Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**CTA EB CRIM. No. 033** (CTA Crim. Case Nos. 0-071 & 0-085)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
BIENVENIDO S. DIMSON, Accused-Appellant.	Promulgated: SEP 2 1 2015

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DECISION

CASANOVA, J.:

This is a Verified Petition for Review[1], filed on December 1, 2014, by accused-appellant Bienvenido S. Dimson, assailing the Decision[2] (Assailed Decision) dated July 2, 2014, which convicted him on two (2) counts of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, as charged in the consolidated CTA Crim. Case Nos. 0-071 & 0-085, which was affirmed in the Resolution[3] (Assailed Resolution) dated November 12, 2014.

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[1] En Banc Rollo, pp. 1-25.
[2] Annex "A" to the Petition for Review, Ibid., pp. 27-55
[3] Annex "B" to the Petition for Review, Id., pp. 58-56.

PARTIES

Plaintiff-appellee, as represented by the Office of the State Prosecutor, Department of Justice, and the Bureau of Internal Revenue-the principal law agencies tasked to represent the People in tax collection cases, may be served altogether with summonses, writs, orders, notices and other processes of this Court, through the Office of the State Prosecutor, at the Office of the State Prosecutor, Manila City Hall, Arroceros, Manila and, through the Bureau of Internal Revenue at the BIR Region No. 6, Intramuros, Manila.[4]

On the other hand, accused-appellant Bienvenido S. Dimson (accused Dimson) is of legal age, Filipino citizen and residing at 12-B Liwayway Street, West Triangle Homes, Quezon City. He may be served with writs, orders, notices and other processes of this Court, through his counsel, Espejo & Partners, at 111 Morning Star Bldg., Central Condominiums, Central Avenue, Quezon City.[5]

He is being charged in his capacity as President/General Manager of Dimson (Manila), Inc. (DMI) in two criminal complaints for violation of Section 255 in relation to Sections 253 (d) and 256 of the National Internal Revenue Code of 1997, as amended, for failure of DMI to pay its deficiency taxes for taxable years 1999 and 2000 with respect to the income it earned from the joint venture projects it entered into with Concrete Aggregates Corporation and Manila Amman Trading, J.M. Luciano Construction, Inc., Hilmarc's Construction Corporation, and Daewoo Construction & Engineering Limited.

THE FACTS

The factual antecedents of the case, as found by the CTA Third Division, are as follows:

> "Criminal Case No. 0-071 deals with deficiency EWT and Income Tax for the taxable year 2000, while Criminal Case No. 0-085 deals with deficiency EWT, VAT and Income Tax for the taxable year 1999.
>
> **CRIMINAL CASE NO. 0-085 (TAXABLE YEAR 1999)**
>
> Dimson filed, on April 13, 2000, its income tax return ('ITR') for taxable year 1999. No payment was made by

[4] Parties, Petition for Review, En Banc Rollo, p. 2.
[5] Ibid.

Dimson because it declared in its ITR that its Prior Years Excess Credits (26A) in the amount of Php2,961,317.04 exceeded the income tax due in the amount of Php752,751.87 (22B).

The BIR eventually discovered the non-payment of taxes for taxable year 1999 when Revenue Officers Conrado C. Lorenzo and Group Supervisor Jose C. Capistrano conducted an investigation. By virtue of the Letter of Authority dated October 25, 2000, these revenue officers were authorized to examine the books of accounts of Dimson.

Requests, Subpoenas Duces Tecum and Notices from the BIR were likewise served on Dimson. However, the company failed to present its books of account and other accounting records which were needed in the investigation. Thus, the revenue officers made their assessment and computation based on the evidence available in their file. They found out that in taxable year 1999, Dimson's total deficiency taxes amounted to Php68,016,046.85.

On September 28, 2001, Rolando Relos, accountant of Dimson, executed a Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC.

Thereafter, the BIR issued a PAN dated December 11, 2003. On December 29, 2003, the BIR issued a Formal Notice of Demand and Assessment Notice on EWT, Formal Notice of Demand and Assessment Notice on VAT, and Formal Notice of Demand and Assessment Notice on Income Tax, all stamp-marked 'DISPUTED'.

On January 20, 2004, accused wrote to the BIR, which letter was captioned 'Reply-Preliminary Assessment Notice', stating that they 'received the PAN dated December 11, 2003 during the last week of December 2003' and that they were 'formally protesting the findings stated in the assessment report.'

In response, the BIR informed accused that the record of the case was forwarded to Revenue District Office No. 32.

On January 20, 2005, the BIR notified the accused that Dimson's 1999 internal revenue tax liabilities were for final review. Said letter was endorsed by the chief of the

Assessment Division to the chief of the Collection Division to enforce collection.

On March 10, 2005, the BIR issued a Final Notice Before Seizure.

On March 22, 2005, accused wrote the BIR acknowledging receipt of the Final Notice Before Seizure and formally protesting Collection Notice No. 32-1-99.

On April 5, 2005, the BIR received another letter from the accused, captioned: 'Re: Request for Cancellation of Final Notice of Dimson (Manila), Inc. Before Seizure'.

On May 18, 2005 at 2:00 p.m., Dimson received a Warrant of Distraint and/or Levy No. 032-02305 issued by the BIR.

On May 25, 2005, accused filed before BIR Revenue District Officer Benito Wong, an Urgent Appeal, appealing the aforestated Warrant of Distraint and/or Levy.

On June 2, 2005, accused sent a letter to the BIR, addressed to Director Misajon, regarding its Request for Appointment to Discuss Warrant of Distraint and/or Levy No. 032-02305.

Thereafter, on August 18, 2005, Ceferina M. Ong, Chief of Collection Division, forwarded the case of Dimson to the Chief of Legal Division for appropriate action.

In response, on October 18, 2005, Regional Director Alfredo V. Misajon ('Director Misajon') issued a letter addressed to accused denying the appeal of the accused and requesting him to pay the taxes due. The letter reads in part:

> 'In reply, this Office maintains that the aforesaid deficiency income, VAT and EWT assessments were issued with factual and legal bases. Assessment Notices together with the details of expense disallowance were duly issued to DIMSON, yet despite ample time given to the latter to refute the aforesaid assessments through substantial documentary evidence, DIMSON failed to do so.

On the other hand, DIMSON'S allegation that its Joint Venture Managers, CONCRETE AGGREGATE CORPORATION AND J. M. LUCIANO CONSTRUCTION, have allegedly paid DIMSON's taxes for taxable year 1999 is bereft of legal basis.

Section 22(B) of the 1997 Tax Code provides:

> '(B) The term corporation shall include partnerships, no matter how created or organized, joint-stock corporation, joint accounts *(cuentas en participacion)*, associations, or insurance companies, but does not include general professional partnerships and *a joint venture or consortium formed for the purpose of undertaking construction projects* or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract with the Government. 'General professional partnership' are partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derive (sic) from engaging in any trade or business' (Emphasis supplied)

From the foregoing, this Office opines that DIMSON must file separate income tax returns and/or VAT returns on its net income from its two (2) joint venture projects less its proportionate share in the joint venture expenses because the joint venture is not embraced within the meaning of the term 'corporation', hence, not subject to corporate income tax imposed under Section 27 (A) of the 1997 Tax Code *(BIR Ruling No. 002-97, January 14, 1997). The joint venture being exempt from corporate income tax is not required to file quarterly and final adjustment returns (BIR Ruling No. 020-82, January 26, 1982).*

Even assuming arguendo that DIMSON is right that the income taxes for the aforesaid joint projects were erroneously paid by the joint venture through its Joint Managers, an automatic credit against DIMSON's deficiency income, VAT and EWT liabilities cannot be allowed. Instead, a claim for refund should be filed by the

Joint Managers within two years from the alleged erroneous payment of taxes. *(Section 229, 1997 Tax Code).*

Accordingly, this Office respectfully requests DIMSON to pay the aforesaid 1999 income, VAT, and EWT assessments.

This is our final decision on the matter.'

On January 26, 2006, Director Misajon issued a recommendation letter addressed to the City Prosecutor of Manila, recommending the immediate criminal prosecution of accused as president/general manager and responsible officer of Dimson for failure to pay the internal revenue tax obligations of Dimson.

On February 13, 2006, accused filed a 'Request for Reinvestigation of Dimson 1999 to 2003 Tax Returns' dated February 9, 2006. In response, on February 17, 2006, Director Misajon issued a letter which denied the request for reinvestigation for lack of factual and legal bases. The pertinent portions of the said letter read as follows:

> 'Thus, DIMSON's instant request for reinvestigation is hereby DENIED for lack of factual and legal bases.
>
> Relative to the 1999 case, a criminal complaint was filed against you as President and General Manager of Dimson entitled 'PEOPLE OF THE PHILIPPINES vs. BIENVENIDO S. DIMSON' docketed under I.S. No. 06A-01868 for violation of Sections 255 and 253(d) of the 1997 Tax Code, which case is now pending preliminary investigation before Assistant Prosecutor NORMA ZARTIGA GO of the office of the City Prosecutor, Manila. Filing of similar complaint will follow with respect to 2000 and 2002 cases.'

On June 6, 2008, the Department of Justice filed before this Court Criminal Case No. 0-085.'

CRIMINAL CASE NO. 0-071 (TAXABLE YEAR 2000)

Dimson filed on April 5, 2001 its income tax return for taxable year 2000. No payment was made by Dimson because it declared in its ITR that its Prior Years Excess Credits (26A) in the amount of 2,208,565.17 exceeded the income tax due in the amount of Php733,993.44 (22B)

Revenue Officer Ma. Angeles Rosales and Group Supervisor Benjamin V. Cruz, Jr. discovered the non-payment of taxes due for taxable year 2000 when they conducted an audit. Thus, by virtue of a Letter of Authority dated October 30, 2002, the said revenue officers were authorized to examine the books of accounts of Dimson for the taxable year 2000. BIR Notices were served on Dimson. However, despite receipt of the notices, the company failed to present the documents required by the BIR. Hence, the revenue officers made the assessments based on the available records in their file. Based on their findings, the total deficiency taxes for taxable year 2000 amounted to Php10,031,184.02.

Hence, on December 9, 2003, the BIR issued a Preliminary Assessment Notice ('PAN').

On January 22, 2004, the Final Demand Letter and Assessment Notice on EWT and the Final Demand Letter and Assessment Notice on Income Tax for taxable year 2000 were issued. These notices were received by Dimson on January 26, 2004.

On July 7, 2004, the BIR issued a Final Notice before Seizure.

On July 19, 2004, accused filed a Protest Letter refuting the assessment because 'they received the assessment only on July 14, 2004' and stating they would present additional documents that would justify circumstances surrounding transactions for taxable year 2000.

On July 26, 2004, accused sent a follow-up letter stating that they had not replied earlier due to the fact that they abandoned in haste their office in Maceda, Sampaloc, Manila.

On November 26, 2004, accused filed 'a Very Urgent Appeal' stating that 'they did not receive the assessment before the same became final.' On the same date, accused also sent the BIR a 'Request for the Cancellation and/or

Suspension of Your Final Notice Before Seizure Regarding Assessment'.

On January 18, 2005, accused filed a letter "Re: Assessment No. 32-2000", explaining that their declared gross income of Php416,260,424.76 for the year 2000 came from their share in the joint venture ('JV') projects with Daewoo Construction and Hilmarc's Construction and that out of their reported income, only Php5.5 million in rentals was received by the company. The balance of Php410.76 million representing their contract portion share in the JV projects was actually received and disbursed by both Daewoo and Hilmarc's Construction as authorized managing officers. The taxes due for the total contract amount of the JV projects have already been reported and paid by both Daewoo Construction and Hilmarc's Construction.

In response to that, on June 1, 2005, Director Misajon issued a letter stating that the 30-day period within which the accused could protest the assessment had already lapsed since the Assessment Notice 32-2000 dated January 22, 2004 was received on January 26, 2004.

On August 4, 2005, Edna L. Tesorero ('Chief Tesorero), Chief of Collection Section, issued a 1st Notice to Dimson relative to its tax liability for collection. On August 26, 2005, a 2nd Notice was issued.

On August 18, 2005, accused sent a letter to Chief Tesorero acknowledging receipt of BIR's 1st Notice and requesting reconsideration of the said assessment on the ground that the taxes being collected had already been paid by their joint venture managers and the incomes were simply reflected in their return to comply with the Department of Public Works and Highways ('DPWH') requirement.

On August 15, 2005, the BIR issued a Warrant of Distraint and/or Levy against the accused. It was received by Angel Cordero on August 30, 2005.

In a letter dated September 8, 2005, accused acknowledged receipt of the Warrant of Distraint and/or Levy and requested the cancellation of the assessment. a

Thereafter, on October 26, 2005, Ceferina M. Ong, Chief of Collection Division, forwarded the case of Dimson to the Chief of Legal Division for appropriate action.

On January 20, 2006, the BIR denied the request in this wise:

> 'In reply, this Office maintains that the aforesaid deficiency income and EWT assessments were issued with factual and legal bases. *Assessment Notices together with the details of expense disallowance* were duly issued to Dimson. More importantly, the aforesaid income and EWT assessments have become final, executory, and demandable for DIMSON's failure to protest said assessments within the thirty (30)-day period prescribed by Section 228 of the 1997 Tax Code.
>
> Moreover, DIMSON's allegation that its Joint Venture Managers, DAEWOO CONSTRUCTION and HILMARC'S CORPORATION have allegedly paid DIMSON'S taxes for taxable year 2000 is bereft of legal basis.
>
> Section 22(B) of the 1997 Tax Code provides:
>
> > '(B) The term corporation shall include partnerships, no matter how created or organized, joint-stock corporation, joint accounts *(cuentas en participacion)*, associations, or insurance companies, but does not include general professional partnerships and *a joint venture or consortium formed for the purpose of undertaking construction projects* or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract with the Government. 'General professional partnership' are partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derive (sic) from engaging in any trade or business' (Emphasis supplied)

From the foregoing, DIMSON must file income tax return on its net income from its two (2) joint venture projects less its proportionate share in the joint venture expenses because the joint venture is not embraced within the meaning of the term 'corporation', hence, not subject to corporate income tax imposed under Section 27(A) of the 1997 Tax Code *(BIR Ruling No. 002-97, January 14, 1997). The joint venture being exempt from corporate income tax is not required to file quarterly and final adjustment returns (BIR Ruling No. 020-82, January 26, 1982).*

Even assuming that DIMSON is right that the income taxes for the aforesaid joint projects were erroneously paid by the joint venture through its Joint Managers, an automatic credit against DIMSON's deficiency income and EWT liabilities cannot be allowed. Instead, a claim for refund should be filed by the Joint Managers within two years from the alleged erroneous payment of taxes. *(Section 229, 1997 Tax Code).*

Accordingly, this Office resolves to deny the request for reconsideration and respectfully requests DIMSON to pay the aforesaid 2000 income and EWT assessments immediately upon receipt hereof.

This is our final decision on the matter.'

On February 10, 2006, Director Misajon issued a recommendation letter addressed to the City Prosecutor of Manila recommending the immediate prosecution of accused as president/general manager and responsible officer of Dimson for failure to pay internal revenue tax obligations of the corporation.

On December 28, 2007, the Department of Justice filed before this Court Criminal Case No. 0-071.

THE PROSECUTION'S EVIDENCE

The prosecution presented evidence to prove that Dimson declared income, received all notices and assessments pertinent thereto and, was, therefore, required to pay the tax;

that Dimson failed to pay the tax due; and that the failure to pay the tax was willful.

First, they presented the ITRs that Dimson filed for taxable years 1999 and 2000.

Next, they presented witnesses who testified that Dimson received the notices and assessments relevant to the BIR's efforts to collect the taxes due, to wit:

In Criminal Case No. 0-071, prosecution witness Ma. Angeles Rosales testified that she served upon the taxpayer the letter of authority together with the first notice of the BIR and its checklist of items for examination on November 7, and that these were received by Ms. Joanne Ortega ('Ms. Ortega'). Shortly thereafter, she followed up through a phone call when the documents would be ready. After two months passed, she served the second notice of the request for presentation of records on January 7, 2002 which was also received by Ms. Ortega. She further testified that the purpose of these BIR notices was 'to afford due process.' A third and final notice was served on February 28, 2003 which was received by Cora Orsillo ('Ms. Cora'). After receipt of the documents of Dimson, witness Rosales prepared an assessment which she submitted to the Assessment Division for approval.

BIR Examiner Gloria Maliwanag testified that the Checklist of Requirements served on the taxpayer was received by Ms. Ortega on November 7, 2007, along with the Letter of Authority; and that the second notice to the taxpayer was received on January 7, 2002, and the final notice on February 28, 2002, by Ms. Cora.

Revenue Officer Ronan P. Martirez testified that he personally served a Tax Verification Notice on the accused on March 2, 2004 but it was received by a man, not the accused, whose name he could not recall; that he could not tell whether the man who received the TVN was a Dimson employee; and that the man, who was dressed in house clothes, said he was only a caretaker of the place as the Dimson office had already been closed.

Philippine Postal Corporation Records Unit Head Fe P. Gaoiran testified that the letter with registry number 803356 that was delivered to Dimson was received by Ms. Cora on January 26, 2004.

RDO 29 Revenue Officer Felicidad dela Rosa testified that the warrant that she personally served at 17 East Riverside New Roosevelt Ave. San Francisco del Monte was received by an Angel Cordero ('Mr. Cordero') on August 30, 2005, but that she did not personally know Mr. Cordero or whether he was an authorized representative or officer of the company.

In Criminal Case No. 0-085, prosecution witness, Revenue Officer Conrado Lorenzo, testified that the taxpayer was furnished a copy of the Letter of Authority and a written preliminary request for the books of accounts on October 25, 2000, and that these were received for Dimson by one Peter Castillo on November 7, 2000. The second notice or request for documents was received by Ms. Cora while the final notice to the taxpayer was initialed by 'the taxpayer' on March 29, 2001. He further testified that a subpoena duces tecum dated October 26, 2001 was served by a BIR messenger and was received by Ms. Cora at the official address of Dimson. He also sent a request for a preliminary conference to the company as regards the result of the Preliminary Assessment which was received by Rolando T. Raul. His findings as to income tax deficiency, on the other hand, were received by one Rolando Rios.

Revenue Officer Felicidad dela Rosa also testified that when she served the Warrant of Distraint, she did not meet the accused personally, and that the warrant was received by Ms. Ortega.

The prosecution contends that the accused's non-payment of his tax liability was willful. Accused could have very well known that he could be held liable for the taxes due on whatever income that was reported in the filed ITRs of Dimson. If indeed it was a mere mistake and he had no intention to defraud the government, as the accused claims, he could have simultaneously explained the situation upon filing the ITRs for taxable years 1999 and 2000, or he could have done so right after filing the ITRs with the BIR. He should not have waited for the BIR to discover the unpaid taxes and collect the same before he explained his side. Other than the bare and self-serving asseverations of accused and his witnesses that no income was received from the said joint venture projects, accused failed to present any iota of documentary evidence to support such claim sufficient to defeat the assessments made by the BIR.

THE DEFENSE OF THE ACCUSED

Accused argued that the corporation did not receive any income for taxable years 1999 and 2000 from the joint ventures for it to be liable for alleged tax deficiencies.

Accused claims that Dimson is not required to pay the taxes subject of the assessments, because none of the income from the joint venture projects was received by Dimson, inasmuch as the corporation was 'kicked out' from all four (4) of the joint ventures before their projects could start. Hence, Dimson was not able to participate because it was not able to produce the capitalization requirement demanded by the joint ventures.

In declaring income from the JV Projects in Dimson's ITRs for taxable years 1999 and 2000, accused justified his actions by saying that the income declared was purely 'statistical income', and he had done this upon the suggestion of someone from the Department of Public Works and Highways ('DPWH) Bids Committee. Accused claims he was forced to heed the 'suggestion' to be able to renew Dimson's annual accreditation by the DPWH as a construction contractor. Alternatively, he described this 'suggestion' as 'DPWH mandatory reportorial requirements,' but failed to indicate the legal basis for such.

On the other hand, the accused also denied being served formal letters of demand and assessment notices. In his Counter-Affidavit dated April 21, 2006, he stated:

> 's. x x x Dimson has never received any BIR assessments since Dimson has already abandoned its former office in haste sometime in March 2003. Hence, Dimson had really no opportunity to review and contest the assessments sent to them and in effect, therefore, the tax liability, if there is any, of Dimson has not been determined yet since no proper assessment (s) [sic];'

The accused also testified under oath on May 16, 2012 that he never saw any BIR examiner who talked to him personally and nobody ever visited his office to check the book of accounts of his corporation; and that he never met any of the prosecution witnesses before the case against him was filed.

To prove that accused was bumped off from the joint ventures and that the taxes were paid by the joint venture partners of the company, the accused presented the following:

1. Joint Affidavit of Manila Amman Trading Corp. thru its President, Philip V. Ordonez, and Concrete Aggregates Corp. thru its General Manager Arleo E. Magtibay, stating that the Joint Venturers Concrete Aggregates Corporation and Manila Amman Trading Corporation jointly consent to the relief of equipment and financial responsibility of Dimson in the Quirino Highway contract with DPWH and they jointly certify that the additional financial and equipment requirements of the project in lieu of Dimson are deemed sufficient to cover all the project requirements.

2. Certification dated March 7, 2007, issued by Emmanuel A. Rapadas, General Manager of Concrete Aggregates Corporation, stating that the construction of Quirino Highway project was constructed by the Joint Venture of Concrete Aggregates/Dimson (Manila), Inc./Manila Amman Trading was undertaken solely by the Authorized Managing Office (AMO) Concrete Aggregates Corporation & Manila Amman Trading without any participation of Dimson and that all project revenue were received and all the taxes were paid by Concrete Aggregates Corporation & Manila Amman Trading to the BIR RDO No. 121 Quezon City.

3. Certification dated January 30, 2007, issued by Efren M. Canlas, Authorized Managing Partner of Hilmarc's Construction Corporation, stating that the construction of Luneta Waterfront Development Project under the contract by the Hilmarc's/Dimson Joint Venture was solely undertaken by the Authorized Managing Office (AMO) Hilmarc's Construction Corporation without any participation of Dimson and that all the project revenues were reported under the name of the Joint Venture. The joint venture is duly registered under Revenue District Office #40 and its Tax Identification Number

is 208-362-850 and that all the taxes were received and paid under the name of the joint venture.

4. Cover Sheet of Concrete Aggregates Corporation submitted on April 16, 2001 to prove that Concrete Aggregates Corporation's income covers the income obtained from the joint venture.

5. Audited Financial Statement of Daewoo Construction & Engineering Company Limited to prove that Daewoo's income covers the income obtained from the joint venture project.

6. Affidavit of Adelaida Escasinas stating that Dimson did not receive any income from the joint venture projects.

Mr. Efren Canlas testified on August 15, 2012, that Dimson (Manila), Inc. is part of the joint venture between Hilmarc and Dimson, however when the Luneta Waterfront Development project was about to start, Dimson could not comply with their agreement on the authorized capitalization, hence, as the lead contractor, Hilmarc proceeded with the project using the name of the joint venture. The project was completed with no participation on the part of Dimson but the project was still under the name of the joint venture. All the tax liabilities were settled under the name of the joint venture. Dimson did not receive any income since it was no longer a part of the project.

Adelaida Escasinas testified on September 26, 2012, that she was an employee of Dimson from 1974 to 2008. Since 1980 she worked as a solo cashier. She did not receive any income, money or check with regard to the joint venture projects of Dimson. She identified an undated affidavit which she executed and marked as Exhibit '27'."[6]

In a Resolution dated July 3, 2013, the case was submitted for decision after taking into consideration the plaintiff's Memorandum filed on June 21, 2013 and the Memorandum (For the Accused Bienvenido S. Dimson) filed on June 10, 2013.

[6] Annex "A" to the Petition for Review, Id., pp. 27-43.

In a Decision promulgated on July 2, 2014, the Third Division of this Court convicted accused-appellant on two (2) counts of violation of Section 255 of the NIRC of 1997, as amended in this wise:

"**WHEREFORE,** premises considered, judgment is hereby rendered:

1. In Criminal Case No. 0-085, finding accused Bienvenido S. Dimson, GUILTY BEYOND REASONABLE DOUBT, of violating Section 255 of the Internal Revenue Code of 1997, as amended, and he is hereby SENTENCED to suffer a penalty of one (1) year imprisonment and is ORDERED TO PAY a fine in the amount of Php10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, or unable to pay such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

Dimson (Manila), Inc. is hereby ordered to pay a fine of Php100,000.00 pursuant to Section 256 of the NIRC.

As regards the civil liability, accused Bienvenido S. Dimson is held jointly and severally with Dimson (Manila), Inc. and is ordered to pay deficiency income in the amount of Php68,016,046.85 for taxable year 1999, inclusive of penalties, surcharges and interests, plus 20% delinquency interest per annum counted from April 15, 2000 until full payment thereof, pursuant to Section 249(C) (3) of the NIRC of 1997 as amended.

2. In Criminal Case No. 0-071, finding accused Bienvenido S. Dimson, GUILTY BEYOND REASONABLE DOUBT, of violating Section 255 of the Internal Revenue Code of 1997, as amended, and he is hereby SENTENCED to suffer a penalty of one (1) year imprisonment and is ORDERED TO PAY a fine in the amount of Php10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, or unable to pay such fine, pursuant to Section 280 of the NIRC of 1997, as amended.

Dimson (Manila), Inc. is hereby ordered to pay a fine of Php100,000.00 pursuant to Section 256 of the NIRC.

As regards the civil liability, accused Bienvenido S. Dimson is held jointly and severally with Dimson (Manila), Inc. and is ordered to pay deficiency income in the amount of Php10,031,184.02 for taxable year 2000, inclusive of penalties, surcharges and interests, plus 20% delinquency interest per annum counted from April 15, 2001 until full payment thereof, pursuant to Section 249(C) (3) of the NIRC of 1997 as amended.

SO ORDERED."[7]

Undaunted, accused-appellant filed a Motion for Reconsideration (of the Decision Promulgated on 2 July 2014)[8] on July 17, 2014, which was denied for lack of merit in a Resolution[9] promulgated on November 12, 2014.

Aggrieved, accused-appellant elevated the instant case to the CTA Court En Banc *via* Verified Petition for Review on December 1, 2014.

On February 5, 2015, plaintiff-appellee filed its Comment to Accused-Appellant's Verified Petition for Review En Banc[10].

On February 17, 2015, the Court En Banc gave due course to the subject Petition and ordered the parties to submit their Memoranda[11].

In compliance with the said Resolution, plaintiff-appellee filed its Memorandum[12] on April 1, 2015, while the Memorandum for the Accused-Appellant[13] was filed on April 28, 2015.

On June 9, 2015, the case was submitted for decision[14].

Hence, this Decision.

In support of the instant Petition for Review, accused-appellant raised the following assignment of errors:

I. THE HONORABLE COURT-THIRD DIVISION ERRED IN RULING THAT THE PROSECUTION HAS BEEN ABLE TO PROVE THE GUILT OF THE ACCUSED-APPELANT BIENVENIDO S. DIMSON BEYOND REASONABLE DOUBT. *a*

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[7] July 2, 2014 Decision, Annex "A" to the Petition for Review, Ibid., pp.54-55.
[8] Division Docket (Vol.III), pp. 1693-1713.
[9] Ibid., pp. 1729-1737.
[10] En Banc Rollo, pp. 67-73.
[11] Ibid., pp. 75-76.
[12] Id., pp. 77-89.
[13] Id., pp. 95-122.
[14] Id., pp. 125-126.

II. THE HONORABLE COURT FAILED TO APPRECIATE THAT DIMSON MANILA, INC. DID NOT ACTUALLY RECEIVE INCOME FROM SAID JOINT VENTURE PROJECTS, THUS, IT IS NOT LIABLE TO PAY INCOME TAX DEFICIENCIES.

III. THE HONORABLE COURT-THIRD DIVISION ERRED IN FINDING THE ACCUSED-APPELLANT JOINTLY AND SEVERALLY LIABLE WITH DIMSON MANILA, INC. IN THE AMOUNT OF Php 68,016,046.85 FOR TAXABLE YEAR 1999 AND IN THE AMOUNT OF Php 10, 031,184.02 FOR TAXABLE YEAR 2000, INCLUSIVE OF PENALTIES, SURCHARGES AND INTEREST, PLUS 20% DELINQUENCY INTEREST.

Despite the accused-appellant's formulation of alleged errors, *We* find that the main issue is whether or not the Court in Division erred in convicting accused-appellant on two (2) counts of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended.

In this Petition, accused-appellant categorically admits that he declared a very high income in the Income Tax Returns (ITR) of Dimson (Manila), Inc. for taxable years 1999 and 2000, even when in truth and in fact, the said corporation did not participate in the subject Joint Venture Projects and have not derived income therefrom. He did that for the sole reason that his accreditation with DPWH will be affected, if it will be known that Dimson (Manila), Inc. backed out from the joint venture projects it was supposed to pursue.

He further admits that while the foregoing justification may be considered as a lame excuse, he still insists that the testimonies of his witnesses and documentary evidence would prove that, indeed, the corporation was not able to participate in the said joint venture projects where the declared income should have been earned. Thus, to assess him of tax deficiencies when he received no income from such would be a clear case of absurdity.

Accused-appellant, likewise, claims that no BIR examiner or officer went to the office of Dimson (Manila), Inc. to examine its records and documents. Accordingly, should said officer opted to do such, then he would have proven to the latter at that early stage that, indeed, there was really no income received by the corporation on said taxable years for it to be liable for such tax deficiencies.

Accused-appellant further states that the inconsistencies in the testimonies of the witnesses with regard to the examination of books of accounts and accounting records of the taxpayer and the process of serving notices to the accused would break the strength of prosecution's evidence.

Lastly, accused-appellant insists that while he may have committed other charges, the records would, however, reveal that he never defrauded, nor deliberately declared such false return to evade taxes due to the government. For indeed, a "fraudulent return" is always an attempt to evade a tax, but a merely "false return" may not be.

THE COURT EN BANC'S FINDINGS AND RULING

We find the instant petition bereft of merit.

A close perusal of the above issues and the discussions thereof shows that they are a mere rehash of arguments and positions already raised and discussed extensively in the assailed Decision and Resolution of the Third Division of this Court.

In this case, accused-appellant was charged of violating Section 255, in relation to Sections 253 (d) and 256 of the 1997 National Internal Revenue Code (NIRC), as amended. Said provisions respectively read:

> "Section 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.
>
> Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an

internal revenue officer wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years." (Emphasis supplied)

"Section 253. General Provisions. —

xxx xxx xxx

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

"Section 256. Penal Liability of Corporations. — Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000)."

Taking the foregoing into consideration, plaintiff-appellee must prove beyond reasonable doubt the following:

1. That the corporate taxpayer is required under the 1997 NIRC, as amended, to pay tax;

2. That accused, as the officer/employee responsible for the violation, failed to pay such tax at the time required by law or regulations; and

3. That the failure to pay was willful.

All the above-mentioned elements must concur to seal a conviction under Section 255 of the 1997 NIRC, as amended.

In the case at bench, it is undisputed that the first element of the offense has been clearly established. Dimson (Manila), Inc., as a domestic corporation and registered with the BIR as a taxpayer, is required to pay its taxes in accordance with the nature of its business. Accused-appellant, on the other hand, is the corporation's President/General Manager, thus, undoubtedly a responsible officer of the corporation in charge of directing the affairs thereof. And, it is for this reason that he is criminally charged under Section 255, in relation to Sections 253 (d) and 256 of the 1997 NIRC, as amended.

Thus, to make the accused-appellant liable for non-payment of tax, the prosecution must prove that he was aware that there was a demand on him to pay the said deficiency taxes.

Records reveal that accused-appellant was sufficiently apprised of the nature, factual and legal bases of his tax deficiencies as well as how the said deficiency taxes being assessed against him were computed. We quote with approval the detailed discussion by the Court in Division, in the Assailed Decision:

> "As borne out by the facts of this case, in Criminal Case No. 0-085, the BIR issued a PAN dated December 11, 2003; that on December 29, 2003, the BIR issued FANs and Formal Letters of Demand on EWT, VAT and Income Tax demanding payment of tax deficiency amounting to Php68,016,046.85 and that the said deficiency taxes should be paid on or before January 30, 2004.[15] Since accused ignored the demand to pay, the BIR was constrained to enforce its collection by issuing a Warrant of Distraint and/or Levy dated May 9, 2005.[16]
>
> With regard to Criminal Case No. 0-071, the BIR issued a PAN dated December 9, 2003; that on January 22, 2004, the BIR issued FANs and Formal Letters of Demand on EWT and Income Tax demanding payment of tax deficiency amounting to Php10,031,184.02 and that said deficiency taxes should be paid on or before February 23, 2004.[17] Again, accused disregarded the demand to pay, thus the BIR issued a Warrant of Distraint and/or Levy dated August 15, 2005.[18]
>
> Based on the evidence presented, it is clear that notices were sent to the accused and the same were received by him

[15] Exhibits "BB", "Z" and "X" (Crim. Case No. 0-085).
[16] Exhibit "JJ" (Crim. Case No. 0-085).
[17] Exhibits "Y" and "AA" (Crim. Case No. 0-071).
[18] Exhibit "NN" (Crim. Case No. 0-071).

> and that he in fact sent a number of letters[19] to the BIR **questioning the issuance of the assessment notices and acknowledging receipt of the notices. Thus, he has knowledge of the tax deficiency being demanded by the BIR.** Considering that accused failed to sufficiently refute the assessments in both cases, the assessment notices became final and demandable."[20]

The foregoing exchange of correspondence and documents between the parties would sufficiently show that the requirement that the taxpayer should be informed in writing of the law and the facts on which the assessment is made, pursuant to Section 228[21] of the 1997 NIRC, as amended, was substantially complied with.

We shall now ascertain if the non-payment of the corresponding taxes was willfully done by the accused-appellant herein.

In Black's Law Dictionary, the term "willful" is defined as: a

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[19] In Crim. Case No. 0-085, Dimson sent to the BIR the following letters: Dimson's Letter dated March 22, 2005, BIR Record, pp. 192-209; Dimson's Letter dated April 2, 2005, BIR Record, pp. 211 to 231; Dimson's Urgent Appeal dated May 19, 2005, BIR Record, pp. 243-252; Dimson's Letter dated May 31, 2005, BIR Record, pp. 253-264; Dimson's Letter dated February 9, 2006, BIR Record, pp. 303-341; while in Crim. Case No. 0-071, Dimson sent to the BIR the following letters: Dimson's Protest letter dated July 16, 2004, BIR Record, p. 93; Dimson's follow-up Letter dated July 26, 2004, BIR Record, pp. 94-95; Dimson's Letter dated January 17, 2005, BIR Record, pp. 103-104; Dimson's Urgent Appeal dated November 26, 2004, BIR Record, pp. 105-106; Dimson's Letter dated April 5, 2005, BIR Record, pp. 107-123; Dimson's Letter dated September 9, 2005, BIR Record, pp. 135-171; Dimson's Letter dated August 17, 2005, BIR Record, pp. 177-178; Dimson's Letter dated September 6, 2005, BIR Record, pp. 185-186; Dimson's Letter dated January 16, 2007 with Attachments, BIR Record, pp. 230-257; Dimson's Letter dated May 29, 2007, BIR Record, pp. 260-287.

[20] Decision dated July 2, 2014, p. 47, Annex "A" to the Petition for Review, En Banc Rollo, p. 47.

[21] SEC. 228. Protesting of Assessment. — . . .

xxx xxx xxx

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.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise the decision shall become final, executory and demandable.

> "An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose to either to disobey or to disregard the law. . . .
>
> A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative.
>
> xxx xxx xxx
>
> Act is 'willful' within meaning of section (sic) of Internal Revenue Code imposing penalty for willful failure to pay federal income and social security taxes withheld from employees if it is voluntary, conscious and intentional; **no bad motive or intent to defraud the United States need be shown, and a 'reasonable cause' or 'justifiable excuse' element has no part in definition.** Harrington v. U.S., C.A.R.I., 504 F.2d 1306, 1315."[22]

Moreover, in tax crimes statutes, "willful" is defined as voluntary or intentional violation of a known legal duty.[23]

Accused-appellant's willfulness or bad faith in not paying or refusing to pay the computed tax deficiencies can be inferred from his testimony in the hearing held on June 13, 2012, which is herein quoted below:

"Q Mr. Witness, you said that you were kicked out from the joint venture agreement, how come that you were able to reflect an income in your Income Tax return from these projects you entered into for the taxable year 1999, taxable year 2000?

A For a background, every year the DPWH renews the accreditation of contractors, so contractors are required to submit certain documents including their Income Tax

[22] 6th Edition, St. Paul Minn. West Publishing Co., 1990, p. 1599, cited in People of the Philippines vs. Edmundo T. Ongsiako, Jr., CTA Crim. Case No. 0-196, February 26, 2014.
[23] Mertens (Law of Federal Income Taxation), Vol. 13, 1988 Ed., Chapter 47.04, p. 28.

return to find out that all joint ventures' members have declared their shares for the joint ventures' shares and income.

Q Mr. Witness, are you aware that if you report a particular income in the Income Tax Return, it means that you earned that income so you are liable for a corresponding taxes [sic] amicable [sic] to that income?

A When we submitted originally our income tax return to the DPWH, they found out that we did not declare our portion of income on the projects completed when we were members of the joint venture, we told them that we were kicked out, so the DPWH people said that if we cannot submit to them that document, even if it shows only statistical income, it would place them into bad light because if the joint venture member did not declare his income when he was a member of the joint venture project, they might be suspected that there is a connivance between the DPWH and the contractor involved in not reporting of their shares of income. So, they suggested that to be accredited and to be truth [sic], more manifested that we should submit to the BIR even a statistical report even if the income was not received by the contractor.

Q Why in the first place did you reflect the same in the Income Tax Return when in fact you were alleged that you were not able to generate income for the said project, what is your purpose for reflecting such income in your ITR for taxable year 1999 and taxable year 2000?

A Initially, we did not reflect it in our ITR submitted to the BIR, but then the DPWH forced us to indicate it even if it's statistical, otherwise they would be suspected of being in connivancing [sic] in Tax Evasion Case for not reporting an income so we were forced to put the statistical Income Tax Return.

xxx xxx xxx

PROS. FLORDELIZA

Q How about, Mr. Witness, I presume you have been long contracting business with the government, is that correct?

A Yes, sir.

Q May I know how many years have you been contracting with the government for projects?

A since 1956, sir.

Q More or less that would be how many years from then on until the projects with the Concrete Aggregates Corporation?

A For 40 years, sir.

Q **So, in your 40 years of contracting projects with the government, you want to impress upon this Honorable Court that you prepared and declared as income when in truth and in fact you did not, is that correct?**

A **It was supposed to be a statistical income statement even if we did not receive it just to show to the Court that we complied that it is statistical income.**

Q But, Mr. Witness, is there such thing as statistical income tax return before the Bureau of Internal Revenue?

A I do not know, sir but that was the suggestion of the member of the member of DPWH, just to show them that we were not hiding an income, just to report the statistical share of ours even if we did not receive the same, that is the main reason.

Q **So you mean to say in short, Mr. Witness, there is no such thing as statistical income tax return, is that correct?**

A correct, sir.

x x x xxx xxx

JUSTICE MANALASTAS

Q Mr. Dimson, considering that you have been contracting business with the government for so many years, you must have a big construction company to be able to go on a joint venture with these companies such as Daewoo and Concrete Aggregates, would you say that your construction company is a big one?

A The reason why we entered into a joint venture is to increase our capability because contractors are limited, we can only have projects double of the amount what you have accomplished before.

Q How many employees do you have in your construction company?

A Over 100, [y]our Honors.

Q So I supposed you also hired an accountant?

A Yes, [y]our Honors.

Q Would it be safe to say that your accountant is the one who prepared the income tax return for you for submission to the BIR?

A Yes, [y]our Honors, following the suggestion of the DPWH.

Q Did she or he not advise you that there is no such thing as statistical income, and that all income reported in your ITR would be considered income and you have to pay taxes for it?

A When I told the accountant that this was the suggestion of the bids committee, so they will not be suspected of being tax evader, it should be the statistical financial statement, it should be the statistical something like that, [y]our Honors.

Q Did your accountant agree to the reporting of your statistical income?

A It was suggested by the DPWH.

xxx xxx xxx.

Q You did not think that you will be made to pay taxes on the income that you reported?

A Because the fact that we received no income, we were sure that no taxes will be . . . (interrupted)

Q You received no income according to you but you reported income in your Income Tax Return?

A Yes, our intention is to show the BIR . . (interrupted)

Q **How would the BIR know that you received no income when you reported in your income statement that you actually received income?**

A Before the case was filed before the Honorable CTA, we have written the BIR a letter, detailing or explaining in details why we reported this income just the fact that we submitted certificates for our joint venture managers that we were disassociated; that these joint venture managers paid all the [t]axes in totality of all the projects.

Q Are you saying before this Court that you reported income and later on when the BIR was trying to collect taxes from you, you wrote and said, you actually did not receive any income, is that how it happened?

A Yes, we explained to them that we were forced by the DPWH just to get an accreditation plus the fact that we were kicked out and we have a certificate that the projects were completed without any participation of Dimson.

Q Considering that you have 100 employees in your company and you were being assisted by an accountant, you reported statistical income when you didn't receive any income according to you?

A Because it was the suggestion of the DPWH, we thought that there was nothing wrong with that.

xxx xxx xxx.

Q You are saying that you did not receive any income but you reported income in your income tax return?

A Yes.

Q **What should the BIR believe now? That actually you received income or you did not receive income?**

A We have documents to show that the other joint venture members completed the projects without our participation.

Q But you reported your income in your ITR?

A **That was our honest mistake, [y]our Honors.**

JUSTICE ENRIQUEZ

I have more question to you Mr. Dimson, being an experienced businessman who are 40 years involved in millions of pesos and managing hundreds of employees, do you know that the filing of statistical income statement even upon advise by the DPWH is not allowed by law, being an experienced businessman?

MR. DIMSON

I did not.

xxx xxx xxx.

JUSTICE ENRIQUEZ

From your experience for 40 years in business you do not know that? That is basic.[24]

Accused-appellant's assertion of honest mistake cannot be countenanced by this Court.

Being a Civil Engineer by profession and an experienced businessman/contractor for forty (40) years, it is downright incredible that accused appellant was not aware that the corporation could be held liable for the taxes due on whatever income that was reported in the ITR of Dimson (Manila), Inc. After all, the filing of the said return and the

[24] TSN dated June 13, 2012, pp. 13-67, Division Docket (Vol. III), pp. 1273-1296.

obligation to pay corporate taxes are significant incidents of any business operation. Thus, the possibility of not knowing the same is nil. It is also basic that ignorance of the law excuses no one from compliance therewith.[25]

Moreover, as correctly pointed out by the Court in Division, accused-appellant's defense of "honest mistake" deserves scant consideration, to wit:

> "The defense of 'honest mistake' deserves scant consideration for a number of reasons. *First,* accused is estopped from denying an act that he admits having committed, regardless of his explanation that there was no criminal intent behind its commission. Through estoppel, an admission or representation is rendered *conclusive* upon the person making it and cannot be denied or disproved as against the person relying thereon. The principle of estoppel, enshrined in Article 1431 of our Civil Code, can be made to apply to a criminal case for tax evasion. Thus, Section 2 (a) Rule 131 of the Rules of Court provides:
>
>> 'Sec. 2. Conclusive presumptions. — The following are instances of conclusive presumptions:
>>
>> (a) Whenever a party has by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot in any litigation arising out of such declaration, act or omission be permitted to falsify it.' *(Underscoring supplied)*
>
> *Second,* accused cannot be permitted to invoke a patently illegal act — that of inducing the DPWH to renew his corporation's accreditation through misrepresentation to give his corporation an unwarranted advantage — to exculpate him from criminal liability.
>
> In the landmark case of *Ungab vs. Cusi, et al,* the Supreme Court ruled that the penetration of the crime of violation of Section 255 of the NIRC is grounded upon knowledge of the taxpayer that he has made an *fraudulent/inaccurate return* with the intention to evade and defeat a part or all of the tax. Thus:

[25] Article 3, New Civil Code.

> 'The contention is made, and is here rejected, that an assessment of the deficiency tax due is necessary before the taxpayer can be prosecuted criminal for the charges preferred. The crime is complete when the violator has, as in this case, knowingly and willfully filed fraudulent returns with intent to evade and defeat a part or all of the tax.
>
> An assessment of a deficiency is not necessary to a criminal prosecution for willful attempt to defeat and evade the income tax. **A crime is complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat the tax. The penetration of the crime is grounded upon knowledge on the part of the taxpayer that he has made an inaccurate return, and the government's failure to discover the error and promptly to assess has no connections with the commission of the crime.** (Emphasis supplied)
>
> The willfulness of the act of the accused was manifested through its failure to make the necessary amendments or corrections in the ITRs, if they truly had no intention to defraud the government. The prosecution was able to prove that the accused was properly notified by the BIR regarding the assessment notices, but accused did not submit evidence to refute the assessments other than its argument that it indicated the income 'for purposes of complying with the DPWH requirement.' If accused had no intention of violating our tax laws, why did accused file false ITR's, ignore the notices of the BIR requesting them to submit their books of accounts and other corporate records for investigation by the revenue officer, then fail to pay the taxes due upon demand by the BIR?"[26]

Furthermore, this Court cannot turn a blind eye on accused-appellant's act of permitting untruthful statements to be embodied in his Income Tax Returns. If the Court will allow such act or practice, *We* would in effect, sanction wrong doing and falsity.

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[26] Decision dated July 2, 2014, pp. 24-25, Annex "A" to the Petition for Review, En Banc Rollo, pp. 50-52.

It is settled that much credence is imbued in the Annual Income Tax Return.[27] The figures appearing therein can be taken at face value since the said document was executed by the taxpayer under the penalties of perjury, pursuant to Section 267 of the 1997 NIRC, as amended, which reads:

> SEC. 267. Declaration under Penalties of Perjury. — Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

By such reason, the BIR cannot be blamed if it computed the corporation's tax deficiencies based on the declarations made therein.

In addition, *We a*gree with the Court in Division that there is nothing in the following evidence adduced by accused-appellant that can overturn his declaration of income in his ITR:

1. Joint Affidavit of Contractor Joint Venturers Concrete Aggregates Corporation and Manila Amman Trading Corporation dated June 14, 1994, in which they state that they jointly consent to the relief of equipment and financial responsibility of Dimson (Manila), Inc. in the Quirino Highway contract with DPWH;

2. Certification issued by the General Manager of Concrete Aggregates Corporation, Emmanuel A. Rapadas, on March 7, 2007, in which he certifies that the construction of Quirino Highway Project was undertaken solely by the Authorized Managing Office (AMO) Concrete Aggregates Corporation and Manila Amman Trading without any participation of Dimson (Manila), Inc., and that all project revenues were received and all taxes were paid by Concrete Aggregates Corporation and Manila Amman Trading; and,

3. Certification issued by the Authorized Managing Partner Hilmarc's Construction Corporation, Efren M. Canlas, on January 30, 2007, in which he certifies that the construction of Luneta Waterfront Development, Rizal Park, Manila, was solely undertaken by the

[27] Resolution, Orix Auto Leasing Philippines Corporation vs. Commissioner of Internal Revenue,CTA EB Case No. 1016, May 2, 2014.

> Authorized Managing Office (AMO) Hilmarc's Construction Corporation without the participation of Dimson (Manila), Inc., and that all taxes due were received and paid under the name of Joint Venture Hilmarc's Construction Corporation Dimson (Manila), Inc. Joint Venture.

As pointed out by the Third Division of this Court, the foregoing Affidavit and Certifications were merely executed at the time that these cases were already on trial. It further bears noting that, other than the aforementioned Certifications, no other concrete evidence was presented to prove that the taxes due from the joint venture projects were paid and shouldered by the joint venture partners of the accused-appellant.

For all the foregoing, this Court is convinced that the plaintiff-appellee has sufficiently established the guilt of accused-appellant beyond reasonable doubt.

We, therefore, agree with the Court in Division when it said in the Assailed Decision that the accused-appellant should be held jointly and severally liable with Dimson (Manila), Inc., to wit:

> "As regards the penalties, accused was charged for violation of Section 255 of the NIRC. The imposition of a fine of Php10,000.00 for each crime is proper. Also, the imposition of the penalty of imprisonment of one (1) year for both cases is also proper under the circumstances. This is without prejudice to Section 280 of the NIRC, which provides for the imposition of subsidiary penalty in case the accused has no property to pay such fine.
>
> Furthermore, Dimson is ordered to pay a fine of Php100,000.00 for both cases pursuant to Section 256 of the NIRC.
>
> The civil liability of the accused in this case is deemed instituted herewith pursuant to R.A. No. 1125, as amended by Section 7 (b) 1 of R.A. No. 9282, which provides that '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, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.'

Section 253 (a) of the NIRC provides that '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.'

A corporation is an artificial entity created by operation of law. . . . It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected.

Unfortunately for the accused, this case falls under one of the instances wherein the separate juridical entity of Dimson may be disregarded and the corporate veil may be pierced.

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is being used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

In the case of *Aratea v. Suico,* the Supreme Court said that '[the] legal fiction may be disregarded if it is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues. Furthermore, although piercing the veil of corporate fiction is frowned upon, it 'can only be done if it has been clearly established that the separate and distinct personality of the corporation is used to justify a wrong, protect fraud, or perpetrate a deception.'

In conjunction with Sec. 31 of the Corporation Code of the Philippines, this Court finds that, as borne out by the facts of this case, the accused has assented to patently unlawful acts of the corporation in order to gain

> unwarranted advantage with the DPWH, and has acted with gross negligence in directing the affairs of the corporation by failing, despite numerous opportunities and the reasonable passage of time, to correct or amend the tax returns subject of these cases to the detriment of the corporation. As a consequence therefore, the accused is held jointly and severally liable with Dimson for its deficiency taxes for taxable year 1999 and 2000."[28]

It bears stressing that, "taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. We cannot tolerate taxpayers hampering expedient collection of taxes by their failure to act within a reasonable period. No government could exist if all litigants were permitted to delay the collection of its taxes."[29]

Finding no reversible error, the Court *En Banc* affirms the Assailed Decision dated July 2, 2014 and the Assailed Resolution dated November 12, 2014, both rendered by the CTA Third Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

[28] Assailed Decision dated July 2, 2014, pp, 26-28, Annex "A" to the Petition for Review, En Banc Rollo pp. 52-54.
[29] Cecilia Teodoro Dayrit, et al. vs. The Honorable Fernando A. Cruz, etc., et al., G.R. No. L-39910, September 26, 1988.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

-versus-

BIENVENIDO S. DIMSON,
Accused-Appellant.

CTA EB CRIM NO. 033
(CTA Crim. Case Nos. O-071 & O-085)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 2 1 2015

x -- x

SEPARATE OPINION

DEL ROSARIO, P.J.:

I concur in the result, but on different factual and legal premises upon which appellant's conviction is based.

A careful perusal of the Amended Information filed in CTA Crim. Case No. O-071 and the Information filed in CTA Crim. Case No. O-085 shows that accused Dimson is being criminally charged as a responsible officer of Dimson (Manila), Inc. for his supposed willful and unlawful failure, refusal and neglect **to pay deficiency taxes** in **2004** and **2005**, which constitutes the offense of Violation of Section 255, in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended. The *ponencia* focused on non-payment of income tax, pursuant to **Section 23(e), in relation to Section 52** of the NIRC of 1997, as amended.

With due respect, the Informations do not involve non-payment of taxes under Section 23(e), in relation to Section 52 of the NIRC of 1997, as amended but non-payment of deficiency taxes arising from final, executory and demandable assessments pursuant to Section 228 of the NIRC of 1997, as amended.

The elements of Violation of Section 255 of the NIRC of 1997, as amended, for failure to pay deficiency taxes, are, as follows:

1) The corporate taxpayer is required to pay deficiency taxes at the time required by law or regulations;
2) The corporate taxpayer failed to pay such deficiency taxes;
3) The failure to pay such deficiency taxes was willful; and,
4) The accused is an officer of the corporation responsible for non-payment of the said deficiency taxes.

From the evidence on record, the above requisites have been proven by the prosecution beyond reasonable doubt.

First Element - Requirement to pay deficiency tax

As regards the first element, the prosecution has established that Dimson (Manila), Inc. is liable for deficiency taxes as the assessment for taxable years 1999 and 2000 had become final, executory and demandable for its failure to appeal to this Court the denial of its protest on Assessment No. 32-1999 and to protest Assessment No. 32-2000 with the BIR.

CTA CRIM CASE No. O-085

Records show that on December 11, 2003, the Bureau of Internal Revenue (BIR) issued a Preliminary Assessment Notice (PAN)[1] for deficiency taxes for taxable year 1999, which was received by Dimson (Manila), Inc. on the last week of December 2003, as stated in its reply letter to the PAN dated January 19, 2004.[2]

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[1] Exhibit "U", BIR Records O-085, p. 155.
[2] Exhibit "7", Division Docket, p. 1395.

On December 29, 2003, BIR issued Demand Letters[3] with Assessment Notice No. 32-99 for deficiency Income Tax, Value-Added Tax (VAT) and Expanded Withholding Tax (EWT).[4] The said Notice of Assessment was described[5] and admitted[6] as Final Assessment Notice. On July 19, 2004, Dimson (Manila), Inc. filed a protest[7] to the Notice of Assessment. In its protest letter, Dimson (Manila) Inc. admitted that it received the Notice of Assessment on July 14, 2004.

On March 10, 2005, BIR issued a Final Notice Before Seizure[8] which Dimson (Manila), Inc. admitted receiving in a Letter[9] dated March 22, 2005.

In *Oceanic Wireless, Inc. v. Commissioner of Internal Revenue,*[10] the Supreme Court ruled that a demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment.

In this case, the letter of demand dated March 10, 2005, unquestionably constitutes a denial by the BIR of Dimson (Manila), Inc.'s protest on the said assessment when it reiterated the tax deficiency assessments due from petitioner and requested its payment, to wit:

> "In this connection, we are giving you this LAST OPPORTUNITY to settle the adverted assessment within ten (10) days after receipt hereof. Should you again fail, and refuse to pay, this office will be constrained to enforce its collection by summary remedies of **WARRANT OF LEVY ON REAL PROPERTY, DISTRAINT OF PERSONAL PROPERTY OR WARRANT OF GRARNISHMENT**, and/or simultaneous court action."

Instead of appealing to this Court the denial of its protest, on April 5, 2005, Dimson (Manila), Inc. filed a request for the cancellation of the Final

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[3] Exhibits "W", "Y" and "AA", BIR Records O-085, p. 157, 160, and 165.
[4] Exhibits "X", "Z", and "BB", BIR Records O-085, p. 158, 161, and 164.
[5] Plaintiff's Formal Offer of Evidence, Division Docket, pp. 986-987.
[6] Resolution dated Feb. 14, 2012, Division Docket, pp. 1066-1069.
[7] Exhibit "9", Division Docket, p. 1403.
[8] Exhibit "II", BIR Records O-085, p. 206.
[9] BIR Records O-085, p. 209.
[10] G.R. No. 148380, December 9, 2005.

Notice Before Seizure with the BIR reiterating its previous claim that the Joint Venture Managers had already paid Dimson (Manila), Inc.'s taxes.[11]

For failure of Dimson (Manila), Inc. to appeal the denial of its protest to the CTA, the assessment for deficiency taxes had become final, executory and demandable, pursuant to Section 228 of the NIRC of 1997, as amended. The deficiency taxes are, as follows:

Deficiency Income Tax	₱52,278,862.04
Deficiency VAT	14,671,893.19
Deficiency EWT	1,165,291.66
Total	₱68,116,046.89

CTA CRIM CASE No. O-071

Records show that on December 9, 2003, the BIR issued a PAN[12] for deficiency taxes for taxable year 2000.

On January 22, 2004, the BIR issued Demand Letters[13] with Assessment Notice No. 32-2000 for deficiency Income Tax and EWT[14] which was sent through registered mail under Registry Receipt No. 803356[15] and was received by Cora Oraullo on January 26, 2004.[16]

Pursuant to Section 228 of the NIRC of 1997, as amended, Dimson (Manila), Inc. has thirty (30) days from receipt of the FAN or until February 25, 2004 within which to appeal to the CTA. For its failure to appeal to the CTA, the assessment had become final, executory and demandable. The deficiency taxes are, as follows:

Deficiency Income Tax	₱3,749,829.17
Deficiency EWT	6,281,354.85
Total	₱10,031,184.02

[11] Exhibit "13", Division Docket, p. 1417.
[12] Exhibit "T", BIR Records O-071, p. 81.
[13] Exhibits "Y" and "AA", BIR Records O-071, p. 84 and 86.
[14] Exhibits "Z", and "BB", BIR Records O-071, p. 85 and 87.
[15] Exhibit "GG", Division Docket, p. 1044.
[16] Exhibit "HH", BIR Records O-071, p. 129.

Second and Third Elements – Willful failure to pay deficiency taxes

As regards the second and third elements, the testimonial and documentary evidence adduced by the prosecution has proven beyond reasonable doubt that Dimson (Manila), Inc. willfully failed to pay the deficiency taxes for taxable years 1999 and 2000, even after Assessment Notice Nos. 32-1999 and 32-2000 had become final, executory and demandable, as afore-discussed.

As the assessments had become final, executory and demandable, Dimson (Manila). Inc. is mandated to pay the deficiency taxes. Having received the assessments and failing to protest and appeal the denial of the same, the corporation is fully aware that it is mandated by law to pay its deficiency taxes. But despite such knowledge, the corporation still failed to comply with its obligations and insisted that it is not liable for the said deficiency taxes. Instead of paying its deficiency taxes, the corporation filed seven (7) more letters[17] in CTA Crim. Case No. O-085 and six (6) more letters[18] in CTA Crim. Case No. O-071 to the BIR contesting the said assessment and collection.

Furthermore, from the evidence adduced by the prosecution, several notices were sent by the BIR to Dimson (Manila), Inc. requesting that the deficiency taxes be paid, to wit:

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[17] Protest on Final Notice to Dimson (Manila), Inc. Before Seizure, dated March 22, 2005, BIR Records O-085, p. 209; Request for Cancellation of Final Notice to Dimson (Manila), Inc. Before Seizure, dated April 2, 2005, BIR Records O-085, pp. 228-230; Urgent Appeal on the Warrant of Destraint and/or Levy, dated May 19, 2005, BIR records O-085, pp. 250-252; Request for an Appointment to Discuss Warrant of Distraint and/or Levy No. 032-02305, dated May 31, 2005, BIR Records, pp.263-264; Request for Reinvestigation, dated February 13, 2006; Urgent Special Appeal, dated December 12, 2006; and, Urgent Appeal for Justice, dated March 19, 2007.

[18] A Very Urgent Appeal, dated November 26, 2004, BIR Records, p. 106; Request for the Cancellation and/or Suspension of your Final Notice, dated April 5, 2005, BIR Records, p. 123; Request for Reconsideration dated August 17, 2005, BIR Records, p. 178; Request for Cancellation of Warrant of Distraint and/or Levy dated September 6, 2005, BIR Records, p. 186; Personal Letter addressed to CIR Buñag dated January 16, 2007, BIR Records, p. 257; and A Humble but Urgent Petition for the Dismissal of Two BIR Cases filed with the Manila Prosecutor against Dimson (Manila)., Inc., dated May 29, 2007, BIR Records, p. 287.

CTA CRIM CASE No. O-071

1) 1st Notice,[19] dated June 23, 2004;
2) 2nd Notice,[20] dated June 30, 2004;
3) Final Notice Before Seizure,[21] dated July 07, 2004;
4) 1st Notice,[22] dated August 4, 2005;
5) Warrant of Distraint and/or Levy,[23] dated August 15, 2005; and
6) Final Decision,[24] dated January 20, 2006 in Assessment Notice No. 32-2000.

CTA CRIM CASE No. O-085

1) Warrant of Distraint and/or Levy,[25] dated May 9, 2005; and,
2) Final Decision,[26] dated October 18, 2005 in Assessment Notice No. 32-1999.

Records show that the earliest notice to collect the deficiency taxes under Assessment Notice No. 32-2000 was sent on June 23, 2004 while for Assessment Notice No. 32-1999 was sent on May 9, 2005. If Dimson (Manila), Inc. had no intent to evade payment of its deficiency taxes for taxable years 1999 and 2000, it could have complied with the BIR notices as early as June 2004 for Assessment Notice No. 32-2000 and May 2005 for Assessment Notice No. 32-1999. Dimson (Manila), Inc., however, still failed to pay its deficiency taxes despite repeated demand. Clearly, from the evidence adduced by the prosecution, the corporation deliberately failed to pay its deficiency taxes for taxable years 1999 and 2000.

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[19] Exhibit "CC", BIR Records O-071, p. 88.
[20] Exhibit "DD", BIR Records O-071, p. 89.
[21] Exhibit "EE", BIR Records O-071, p. 90.
[22] Exhibit "LL", BIR Records O-071, p. 175.
[23] Exhibit "NN", BIR Records O-071, p. 187.
[24] Exhibit "PP", BIR R ecords O-071, pp. 194-195.
[25] Exhibit "JJ", BIR Records O-085, p. 242.
[26] Exhibit "MM", BIR Records O-085, pp. 274-275.

Fourth Element - Accused is an officer responsible for the non-payment of deficiency taxes

As regards the fourth element, the prosecution has proven beyond reasonable doubt that accused Bienvenido S. Dimson is an officer of Dimson (Manila), Inc. who is responsible for the non-payment of the corporation's deficiency taxes.

The evidence adduced by the prosecution shows that the accused signed as the President and General Manager of Dimson (Manila), Inc. in the tax returns for taxable years 1999 and 2000 and in the numerous correspondences with the BIR regarding the assessment for deficiency taxes of Dimson (Manila), Inc.[27] Clearly, accused being the President and General Manager of Dimson (Manila), Inc. had knowledge of the tax deficiency being demanded by the BIR and is therefore, responsible for non-payment thereof.

Regarding the civil aspect of the case, I concur with the *ponencia* insofar as it pierced the corporate veil and held accused jointly and severally liable with Dimson (Manila), Inc. for the corporation's deficiency taxes for taxable years 1999 and 2000. As aptly ruled by the Court in Division:

> "The willfulness of the act of the accused was manifested through its failure to make the necessary amendments or corrections in the ITRs, if they truly had no intention to defraud the government. The prosecution was able to prove that the accused was properly notified by the BIR regarding the assessment notices, but accused did not submit evidence to refute the assessments other than its argument that it indicated the income

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[27] In **CRIM Case No. O-085**, Dimson sent to the BIR the following letters: Dimson's Letter dated March 22, 2005, BIR Records, pp.192-209; Dimson's letter dated April 2, 2005, BIR Records, pp. 211-231; Dimson's Urgent Appeal dated May 19, 2005, BIR Records, pp.243-252; Dimson's Letter dated May 31, 2005, BIR Records, pp. 253-264; Dimson's Letter dated February 9, 2006, BIR Records, pp. 303-341; while in **CRIM Case No. O-071**, Dimson sent to the BIR the following letters: Dimson's Protest letter dated July 16, 2004, BIR Records, p. 93; Dimson's follow up Letter dated July 26, 2004, BIR Records, pp. 94-95; Dimson's Letter dated January 17, 2005, BIR Records, pp.103-104; Dimson's Urgent Appeal dated November 26, 2004, BIR Records, pp. 105-106; Dimson's Letter dated April 5, 2005, BIR Records, pp. 107-123; Dimson's Letter dated September 9, 2005, BIR Records, pp. 135-171; Dimson's Letter dated August 17, 2005, BIR Records, pp. 177-178; Dimson's Letter dated September 6, 2005, BIR Records, pp. 185-186; Dimson's Letter dated January 16, 2007 with Attachments, BIR Records, pp. 230-257; and Dimson's Letter dated May 29, 2007, BIR Records, pp. 260-287.

"for purposes of complying with the DPWH requirement." **If accused had no intention of violating our laws, why did accused file false ITRs, ignore the notices of the BIR requesting them to submit their books of accounts and other corporate records for investigation by the revenue officer, then fail to pay the taxes due upon demand by the BIR?**

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In conjunction with Sec. 31 of the Corporation Code of the Philippines, this Court finds that, as borne out by the facts of this case, the accused has assented to patently unlawful acts of the corporation in order to gain unwarranted advantage with the DPWH, and has acted with gross negligence in directing the affairs of the corporation by failing, despite numerous opportunities and the reasonable passage of time, to correct or amend the tax returns subject of these cases to the detriment of the corporation. As a consequence therefore, the accused is held jointly and severally liable with Dimson for its deficiency taxes for taxable year 1999 and 2000."

All told, I **VOTE** to **DENY** the Petition for Review and **UPHOLD** the conviction of accused Bienvenido S. Dimson but solely on the afore-stated reasons.

ROMAN G. DEL ROSARIO
Presiding Justice