CTA Form No. 8

22-000638-0070

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CRIM. CASE NO. O-1020

PEOPLE OF THE PHILIPPINES ,
Plaintiff,

- versus -

NOTICE OF DECISION

RONALD PUNAY ROBIN,
Accused.

To:

PROSECUTOR GENERAL RICHARD ANTHONY D. FADULLON
ASST. STATE PROSECUTOR JENNY A. DE CASTRO
Department of Justice
Padre Faura Street, Ermita, Manila 1000

ATTY. RAMON B. LORENZO
ATTY. ROWELL B. VICENTE
ATTY. KRISTINE ALMA T. CAYABYAB
Bureau of Internal Revenue
Legal Division, Revenue Region No. 6
5/F, BIR Building I, Solana Street
Intramuros, Manila

ATTY. SOCORRO MARICEL N. NEPOMUCENO
Mailbox No. 10-BC, Tower B
Manhattan Heights, Barangay Socorro
Cubao, Quezon City 1109

MR. RONALD PUNAY ROBIN
No. 975 Josefina, 3rd Street
Brgy. 531, Zone 52, Sampaloc
Manila

GREETINGS:

You are hereby notified by these presents that on **April 23, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 23, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA CRIM. CASE NO. O-1020** For: Violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
	Promulgated:
RONALD PUNAY ROBIN, *Accused.*	APR 23 2025 ; 8:31 a.m.

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DECISION

CUI-DAVID, J.:

Before the Court is an *Information*[1] filed on December 6, 2022, by plaintiff, People of the Philippines (Plaintiff), charging accused Ronald Punay Robin with a violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

THE PARTIES

Plaintiff is represented by the Bureau of Internal Revenue (**BIR**), the government agency mandated to collect national internal revenue taxes, through the Legal Division, Revenue Region No. 6, with an office address at the 5th Floor, BIR Building I, Solana Street, Intramuros, Manila.

Accused Ronald Punay Robin is of legal age, Filipino, and residing at 975 Josefina III Steet, Barangay 531, Sampaloc, Manila East 1008. He is the registered proprietor of R.E.N.Z.R.

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[1] Docket – Vol. I, pp. 5–7.

Enterprises (R.E.N.Z.R.) with a business address at Room 402, 4th Floor, Champ Building, Bonifacio Drive, Barangay 650, Zone 068, Port Area, Manila.[2]

THE FACTUAL ANTECEDENTS

On December 6, 2022, plaintiff filed an *Information*[3] against accused for violating Section 255 of the NIRC of 1997, as amended. The relevant portion of the *Information* reads as follows:

> That on or about October 5, 2019, in the City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a Filipino citizen and proprietor of R.E.N.Z.R. Enterprises, with Tax Identification Number 175-411-904-000, and who is required by law, rules, and regulations to file an accurate income tax return and to pay the correct amount of income tax, did then and there knowingly, willfully and unlawfully fail and refuse to pay deficiency income tax for taxable year 2016 in the amount of One Million Nine Hundred Sixty-Five Thousand Four Hundred Seventy-One and 40/100 (Php1,965,471.40) Pesos, exclusive of surcharge and interest, despite receipt of the assessment notice, on September 5, 2019, including prior notices, to pay the said deficiency tax, without filing any protest, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount.
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> **CONTRARY TO LAW**.

Finding probable cause, the Court ordered the issuance of a *Warrant of Arrest* against accused, who was allowed to post bail for his provisional liberty in the amount of ₱60,000.00.[4]

On February 3, 2023, accused voluntarily appeared before the Court and posted the required bail bond for his provisional liberty in the amount of ₱60,000.00 in cash. Thereafter, the Court set the arraignment and pre-trial for April 26, 2023.[5]

During the arraignment, accused, assisted by counsel, entered a plea of "Not Guilty" to the offense charged. Afterward, the parties agreed to confer and draft a *Joint Stipulation of Facts*

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2 *Id.* at 447–459, Pre-Trial Order, Summary of Stipulated Facts.
3 *Id.* at 5–6.
4 *Id.* at 190–193, Resolution dated January 10, 2023.
5 *Id.* at 198, Resolution dated February 3, 2023.

and Issues (JSFI).[6] They were given thirty (30) days, or until May 26, 2023, to file their JSFI.[7]

On May 29, 2023, the parties belatedly submitted their JSFI, which the Court subsequently approved, concluding the pre-trial.[8]

After the pre-trial was terminated, plaintiff presented its witnesses, namely: (1) Revenue Officer Jefferson B. Ocampo (RO Ocampo) and (2) Revenue Officer Kristine Jyka C. Mengullo (RO Mengullo).

RO Ocampo testified through his Judicial Affidavit[9] that he came to know accused when he and Group Supervisor (GS) Dalisay Zaratan were assigned to audit accused's books of accounts and other accounting records for the taxable year (TY) 2016, pursuant to Letter of Authority (LOA) No. eLA201500020869/LOA-033-2017-00000372[10] dated November 23, 2017. The LOA, together with a *Checklist for the Presentation/Submission of Documents/Records,* was served on accused on November 27, 2017. However, accused failed to present his books of accounts and other accounting records, prompting the issuance of a *First Notice*[11] on December 8, 2017, followed by a *Second and Final Notice*[12] on January 15, 2018, both of which were unheeded. When accused again failed to comply, a *second* LOA, No. eLA201600044548/ LOA-033-2018-00000712[13] was issued on November 5, 2018, authorizing him (RO Ocampo) and GS Imelda Alsol (GS Alsol) to continue the audit with the *second* LOA duly served to accused on December 5, 2018. Subsequently, on February 22, 2019, a *Notice of Informal Conference*[14] with an attached *Annex "A"* was issued and served, informing accused of his deficiency taxes and inviting him for an informal conference. Thereafter, a *Memorandum*[15] recommending the issuance of a Preliminary Assessment Notice (PAN) was prepared. On July 18, 2019, a PAN[16] with the attached Details of Discrepancies was issued and served on July 29, 2019.

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6 *Id.* at 339–340, Minutes of the Hearing.
7 *Id.*
8 *Id.* at 402, Resolution dated June 19, 2023.
9 *Id.* at 227–236, Exhibit P-33.
10 *Id.* at 25, Exhibit P-1.
11 *Id.* at 27, Exhibit P-3.
12 *Id.* at 28, Exhibit P-4.
13 *Id.* at. 29, Exhibit P-5.
14 *Id.* at 30–32, Exhibit P-6.
15 *Id.* at 245–246, Exhibit P-7.
16 *Id.* at 33–34, Exhibit P-8.

To document the service of the PAN, a *Memorandum*[17] dated July 29, 2019, and an *Affidavit of Service*[18] were executed, stating that the PAN was served on accused through his Customs Representative, Donald Reyes, at Rm. 402, 4th Floor, Champ Bldg., Bonifacio Drive, Brgy. 650. Zone 68, Port Area, Manila. Thereafter, Final Assessment Notice (FAN) Nos. 33-16-44548-19-225(IT),[19] 33-16-44548-19-225(VT),[20] and 33-16—44548-19-225(MC)[21] and the corresponding Formal Letter of Demand[22] (FLD) with attached Details of Discrepancies, all dated August 20, 2019, were issued and served on September 5, 2019. Similar to the PAN, a *Memorandum*[23] dated September 6, 2019, was executed, stating that the FLD/FAN was served on accused through Donald Reyes at the same address. RO Ocampo further testified that the *Memorandum* of September 6, 2019, together with the served copies of the FLD/FAN, was forwarded to the Assessment Division of Revenue Region No. 6, Manila. During cross-examination, he testified that he served the PAN and FLD/FAN at the address indicated therein, where they were received by Donald Reyes. However, he admitted that he did not ask Donald Reyes whether he had written authorization from accused to receive the documents. On re-direct examination, he clarified that when delivering notices to a taxpayer's office and the taxpayer is unavailable, they inquire who is authorized to receive documents. He stated that Donald Reyes affirmed he was accused's authorized representative, which is why RO Ocampo allowed him to receive the notices.

RO Mengullo, in her Judicial Affidavit,[24] testified that she holds the position of Revenue Officer II assigned to the Arrears Management Section – Collection Division, BIR Revenue Region No. 6, Manila. Pursuant to a *Memorandum of Assignment*[25] dated November 12, 2019, she was tasked to enforce a Warrant of Distraint and/or Levy (WDL) and Warrants of Garnishment (WG) against accused. In compliance, she prepared and served the WDL[26] and WGs[27] to various banks. Thereafter, a *Memorandum*[28]

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17 *Id.* at 37, Exhibit P-9.
18 *Id.* at 256, Exhibit P-10.
19 *Id.* at 38, Exhibit P-11.
20 *Id.* at 39, Exhibit P-12.
21 *Id.* at 40, Exhibit P-13.
22 *Id.* at 41–42, Exhibit P-14.
23 *Id.* at 46, Exhibit P-15.
24 *Id.* at 269–275, Exhibit P-34.
25 *Id.* at 276, Exhibit P-16.
26 *Id.* at 47, Exhibit P-17.
27 *Id.* at 48–56, Exhibits P-18 to P-26.
28 *Id.* at 287, Exhibit P-27.

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dated November 25, 2019, documented that the WDL was served on accused at Room 402, 4th Floor, Champ Bldg., Bonifacio Drive, Brgy. 650, Zone 68, Port Area, Manila, through his authorized representative, Nerissa R. Endozo. She continued that on December 26, 2019, they received a *Request for Reinvestigation*[29] from accused, which was later denied through a *Memorandum*[30] dated January 8, 2020, issued by the Chief of the Collection Division, Revenue Region No. 6 – Manila, for being filed beyond the prescribed period. A Letter[31] dated February 6, 2020, denying accused's request for re-investigation, was sent through registered mail under Registry Receipt No. RE 169 091 335 ZZ.[32]

On August 23, 2023, the prosecution filed Plaintiff's Formal Offer of Evidence, offering Exhibits P-1 to P-34, including sub-markings, which the Court admitted in a Resolution[33] dated October 9, 2023. Thereafter, on December 14, 2023, accused, with leave of Court, filed a *Demurrer to Evidence*[34] seeking the dismissal of the case due to insufficiency of evidence. However, on April 24, 2024, the Court denied the *Demurrer to Evidence* and scheduled the presentation of the defense's evidence for June 19, 2024.[35]

For his defense, accused, **Ronald Punay Robin**, testified *via* his Amended Judicial Affidavit[36] that he was a businessman and sole proprietor of R.E.N.Z.R. He claimed to have paid his income tax for TY 2016 and denied receiving any correspondence from the BIR regarding tax assessments. When shown the BIR documents,[37] accused stated that he did not recognize them and had never received them. He also denied authorizing Donald Reyes to accept documents on his behalf and explained that R.E.N.Z.R. often conducted fieldwork, leaving its office unattended. He further asserted that the office of R.E.N.Z.R. (Room 402) and the office of Donald Reyes (Room 402-A) were

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[29] *Id.* at 288–290, Exhibit P-28.
[30] *Id.* at 291–292, Exhibit P-29.
[31] *Id.* at 293–294, Exhibit P-30.
[32] *Id.* at 293, Exhibit P-30-A.
[33] *Id.* at 478–479.
[34] *Id.* at 518–527.
[35] Docket – Vol. II, pp. 541–553, Resolution dated April 24, 2024.
[36] *Id.* at. 565–578, Exhibit A-6.
[37] BIR Documents, such as:
1. LOA No. eLA201500020869/LOA-033-2017-00000372 dated November 23, 2017;
2. Checklist for the Presentation/Submission of Documents/Records;
3. First Notice issued on November 23, 2017;
4. Second and Final Notice;
5. LOA with No. eLA201600044548/LOA-033-2018-00000712 dated November 5, 2018;
6. Notice of Informal Conference with attached Annex "A";
7. Memorandum with Attachments;
8. PAN with Details of Discrepancies; and
9. FAN/FLD with Details of Discrepancies, all dated August 20, 2019,

adjacent, and BIR personnel might have mistakenly served the documents at the wrong office. Accused also identified his Counter-Affidavit filed with the Department of Justice (DOJ), in which he denied receiving BIR notices or being afforded due process to dispute any tax assessment as he received no notices; and that the documents attached to his Counter-Affidavit were authentic and correct. Despite this, he later received a Warrant of Arrest. He testified that he paid ₱196,547.14 to the BIR, representing 10% of his alleged deficiency income tax, based on his counsel's advice for businesses in financial distress, but contested the BIR's assessment, arguing that import entry values were erroneously treated as undeclared income instead of only considering the markup on goods. He confirmed that R.E.N.Z.R. ceased operations on December 31, 2018, and formally closed in 2022. On cross-examination, he acknowledged making a partial tax payment but reiterated his objections to the assessment's validity.

Additionally, accused presented **Donald M. Reyes** (Mr. Reyes), who testified on direct examination through his Judicial Affidavit[38] that he is employed by Lynjenken Freight Services (Lynjenken) as a Customs Representative and is familiar with R.E.N.Z.R. since its office is located next to Lynjenken's. He clarified that R.E.N.Z.R. occupies Room 402, while Lynjenken's office is in Room 402-A. Lynjenken, a private company registered with the Department of Trade and Industry (DTI), hires a Licensed Customs Broker (LCB) to sign documents related to the release of cargo from other countries and acts as the LCB's representative in transactions with the Bureau of Customs (BOC). He is not a Customs Broker but a Customs Representative. As a Customs Representative, he processes and represents the LCB before the BOC. He admitted that the signatures on the receiving copies of the PAN and FLD/FAN were his but refuted RO Ocampo's claim that he was accused's authorized representative. Instead, he told RO Ocampo that he could receive the PAN and FLD/FAN and pass them on to his boss, Nerissa R. Endozo, as R.E.N.Z.R.'s office was frequently unoccupied. He handed over the PAN and FLD/FAN to Nerissa Endozo. He further stated that he did not personally deliver the PAN and FLD/FAN to accused because R.E.N.Z.R.'s office was always empty and, to his knowledge, the PAN and FLD/FAN were never given to the accused, as they remained on his boss's table. During cross-examination, he confirmed that R.E.N.Z.R. occupies Room 402, while Lynjenken occupies Room 402-A, both

[38] Docket – Vol. II, pp. 721–729, Exhibit A-9.

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are located on the 4th Floor of Champ Building. He clarified that there was a marking or signage indicating that Lynjenken occupied Room 402-A; however, he could not provide proof as he did not have a photo of it on his mobile phone. On re-direct examination, he testified that the numbers "402" and "402-A" were posted on the respective doors of R.E.N.Z.R. and Lynjenken. He also stated that the two (2) doors were approximately three (3) to four (4) meters apart, and both have the same color – brown.

As Mr. Reyes was the last witness for the defense, accused proceeded to offer Exhibits A-1 to A-9, including sub-markings, all of which were admitted by the Court, except for Exhibit P-8, which was denied for being a mere photocopy.[39]

On August 27, 2024, accused filed a *Motion for Reconsideration*,[40] which was subsequently denied in a Resolution[41] issued on November 7, 2024.

On January 15, 2025, the case was submitted for decision,[42] taking into account *Plaintiff's Memorandum*[43] filed on September 12, 2024, and accused's *Memorandum*[44] filed on September 13, 2024.

THE ISSUES

The issues for resolution, as defined by the parties in their JSFI and outlined in the Pre-Trial Order dated September 22, 2023,[45] are as follows:

As regards the criminal aspect:

1. Whether or not accused Ronald Pugay Robin is liable for the alleged violation of Section 255 of the National Internal Revenue Code of 1997, amended; and

As regards the civil aspect:

2. Whether or not accused Ronald Pugay Robin is liable to pay the alleged deficiency income tax of

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[39] *Id.* at 743–746, Order dated August 14, 2024.
[40] *Id.* at 747–749.
[41] *Id.* at 813–815.
[42] *Id.* at 834, Resolution dated Janaury 15, 2025.
[43] *Id.* at 759–770.
[44] *Id.* at 772–784.
[45] Docket – Vol. I, pp. 447–459.

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PHP1,965,471.40, exclusive of surcharge and interest for the taxable year 2016.

THE COURT'S RULING

Plaintiff failed to prove the <u>elements</u> required to establish a violation of Section 255 of the NIRC of 1997, as amended.

In the *Information* filed on December 6, 2022, accused is indicted for violating Section 255 of the NIRC of 1997, as amended, for his alleged failure to pay deficiency income tax for TY 2016, despite receiving the assessment notice, including prior notices, and without filing any protest.

Section 255 of the NIRC of 1997, as amended, provides:

> SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax, and Refund Excess Taxes Withheld on Compensation.* — **Any person required under this Code or by rules and regulations** promulgated thereunder **to pay any tax**, make a return, keep any record, or supply correct and accurate information, **who willfully fails to pay such tax**, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld or refund excess taxes withheld on compensation, **at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. (*Emphasis supplied*)

To sustain the indictment and secure a conviction under the above provision, the prosecution must prove *beyond reasonable doubt* the concurrence of the following elements:

1. The accused is a person **required** under the NIRC or its rules and regulations **to pay any tax**;

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

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

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Under Section 2, Rule 133 of the Revised Rules of Court, as amended, the prosecution bears the burden of proving accused's guilt *beyond reasonable doubt,* as follows:

> **"Rule 133**
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> Sec. 2. *Proof beyond reasonable doubt.* – In a criminal case, the accused is entitled to an acquittal unless his or her guilt is shown beyond reasonable doubt. **Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty.** Moral certainty only is required or that degree of proof which produces conviction in an unprejudiced mind." (Emphasis supplied)

It is well-settled that the burden of proof rests with the prosecution. Unless this burden is discharged, accused is entitled to acquittal.

A careful reading of the foregoing ***elements*** reveals that the *second* and *third* elements depend on the *first*. Thus, it is only when the *first* element is established that the remaining elements must be determined to exist. In essence, the showing of the failure to pay the pertinent tax and the willfulness of such failure rests on whether the accused is legally required to pay the tax in the first place. If there is no obligation to pay tax, there can be no willful failure to pay.

Under the NIRC of 1997, as amended, the obligation to pay tax arises in two (2) specific instances: 1) upon being required by the same law to pay a particular tax, simultaneous with the filing of the pertinent tax return;[46] or 2) upon being informed of a tax assessment issued by the BIR, requiring the taxpayer to pay the assessed tax within a specific period set forth in the said tax assessment.

The *first* instance follows a self-assessment approach where the taxpayer determines tax liability, files the appropriate tax return, pays the tax due, if any, and complies with other reporting requirements. In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,[47] the Supreme Court describes the said approach as follows:

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46 Examples of these are the following: Section 51 in relation to Section 56 (A) (1) [for Income Tax — Individuals], Section 77 [for Income Tax — Corporations], Section 91 [for Estate Tax], Section 103 [for Donor's Tax], Section 114 [for VAT], Section 128 [for Other Percentage Taxes], Section 130 [for Excise Taxes], and Section 200 [for Documentary Stamp Tax], all of the NIRC of 1997, as amended.

47 G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].

> The assessment process starts with the filing of tax return and payment of tax by the taxpayer. The initial assessment evidenced by the tax return is a self-assessment of the taxpayer. **The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly paid, the Bureau of Internal Revenue may dispense with its own assessment**. (*Emphasis supplied; Citations omitted*)

On the other hand, the *second* instance involves the issuance of a tax assessment by the Commissioner of Internal Revenue (CIR) or an authorized representative when a tax obligation is not properly paid. In this connection, it must be pointed out that Section 6(A) of the NIRC of 1997, as amended, provides as follows:

> 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.* — x x x
>
> **The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative**. (*Emphasis and underscoring supplied*)

Accordingly, from the moment the CIR or an authorized representative serves a notice on the concerned taxpayer and demands payment of tax or any deficiency tax, a legal obligation to pay the assessed tax arises. However, such notice must be in writing, informing the taxpayer of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.[48] As a corollary, the reason for requiring that taxpayers be informed in writing of the facts and law on which the assessment is made is the constitutional guarantee that no person shall be deprived of his property without due process of law.[49]

In the instant case, accused's obligation to pay tax (the *first* element of the crime) supposedly arose from the *second* instance, *i.e.*, upon being informed of the tax assessments issued by the BIR. Here, accused claims that the deficiency tax assessment is void due to violations of his rights to due process. More specifically, he asserts that the PAN and FLD/FAN were not

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48 Refer to Section 228 of the NIRC of 1997, as amended, which partly provides as follows: "The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

49 *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation, et seq.*, G.R. Nos. 215534 & 215557, April 18, 2016 [Per J. Mendoza, Second Division].

received by him as they were served on a certain Donald Reyes, who was neither his employee nor his authorized representative. Hence, the burden shifted to the prosecution to prove that the deficiency tax assessment was properly served and received by accused.

The necessity of affording taxpayers with sufficient written notice of their tax liability is clear and definite under Section 228 of the NIRC of 1997, as amended. This provision mandates that a taxpayer must be informed in writing of the legal and factual basis of the assessment; otherwise, the assessment is void. The pertinent portion of the provision reads:

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, that a pre-assessment notice shall not be required in the following cases:
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> ... ...
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. (*Emphasis supplied*)

To implement the requirements under Section 228, Revenue Regulations (RR) No. 12-1999, as amended by RR No. 18-2013 and RR No. 7-2018,[50] prescribe the due process to be observed in the issuance and service of deficiency tax assessments, to wit:

> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Preliminary Assessment Notice* (PAN). — ...
>
> 3.1.2 *Exceptions to Prior Notice of the Assessment.*— ...

[50] SECTION 2. Amendment. - Section 3 of RR 12-99, as amended by RR No. 13-18, is hereby amended by adding Section 3.1.1 providing for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. ...

3.1.3 *Formal Letter of Demand and Final Assessment Notice* (FLD/FAN). — ...

... ...

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

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

<u>In case personal service is not practicable</u>, the notice shall be served by <u>substituted service or by 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.

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"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

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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. (*Emphasis supplied*)

Based on the foregoing regulations, BIR notices (**PAN/FLD/FAN**/FDDA) must be properly served to ensure due process through the following modes of service:

1. **Personal Service** – Personal delivery of the notice to the taxpayer's registered or known address or wherever they may be found.

2. **Substituted Service** – If personal service is not practicable, the notice may be left with a clerk or a person having charge thereof (if the known address is a place where business activities of the party are conducted) or a person of legal age residing therein (if the known address is the place of residence). If no person is available, revenue officers must bring a barangay official and two disinterested witnesses to the address to attest to the attempted service.

3. **Service by Mail** – If personal or substituted service is not feasible, the notice may be sent via registered mail to the taxpayer's registered or known address.

Strict adherence to due process in tax assessments is crucial. Failure to comply with these procedural requirements, particularly the requirement to inform the taxpayer of the legal and factual basis of the assessment through the proper service of BIR notices, renders the assessment void.

There was a fatal infirmity in the service of the PAN and FLD/FAN.

Under Section 3.1.6 of RR No. 12-99, as amended, substituted service may be availed of **only** when personal service is not practicable. If the taxpayer is not present at the registered or known address, substituted service can be resorted to by leaving the assessment notices at the registered address with the taxpayer's **clerk** or a **person in charge** thereof.

Here, the prosecution asserts that the PAN and FLD/FAN were duly served to accused at his registered business address through Mr. Reyes, who purportedly had charge thereof. To support this claim, the prosecution presented the following:

1. A *Memorandum* and an *Affidavit of Service of Preliminary Assessment Notice (PAN),* both dated July 29, 2019, executed by Jefferson B. Ocampo and Edcris B. Tolentino, attesting that the

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PAN was served at accused's registered address and received by Donald Reyes (Exhibits P-9 and P-10); and

2. A *Memorandum* dated September 6, 2019, prepared by Jefferson B. Ocampo, stating that the FLD/FAN was served at accused's registered address and received by Donald Reyes (Exhibit P-15).

However, the Court finds that the BIR failed to comply with the prescribed procedures for properly effecting substituted service.

First, substituted service may be availed of only upon a showing that personal service is not practicable. In the instant case, no proof was presented by the prosecution to establish that the personal service of the subject PAN and FLD/FAN was indeed not practicable.

Second, the prosecution failed to controvert accused's assertion that Mr. Reyes was neither his employee nor his duly authorized representative. There is no proof that the PAN and FLD/FAN were served upon accused's "clerk" or a "person having charge" of his office, as required under Section 3.1.6 of RR No. 12-99, as amended.

While the *Affidavit of Service of the Preliminary Assessment Notice (PAN)*, the *Memoranda* dated July 29, 2019 and September 6, 2019, respectively, and the testimony of the prosecution's witness, RO Ocampo,[51] indicate that the PAN and FLD/FAN were served through Donald Reyes at Room 402, 4th Flr., Champ Bldg., the presentation of defense evidence revealed that Mr. Reyes was not connected to accused in any capacity.

Accused testified that Mr. Reyes was not his employee and that the PAN and FLD/FAN were erroneously served at **<u>Room 402-A</u>** rather than at **Room <u>402</u>,** his registered address. He underscores that **Room <u>402-A</u>** is a separate and distinct office

[51] Judicial Affidavit of Jefferson Ocampo, Exhibit P-33:

34. Q After you served the Preliminary Assessment Notice (PAN) with attached Details of Discrepancies dated July 18, 2019 to the accused, what happened next?

A We executed a Memorandum dated July 29, 2019 and Affidavit of Service of Preliminary Assessment Notice stating that we served the PAN to the accused at Rm. 402, 4th Flr., Champ Bldg., Bonifacio Drive, Brgy. 650, Zone 68, Port Area, Manila, through Donald Reyes, his Customs Representative.

... ...

40. Q After you served the Final Assessment Notice (FAN) Nos. ... and its corresponding Formal Letter of Demand with attached Details of Discrepancies, all dated August 20, 2019 to the accused, what happened next?

A We prepared a Memorandum dated September 6, 2019 stating that we served the Final Assessment Notice (FAN) Nos. ... and its corresponding Formal Letter of Demand with attached Details of Discrepancies, all dated August 20, 2019 to the accused at Rm. 402,4th Flr., Champ Bldg., Bonifacio Drive, Brgy. 650, Zone 68, Port Area, Manila, through Donald Reyes, his Customs Representative.

from **Room 402** and that Mr. Reyes holds office at Room 402-A, not of accused's office at Room 402.[52]

Accused's testimony was corroborated by Mr. Reyes himself, who confirmed that he was a Customs Representative for Lynjenken Freight Services, located at Room 402-A of Champ Building, while R.E.N.Z.R., an importer he was familiar with, occupied Room 402. He also affirmed that the two (2) offices were adjacent but separate entities. [53]

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[52] Docket –Vol. II, pp. 567–569, Exhibit A-6, Amended Judicial Affidavit of accused Ronald Punay Robin, dated July 11, 2024.

Q11: May mga ipapakita ako sa iyong mga dokumento na inisyu ng Bureau of Internal Revenue RDO 33, nakikilala mo ba ang mga dokumentong ito?
Manifestation: The undersigned counsel is showing to the witness the following documents: Letter of Authority … Preliminary Assessment Notice with Details of Discrepancies dated July 18, 2019; Assessment Notices and the corresponding Formal Letter of Demand with Details of Discrepancies; Final Assessment Notice (FAN) Nos. … and its corresponding Formal Letter of Demand with attached Details of Discrepancies, all dated August 20, 2019.
A11: Wala akong alam. Wala akong nakikilalang dokumento.

Q12: Alin dito sa mga dokumentong ito ang natanggap mo?
A12: Wala po.

Q13: Sa mga dokumentong ito, may nakasulat na "Donald M. Reyes, Customs Representative" na diumano ay tumanggap ng mga dokumentong ito. Alin sa mga dokumentong ito and iniabot sa iyo ni Donald Reyes, kung meron man?
A13: Wala po, your Honor.

Q14: **Sino si Donald Reyes, kung kilala mo siya?**
A14: **Ang alam ko po ay isa siya sa mga empleyado ng isang kumpanya na umuupa rin sa fourth floor ng Champ Building.**

Q15: Anong kumpanya iyon?
A15: Hindi ko na po matandaan.

Q16: **Bakit kaya sa kanya bumabagsak ang mga dokumento ng BIR na para kay RENZR?**
A16: **Palaging walang tao sa RENZ-R dahil palaging nasa field. Magkatabi po kasi iyong opisina ng RENZ-R at opisina ng kumpanya ni Donald Reyes. Nasa Room 402 kami. Pero si Donald ay nasa Room 402-A, and akala siguro ng BIR ay akin iyong Room 402-A.**

Q17: May sariling pintuan ba ang Room 402-A na opisina ng kumpanya ni Donald Reyes?
A17: Opo, mayroon po.

Q18: **May pahintulot ba si Donald Reyes sa iyo na tumanggap ng mga dokumento mula sa iba't ibang ahensya ng gobyerno, para kay R.E.N.Z.R.?**
A18: **Wala, hindi ko naman sya empleyado.** (*Emphasis supplied*)

[53] Docket, p. 723–724, Exhibit A-9.
Q8: Customs Representative ka ng anong kumpanya?
A8: Lynjenken Freight Services.

Q9: Patingin ng iyong company ID?
A9: (The Witness is showing an old Lynjenken Freight Services ID with number L-004)

Manifestation: A machine copy of the Lynjenken Freight Services ID with number L-004 is herewith attached as Annex 1. The employee name on the ID is Donald M. Reyes, and the position of the employee is "Customs Representative." The company address states: "RM 402A Champ Bldg., Brgy. 650, Zone 068 Port Area, Manila." We move to mark the same as Exhibit A-7.

… … …

Q15: May kilala ka bang importer na RENZR Enterprise?
A15: Opo. katabi po ng aming opisina.

Q16: Anong room number nila?
A16: Room 402.

Mr. Reyes denied being the authorized representative of accused, stating that he accepted the BIR notices only because the R.E.N.Z.R. office was often unoccupied. He further testified that he gave the PAN and FAN to his boss, Nerissa Endozo, who, to his knowledge, left them on her table and did not forward them to accused:[54]

> Q26: Ayon kay Revenue Officer Jefferson Ocampo, sinabi mo raw sa kanya na ikaw ang authorized representative ni Ronald Robin. Narito ang kanyang sinabi sa cross-examination, sa hukuman: ...
> Ano ang katotohanan sa kanyang sinabi, kung mayroon man? ...
> A26: Hindi ko po sinabi na authorized representative ako ni Punay. Ang sabi ko po ay pwede kong tanggapin ang mga sulat na dumarating sa RENZR.
>
> ... ...
>
> Q28: Nang matanggap mo ang BIR PAN na ito (I am showing the same BIR documents to the witness) mula kay Jefferson Ocampo, ano ang sinabi mo kay Jefferson Ocampo?...
> A28: Sinabi ko po na ibibigay ko ito sa boss ko dahil palaging walang tao sa RENZR...
>
> Q29: Nang matanggap mo ang BIR FAN na ito mula kay Jefferson Ocampo, ano ang sinabi mo kay Jefferson Ocampo? ...
> A29: Ganoon din po, na ibibigay ko sa boss ko. ...
>
> Q30: Ano ang ginawa mo sa mga documents na ito? ...
> A30: Binigay ko po sa boss ko. ...
>
> Q31: Sinong boss? ...
> A31: Si Nerissa Endozo. ...
>
> ... ...
>
> Q34: Bakit hindi mo na lang dineretso kay Ronald Robin ang mga sulat ng BIR? ...
> A34: Sinabi ko na po kay Mr. Jefferson Ocampo na palaging walang tao sa RENZR. At ang sabi rin po kasi ni Mr. Jefferson Ocampo, ay "Wala ito. Tanggapin mo lang ito." Kaya ang akala ko po ay hindi importante ang BIR PAN na tinanggap ko. ...
>
> Q35: Ibinigay ba ni Nerissa Endozo kay Ronald Robin ang mga sulat ng BIR? ...
> A35: Sa pagkakaalam ko po ay parang hindi dahil nasa table lang po niya ang mga sulat ng BIR. ...

Had RO Ocampo verified Mr. Reyes' authority or at least checked his identification card, he would have discovered that he was not an employee of accused and had no authority to receive the PAN and FLD/FAN on behalf of accused. The BIR took the

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Q17: Anong room number ng Lynjenken?
A17: Room 402-A.

[54] Judicial Affidavit of Donald M. Reyes dated July 29, 2024.

risk of dealing with Mr. Reyes, relying solely on his act of receiving the PAN and FLD/FAN as proof of authority to receive BIR notices, which was insufficient. There must be clear affirmative acts or conduct from accused, explicitly or tacitly authorizing Mr. Reyes to receive such notices. No such evidence was presented in this case.

In *Country Bankers Insurance Corporation v. Keppel Cebu Shipyard*,[55] the Supreme Court ruled:

> [T]he ignorance of a person dealing with an agent as to the scope of the latter's authority is no excuse to such person and the fault cannot be thrown upon the principal. **A person dealing with an agent assumes the risk of lack of authority in the agent. He [or she] cannot charge the principal by relying upon the agent's assumption of authority that proves to be unfounded**...(*Emphasis supplied*)

By serving the assessment notices at an entirely different office and to a person who had no connection to accused, the BIR failed to effect proper service in accordance with the prescribed due process requirements.

Even if the Court were to accept the prosecution's claim that the PAN and FLD/FAN were served at accused's registered address, the prosecution still failed to prove that the BIR complied with the requirement that the assessment notice must be left with the taxpayer's "clerk" or "person having charge" of the office.

In *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*,[56] the Supreme Court emphasized that assessment notices must be served directly upon the taxpayer or its duly authorized representative, explaining:

> The wisdom for such a requirement is readily apparent – unless the recipient possesses a certain degree of authority or discretion, they would be unable to grasp the gravity of the service of an assessment notice and the potential financial impact it would have to the taxpayer they purport to serve and represent. This is especially true for juridical entity taxpayers who can only act through its officers and employees, and who would otherwise be prejudiced by such recipient's simple ignorance.

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55 G.R. No. 166044, June 18, 2012 [Per J. Leonardo-De Castro, First Division], citing *Manila Memorial Park Cemetery, Inc. v. Linsangan*, G.R. No. 151319, November 22, 2004 [Per J. Tinga, Second Division].

56 G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].

Given the foregoing, the Court finds that there was no valid service of the PAN and FLD/FAN upon accused.

The Supreme Court has consistently ruled that proper service of assessment notices and actual receipt by the taxpayer are essential to the assessment process. The failure to prove that the PAN and FLD/FAN were actually received by accused renders the entire assessment process null and void.

Since the assessment is void due to improper service, the *first* element of the offense—that accused was a person required to pay tax—was not established. Without a valid assessment, accused had no legal obligation to pay tax the alleged deficiency tax under the *second* instance. Consequently, the *second* and *third* elements of the offense, which depend on the existence of a valid tax obligation, also fail.

Accordingly, the prosecution failed to prove beyond reasonable doubt that accused willfully failed to pay the alleged deficiency income tax for TY 2016. With the void assessment and the absence of all elements of the offense, there is no basis to sustain the charge against accused.

Plaintiff failed to establish accused's civil liability.

The Court now determines whether accused Ronald Pugay Robin is liable for the alleged deficiency income tax of ₱1,965,471.40, exclusive of surcharge and interest, for TY 2016.

Under Section 7(b)(1) of Republic Act (RA) No. 9282, the *civil action* for the recovery of civil liability of accused is deemed instituted upon the filing of the criminal case against him, as follows:

> **SEC. 7.** *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ... ...
>
> b. Jurisdiction over cases involving criminal offenses as herein provided:
>
> (1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code ... and other laws administered by the Bureau of Internal Revenue

hr

> ... . Any provision of law or the Rules of Court to the contrary notwithstanding, **the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, <u>the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action</u>, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.** (*Emphasis supplied*)

Based on the foregoing, the civil action arising from the alleged violation of Section 255 of the NIRC of 1997, as amended, was deemed instituted with the instant criminal case.

However, given the Court's finding that the prosecution *failed* to establish *all* elements of the offense, there can be no conviction of the offense charged. The *omission* penalized under Section 255 of the NIRC of 1997, as amended, from which civil liability may arise, did *not* exist. This is explicit in Section 253 (a) of the NIRC of 1997, as amended, *viz.*:

> **Sec. 253.** *General Provisions.* —
>
> (a) **Any person convicted of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein:**
>
> *Provided,* That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles. [*Emphasis supplied*]

It is settled that the civil aspect of a criminal case may survive an acquittal when based on reasonable doubt.[57] However, in this case, the Court finds no basis for civil liability since the acquittal of accused was grounded on the prosecution's failure to prove that the PAN, FLD, and FAN were properly served to and received by accused. As such, the assessment notices were deemed null and void, negating any obligation to pay the assessed deficiency income tax.

In fine, accused's civil liability was not proven. The improper service of the PAN, FLD, and FAN to Mr. Reyes and the lack of proof that accused received them render the deficiency income tax assessment null and void. Without a valid assessment,

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[57] *Dy v. People of the Philippines, et al.*, G.R. No. 189081, August 10, 2016 [Per J. Jardeleza, Third Division].

neither a conviction nor a corresponding civil liability can arise under the NIRC of 1997, as amended.

WHEREFORE, in light of the foregoing, accused **RONALD PUNAY ROBIN** is hereby **ACQUITTED** due to the failure of the prosecution to prove his guilt beyond reasonable doubt. There being no competent evidence to prove his civil liability, he is also exonerated from the same.

Accordingly, the ₱60,000.00 cash bond posted by accused is cancelled pursuant to Section 22, Rule 114 of the Revised Rules of Criminal Procedure. The refund shall be processed only upon presentation of the Official Receipt and shall be released to the person named therein or to the duly authorized representative, in accordance with *En Banc* Resolution No. 03-2009, *Re: Guidelines on Reduction and Refund of Bail Bonds*.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G.DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice