, *viz.*:[66]

"Q In your testimony also, Madame witness, you mentioned that you allegedly stated that a Reply was made in relation to that demand letter was sent, do you happened to know who sent that Reply?

A I believe it was the accused himself being the President of Almaray Construction requesting us to give him ample time to settle.

Q Madame witness, were you able...

[66] August 31, 2016 Transcript, RTC TSN Folder, Criminal Case No. 01-194392.

COURT:
Wait. Was that Reply marked as Exhibit for the prosecution?

ATTY. LORENZO:
Yes, your honor.

COURT:
What Exhibit?

ATTY. LORENZO:
It was marked as Exhibit "E".

ATTY. SAMPANA:
Q Were you able to ascertain if indeed Engr. Matanguihan sent this Reply or verify if indeed it was the accused who sent that Reply?

A I believe it was sent to us by Engr. Mananguihan.

Q Did you see it personally?
A Yes.

Q The preparation of the document itself, you saw?
A It was sent by Engr. Matanguihan, the accused.

Q How do you know?
A It was received on October 25.

Q Just because it was just received, you presumed that it was sent by accused himself, is that what you are saying?

A Supposedly because being the President this is the address of his business.

Q Are you familiar with the signature of the accused?
A The fact that...

Q Are you familiar with the signature of the accused?
A I cannot answer that 100% because there was so many cases then.

Q So, you are not familiar with the signature of the accused?
A I'm not so very familiar with it."

During the October 1, 2015 hearing, however, it can be deduced that there was actually no issue on who actually sent the aforesaid Letter to the BIR considering that accused-appellant testified about the points he was trying to convey to the BIR through that Letter, to wit:[67]

[67] October 1, 2015 Transcript, RTC TSN Folder, Criminal Case no. 01-194392.

_"Q._

Mr. Witness, you stated in your judicial affidavit that you did not receive the assessment and notice sent by the BIR as well as the demand letter dated March 9, 2000, is that correct?

_A._

It is correct, sir.

_Q._

When for the first time did you receive or did you know of this assessment by the BIR for taxable year 1994?

_A._

No, your honor. Wala papo akong nare-receive na assessment po.

_Q._

When for the first time did you learn of this assessment by the BIR for taxable year 1994?

_A._

Di ko napo matandaan sa tagal.

_Q._

Mr. Witness, I am showing to you a document dated October 24, 2000 signed by one Engr. Reynaldo A. Matanguihan which was marked in evidence for the prosecution as Exh. "E", please go over the document and tell us what is it all about.

_A._

I'm asking respectfully the Bureau of Internal Revenue if we have any deficiency in tax. We are asking for a ... I mean... what I mean, humihingi po kami na sana ay makasama po dun sa ano...

Court:

Amnesty? Amnesty program?

_A._

Yes, you honor, dahil matagal napo kaming di _..._

_Q._

In other word Mr. Witness, you already knew of the 1994 **_assessment_** _against Alma Rey Construction in October 2000?_

_A._

Wala papo akong nare-receive non.

_Q._

But you are referring to this letter, you are referring to the tax liability for 1994?

_A._
That letter is not referring to this case, kasi nung mag-submit po ako sa BIR ng sulat, it's not for this case, sir.

Court:
Let the document speak for itself. Go to another point."
(Boldfacing supplied)

Accused-appellant was categorical in his response during the October 1, 2015 hearing that he was asking the BIR of any tax deficiency _[that could be covered]_ by an amnesty. Simply put, accused-appellant did not deny his October 24, 2000 letter to the BIR.

The issue that needs to be resolved is whether the October 24, 2000 Letter adequately and reasonably proves accused-appellant's receipt of the Assessment Notices which were allegedly mailed on June 6, 1997.

The guilt of an accused may be established by circumstantial evidence. Such evidence, however, must still pass the test of moral certainty. When inadequate and uncorroborated, circumstantial evidence cannot sustain a conviction. Specifically, where the state's evidence does not constitute an unbroken chain leading beyond reasonable doubt to the guilt of the accused, the constitutional presumption of innocence prevails and the accused is entitled to an acquittal.[68] Rules on evidence and jurisprudence allow circumstantial evidence alone to sustain a conviction, provided that the following requisites concur:

(i) there is more than one circumstance;

(ii) the facts from which the inferences are derived are proven; and,

(iii) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[69]

In the present case, the October 24, 2000 Letter indicates as its subject matter - _"Tax Delinquent, Year 1994"_, and bears the statement

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[68] People of the Philippines vs. Sergio Bato and Abraham Bato, G.R. No. 113804, January 16, 1998.
[69] People of the Philippines vs. Liberato Pentecostes y Cronico, G.R. No. 226158, November 8, 2017.

that *"[ACCI] would like to pay the same but were not able to raise enough funds intended for fiscal year 1994 and remain delinquent."* The October 24, 2000 Letter made reference neither to the subject Assessment Notices *(with reference number: Assessment No. 31-1-000531-94)* dated June 6, 1997 nor to the nature of deficiency taxes and their amounts.

The subject ***"Tax Delinquent, Year 1994"*** indicated in accused-appellant's October 24, 2000 Letter could not by itself create a valid inference that he actually received the Assessment Notices for the year 1994. Instead, the circumstance prior to the sending of the October 24, 2000 Letter to the BIR reasonably suggests that it was made in response to the March 9, 2000 Letter (Exhibit "A") of Mario A. Saldevar, Chief Legal Division of Revenue Region No. 6. The March 9, 2000 Letter informs accused-appellant that *"the internal revenue tax case of Almarey Construction Co., Inc. involving the amount of P1,386,649.46 representing deficiency income and value-added tax for taxable year 1994 under Assessment No. 03-1-1-000531-94 dated June 6, 1997 has been referred to the Legal Division for judicial action to enforce collection."* It is simply logical to conclude that accused-appellant wrote the BIR on October 24, 2000 upon receiving said March 9, 2000 Letter of Mr. Saldevar to signify his intention to pay ACCI's tax liabilities, and not a confirmation of his receipt of the Assessment Notices which were sent to him way back in 1997.

Truth to tell, plaintiff-appellee's purpose in offering the October 24, 2000 Letter was to prove the intention of accused-appellant to settle the 1994 deficiency tax liabilities of ACCI. There is nothing in plaintiff-appellee's Formal Offer of Evidence which shows that the October 24, 2000 Letter was offered to prove accused-appellant's receipt of the Assessment Notices.

At the very least, the foregoing circumstances reveal that the October 24, 2000 Letter proves accused-appellant's lack of willful intent to avoid the payment of ACCI's deficiency tax liabilities, such that when the existence of the 1994 tax deficiencies of ACCI came to accused-appellant's knowledge, through the March 9, 2000 Letter of the BIR, accused-appellant signified his intention to pay the same by sending the October 24, 2000 Letter.

Thus, the Court finds that the October 24, 2000 Letter, taken as circumstantial evidence, could not establish an unbroken chain that could lead one to a fair and reasonable conclusion that accused-appellant received the Assessment Notices, and that despite receipt thereof, accused-appellant refused to pay the same. Accused-appellant's conviction, tested under the threshold of proof beyond reasonable doubt, was not warranted. To be sure, proof beyond reasonable doubt is the degree of proof that, after investigation of the whole record, produces moral certainty in an unprejudiced mind of the accused-appellant's culpability. Such moral certainty is, however, lacking in this case.[70]

The teachings in ***Amanquiton vs. People of the Philippines***[71] is instructive:

> "We apply the *pro reo* principle and the equipoise rule in this case. Where the evidence on an issue of fact is in question or there is doubt on which side the evidence weighs, the doubt should be resolved in favor of the accused. If inculpatory facts and circumstances are capable of two or more explanations, one consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and will not justify a conviction."

The declaration in ***People of the Philippines vs. Dacasin***[72] is worth re-echoing:

> xxx We find occasion then to reiterate what we have said in *People v. Masalihit*:
>
> > Before we condemn x x x **the crime must first be positively established and that the accused is guilty sans any scintilla of doubt**. This is elementary and fundamental in our criminal justice systems. **Any suspicion or belief that that accused is guilty no matter how strong cannot substitute for the quantum of evidence that is required to prove his guilt beyond reasonable doubt**.
>
> Accused-appellant should not be punished for the failure of the prosecution to dispose of its burden to overcome the constitutional presumption of innocence and to establish his guilt of the accused beyond reasonable doubt. This Court has always stood by the rule that it is better to acquit a guilty person than to convict an innocent one. (Boldfacing supplied)

Since the prosecution was not able to establish by the required quantum of evidence that accused-appellant or ACCI received the

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[70] Ricardo L. Atienza and Alfredo A. Castro vs. People of the Philippines, G.R. No. 188694, February 12, 2014.
[71] G.R. No. 186080, August 14, 2009.
[72] G.R. No. 127811, April 29, 1999.

Assessment Notices, the legal obligation to pay the deficiency taxes did not therefore arise. *Sans* proof of their receipt, the Assessment Notices are intrinsically null and void; **void assessments bear no fruit,[73] they do not give rise to an obligation to pay deficiency taxes.**

Considering that the first element of the offense charged, *i.e., the person is required to pay a tax,* is not present, accused-appellant deserves to be exonerated for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Court finds it unnecessary and futile to discuss the existence of the second and third elements of the offense charge as the same are dependent on the first element, the existence of which was not established by the prosecution by the required quantum of proof.

Finally, no civil liability may likewise be adjudged against accused-appellant as the facts upon which such liability may arise do not exist. As oft-repeated, no valid assessment appears to have been established by the prosecution.

WHEREFORE, finding merit on accused-appellant's appeal, the assailed February 9, 2017 Decision and September 29, 2017 Order of the Regional Trial Court, Branch 21, Manila, in Criminal Case No. 01-194392 are hereby **REVERSED AND SET ASIDE**. Accused-appellant, **Engr. Reynaldo A. Matanguihan** is **ACQUITTED** of the offense of violation of Section 254 of the National Internal Revenue Code, as amended, his guilt not having been established beyond reasonable doubt.

The civil action to collect the deficiency income tax and value-added tax for the year 1994 that is deemed instituted with the aforestated criminal case is likewise **DISMISSED**, as the facts, acts or omissions from which the civil liability might arise do not exist.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[73] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice