REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

PEOPLE OF THE PHILIPPINES, *Plaintiff*	**CTA CRIM CASE NO. O-895**
-versus-	Members: **RINGPIS-LIBAN,** *Chairperson* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
ENRICO CANDELARIA TUAZON, *Accused.*	Promulgated: JUL 3 1 2023 8:50 a.m.

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RESOLUTION

For resolution is accused's **Demurrer to Evidence** ("**Demurrer**"), filed on 17 May 2023, with plaintiff's comment or opposition, submitted on 13 June 2023, praying that the criminal cases against accused be dismissed for insufficiency of evidence to warrant his conviction.

As per the Amended Information,[1] filed with the Court on 9 November 2021, accused Tuazon was charged with the crime of violation of ***Section 255 of the 1997 National Internal Revenue Code*** (**"*Tax Code*"), *as amended***, to wit:

> "That on or about February 13, 2017, in Quezon City and within the jurisdiction of this Honorable Court, accused ENRICO CANDELARIA TUAZON, owner and proprietor of NWOOD71 MARKETING, who is engage in construction business, with Tax Identification Number 900-480-555-000, and who is required by law and by rules and regulations to file correct and accurate annual income tax return and pay the corresponding income tax, did then and there, knowingly, willfully and unlawfully fail to supply correct and accurate information in his income tax returns resulting to his failure to pay deficiency income tax in the amount of One Million Sixty-Five Thousand Nine Hundred Fourteen Pesos and 48/100 (Php1,065,914.48), exclusive of interest and surcharge, for taxable year 2011, despite receipt of the Preliminary Assessment Notice, with Details of Discrepancies, on September 15, 2016 and the corresponding Formal Letter of Demand, with Details of Discrepancies and Assessment Notice, issued on September 27, 2016, including prior and post-notices and demands to pay, the last of which being the Final Notice Before Seizure dated February

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[1] Docket, pp. 63-65.

> 13, 2017 and his failure to file a protest on the said assessment within the prescribed period, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount exclusive of interest and surcharge."

On 18 December 2021, a Warrant of Arrest[2] was issued by the Court. However, the same was returned by the Criminal Investigation and Detection Group – Detective and Special Operations Unit (CIDG-DSOU) due to the failure to locate accused at his address.[3] Thereafter, an Alias Warrant of Arrest[4] was issued by the Court on 7 March 2022.

On 31 May 2022, accused Tuazon appeared and submitted his person to the jurisdiction of the Court. He was granted provisional liberty after posting the reduced bond of Php30,000.[5]

Plaintiff submitted its Pre-Trial Brief[6] on 22 June 2022, while accused filed his on 29 September 2022.[7]

Accused was then arraigned and entered a plea of "Not Guilty" to the criminal charges against him on 12 October 2022.[8]

Thereafter, the parties filed their Joint Stipulation of Facts and Issues on 11 November 2022.[9] A Pre-Trial Order was then issued by the Court on 31 January 2023.[10]

During trial, plaintiff offered the testimonies of Revenue Officers (RO) Roxanne L. Merrera[11] and Vanessa R. Valencia,[12] who both testified through their respective judicial affidavits filed on 1 September and 2 September 2022, respectively. RO Valencia testified on 1 February 2023[13] to being tasked to execute and enforce the summary remedies as well as the collection of accused's delinquent account. She further testified to the issuance and service of the Preliminary Collection Letter (PCL), dated 23 January 2016,[14] the Final Notice Before Seizure (FNBS), dated 13 February 2017,[15] the Warrant of Distraint and/or Levy (WDL), dated 23 October 2017,[16] and the Warrants of

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[2] *Id.*, pp. 69-70.
[3] See Return of Warrant of Arrest dated 16 February 2022, *id.*, pp. 71-72; Certification from Barangay Fairview, Quezon City dated 8 February 2022, *id.*, p. 77.
[4] *Id.*, pp. 84-85.
[5] See Resolution dated 31 May 2022, *id.*, pp. 95-96.
[6] *Id.*, pp. 113-119.
[7] *Id.*, pp. 181-183.
[8] See Minutes of Hearing dated 12 October 2022, *id.*, p. 197; Certificate of Arraignment, *id.*, p. 198.
[9] *Id.*, pp. 206-214.
[10] *Id.*, pp. 219-226.
[11] See Judicial Affidavit of Roxanne L. Merrera, *id.*, pp. 128-157, with annexes.
[12] See Judicial Affidavit of Vanessa R. Valencia, *id.*, pp. 161-179, with annexes.
[13] See Minutes of Hearing dated 1 February 2023, *id.*, p. 227.
[14] Exhibit "P-12", *id.*, p. 273.
[15] Exhibit "P-13", *id.*, p. 274.
[16] Exhibit "P-14", *id.*, p. 275.

Garnishment[17] issued to accused's banks. Meanwhile, on 1 March 2023,[18] RO Merrera testified to the issuance of the Letter of Authority dated 12 February 2016,[19] the issuance and service of the Preliminary Assessment Notice (PAN), with Details of Discrepancies dated 6 September 2016,[20] and the issuance and service of the Formal Letter of Demand (FLD), with Details of Discrepancies, and Assessment Notices (FAN) dated 27 September 2016.[21] The witness further testified that accused failed to file his protest within thirty (30) days from receipt of the FLD/FAN.[22]

After the presentation of the testimonies of witnesses, plaintiff proceeded to file a Formal Offer of Evidence (FOE) on 20 March 2023,[23] with the accused's Comment/Objections filed on 30 March 2023.[24] The exhibits were admitted by the Court in its Resolution dated 12 May 2023.

Instead of presenting his evidence, accused filed a Demurrer to Evidence on 17 May 2023, which was opposed by the plaintiff on 13 June 2023. The Court submitted the same for resolution on 29 June 2023.

In his Demurrer, accused raises the following arguments:

1) The FLD/FAN dated 27 September 2016 were issued beyond the three (3)-year prescriptive period;
2) Assuming arguendo that the FLD/FAN were not time-barred, the FLD is not yet final because of the statement: "*Please take note that the interest and the total amount due will have to be adjusted if paid after the date specified herein*";
3) The FAN was issued without indicating any due date, specifically leaving the space blank: "*Total amount payable on or before ____.*"

While accused's first two arguments fail, the third is enough for the Court to grant the Demurrer.

The procedures and guidelines to demurrer to evidence are provided under ***Section 23 Rule 119 of the Revised Rules of Court*** ("**RRoC**")which states:

> "**Section 23.** Demurrer to evidence. — **After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence** (1) on its own initiative after giving the prosecution the

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[17] Exhibits "P-15", "P-15-A" to "P-15-C", *id.* pp. 275-279.
[18] See Minutes of Hearing dated 1 March 2023, *id.*, p. 231.
[19] Exhibit "P-4", *id.*, p. 256.
[20] Exhibit "P-7" and "P-7-2", *id.* pp. 260-263.
[21] Exhibit "P-9", "P-9-A" to "P-9-C", *id.* pp. 265-270.
[22] See Judicial Affidavit of Roxanne L. Merrera, *id.*, p. 133.
[23] *Id.*, pp. 235-301, with annexes.
[24] *Id.*, pp. 302-310.

opportunity to be heard or (2) **upon demurrer to evidence filed by the accused with or without leave of court.**

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. **When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.**

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment."
(Emphasis supplied.)

In the case of ***Semania vs. Simbillo-Semania and People of the Philippines***,[25] citing ***Go-Yu vs. Yu***,[26] the Supreme Court explained the nature of a demurrer to evidence, thus:

"A demurrer to evidence is defined as '**an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue.**' The demurrer challenges the sufficiency of the plaintiffs evidence to sustain a verdict. In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt. Moreover, [t]he grant or denial of a demurrer to evidence is left to the sound discretion of the trial court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of such discretion. (citations omitted)"
(Emphasis supplied.)

Further, in the case of ***Mangaoang vs. Bank of the Philippine Islands***,[27] citing ***Jalandoni vs. Ombudsman***,[28] the Supreme Court discussed the basis of a court's resolution on a demurrer to evidence, to wit:

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[25] G.R. No. 221328, 23 June 2021.
[26] G.R. No. 230443, 3 April 2019.
[27] G.R. No. 260380, 19 October 2022.
[28] G.R. Nos. 211751, 217212-80, 244467-535, 245546-614, 10 May 2021.

> "When a demurrer to evidence is filed, the trial court ascertains **whether there is competent or sufficient evidence to issue a judgment.** Thus, a demurrer's resolution belongs to the court's sound discretion. In *People v. Sandiganbayan*:
>
>> Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, the trial court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court. Thus, in resolving the accused's demurrer to evidence, **the court is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or support a verdict of guilt.** The grant or denial of a demurrer to evidence is left to the sound discretion of the trial court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of discretion. 54 (Citations omitted)
>> x x x"
>
> (Emphasis supplied)

Based on the foregoing, the Court is hereby required to ascertain **whether the evidence presented by the prosecution is competent or sufficient to support a verdict of criminal guilt.**

The issuance of the FLD / FAN is not barred by prescription

For his first argument, accused contends that the FAN/FLD was issued beyond the period prescribed by the laws.

Under ***Section 203 of the Tax Code***, the BIR's right to assess deficiency taxes is generally limited to three (3) years after the last day prescribed by law for filing of the return or from the day the return was filed, whichever comes later, to wit:

> "**Section 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes **shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."
> (Emphasis supplied.)

However, ***Section 222 of the Tax Code*** provides for the exceptions on the three (3)-year prescriptive period above:

> "**Section 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a **false or fraudulent return** with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided*, That **in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.**
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.
>
> (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
>
> (e) Provided, however, That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree."
>
> (Emphasis and underscoring supplied.)

A review of the criminal information and the evidence presented reveals that accused was assessed of deficiency income for the taxable year 2011. The corresponding FLD/FAN was issued by the BIR and received by accused on 27 September 2016, which is beyond the three (3)-year period prescribed by ***Section 203 of the Tax Code.***

However, upon review of the FLD/FAN, the Court notes that the BIR invokes the exception under ***Section 222 (a) of the Tax Code*** cited above, and posits that the ten (10)-year prescriptive period is applicable in this case.

Moreover, the BIR assessed accused with 50% surcharge on top of the deficiency taxes. The FLD states that the same is imposed pursuant to ***Section 248 (B) of the Tax Code*** which states:

> "**Section 248.** Civil Penalties –
>
> x x x
>
> (B) **In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of deficiency tax,** in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That **failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration** of sales, receipts or income or for overstatement of deductions, as mentioned herein." (Emphasis supplied)

In his Demurrer, accused argues that the fact of fraud or fraudulent return must be established and cannot rest on mere *prima facie* evidence which arose from the BIR's finding of substantial underdeclaration of sales, receipts or income due to failure to report the same in an amount exceeding 30% of that declared in the return.

The Court, however, emphasizes that while the fact of fraud must generally be proven and never presumed, the proper establishment of *prima facie* evidence shifts the burden on the taxpayer to dispute the finding of underdeclaration. This was clearly held by the Supreme Court in the case of ***AFP General Insurance Corp. v. Commissioner of Internal Revenue***:[29]

> "Under the Tax Code, **failure to report sales, receipts, or income of at least 30% of the amount declared in the return constitutes prima facie evidence of a false or fraudulent return. <u>This presumption shall stand as AGIC did not present proof to dispute the finding of under-declaration.</u>** There being an undisputed case of a false or fraudulent return, an exception to the general rule, the CTA *En Banc* correctly applied the 10-year prescriptive period under Section 222 (a), instead of the three-year period under Section 203 of the Tax Code."
> (Emphasis and underscoring supplied.)

In this case, accused failed to present proof to contest the finding of underdeclaration. Moreover, since the instant Demurrer was filed without leave of Court, no further evidence may be presented by accused to support his position on the absence of fraud. As prescribed by ***Section 23, Rule 119 of the RRoC*** previously cited, accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution when the demurrer to evidence is filed without leave of court.

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[29] G.R. No. 222133, 4 November 2020.

Necessarily, accused had to present concrete evidence against said allegation of fraud. Without such evidence, the presumption stands.

The ten (10)-year prescriptive period thus applies in the case at hand. Prescription had not yet set in upon the issuance and service of the FLD/FAN on 27 September 2016.

Interest adjustment after the prescribed due date does not deny the finality of the amount assessed by the BIR if the taxpayer can ascertain how interest is computed

For his second argument, accused raises that the amount demanded per FLD/FAN is not yet final since the documents state that the interest and total amount due will be adjusted if paid after the due date.

The Court, however, disagrees and holds that invoking the case of ***Commissioner of Internal Revenue vs. Fitness by Design Inc. ("Fitness by Design Case)***[30] is misplaced.

Section 249 of the Tax Code provides for the imposition of interest on assessed taxes, to wit:

> "**Section 249.** *Interest.* —
>
> x x x
>
> (C) Delinquency Interest. — In case of failure to pay:
>
> x x x
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, **there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid**, which interest shall form part of the tax."
> (Emphasis and underscoring supplied.)

Clearly, interest shall be imposed until the assessed amount is fully paid and not merely until the due date specified in the BIR's assessment. However, in order to deem the taxpayer fully informed of the final amount due, the assessment notice should indicate how the interest was determined.

[30] G.R. No. 215957, 9 November 2016.

Below is a comparison of the excerpts from FLD/FAN issued by the BIR in the ***Fitness by Design Case***, and in the instant case.

FLD/FAN issued to Fitness by Design		**FLD/FAN issued to Accused Tuazon**	
Tax Due	x x x	Tax Due	x x x
Add: Surcharge (50%)	x x x	Add: 50% Surcharge	x x x
Interest (20%/annum) under 4-15-04	x x x	**Interest (4/16/12 to 10/31/16)**	x x x
Deficiency Income Tax	x x x	Total Amount Due.	x x x
Please note, however, that the interest and the total amount due will have to be adjusted **if prior or beyond April 15, 2004.**		Please note that the interest and the total amount due will have to be adjusted **if paid after the date specified herein.**	

In the Fitness by Design case, the BIR informed the taxpayer that interest would be adjusted regardless if paid before or after due date, without indicating how the interest was computed. The FLD/FAN merely states until when the interest was calculated but not when such interest commences to run. Thus, Fitness by Design was unable to ascertain the assessed tax liability should the payment not be made on the specified due date.

Here, accused may be able to compute the adjusted interest and total amount due since both the start and end dates of the BIR's interest calculations were indicated. The Court finds that providing a formula would suffice as the BIR cannot ascertain the taxpayer's exact date of payment.

Thus, accused was sufficiently apprised of the exact manner by which the interest or any adjustment thereto would be computed, and his right to due process was not violated.

The FLD/FAN failed to indicate the due date for payment and is thus invalid

Accused's third argument saves the day for him. He raises that the FLD/FAN was issued without indicating the due date of payment of assessed taxes. Specifically, accused highlighted that in the FAN, the space for due date was left blank.

Under ***Section 228 the National Internal Revenue Code*** ("Tax Code"), as amended, taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void.

Pursuant thereto, ***Section 3.1.4 of Revenue Regulations No. 12-99*** provides:

> "Sec. 3. Due Process Requirement in the Issuance of a Deficiency Assessment. —
>
> x x x
>
> Sec. 3.1.3. Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The **letter of demand calling for payment** of the taxpayer's deficiency tax or taxes **shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void.**"
> (Emphasis supplied.)

On the basis of the foregoing due process requirements, the Supreme Court, in the case of ***Commissioner of Internal Revenue (CIR) v. Pascor Realty and Development Corp.***,[31] pronounced that *"(a)n assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period."*

Anchored on such pronouncement, the Supreme Court opined in the ***Fitness by Design Case*** that the BIR's demand for payment was rendered void when the FAN did not indicate a due date. The Court discussed that the FAN issued to Fitness by Design states that the taxpayer is requested to pay the deficiency internal revenue tax liabilities **within the time shown in the enclosed assessment notice**. However, the attached assessment therein remained unaccomplished.

Upon perusal of the records in the case at hand, the Court was able to validate accused's claim that the FAN failed to indicate the date within which payment must be made. Indeed, the space for due date was left blank, as shown in the reproduced copy of the FAN below:

[31] G.R. No. 128315, 29 June 1999.

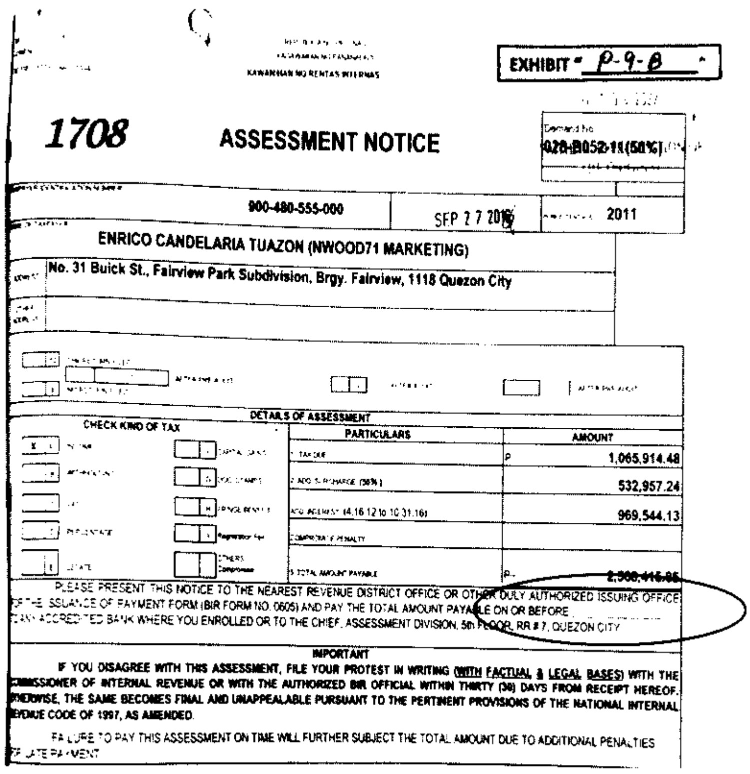


EXHIBIT "P-9-B"

1708 **ASSESSMENT NOTICE**

Demand No. 028-B052-11(50%)

900-480-555-000 SEP 27 2016 2011

ENRICO CANDELARIA TUAZON (NWOOD71 MARKETING)

No. 31 Buick St., Fairview Park Subdivision, Brgy. Fairview, 1118 Quezon City

DETAILS OF ASSESSMENT

CHECK KIND OF TAX	PARTICULARS	AMOUNT
	TAX DUE	P 1,065,914.48
	ADD SURCHARGE (50%)	532,957.24
	ADD INTEREST (4.16.12 to 10.31.16)	969,544.13
	COMPROMISE PENALTY	
	TOTAL AMOUNT PAYABLE	P

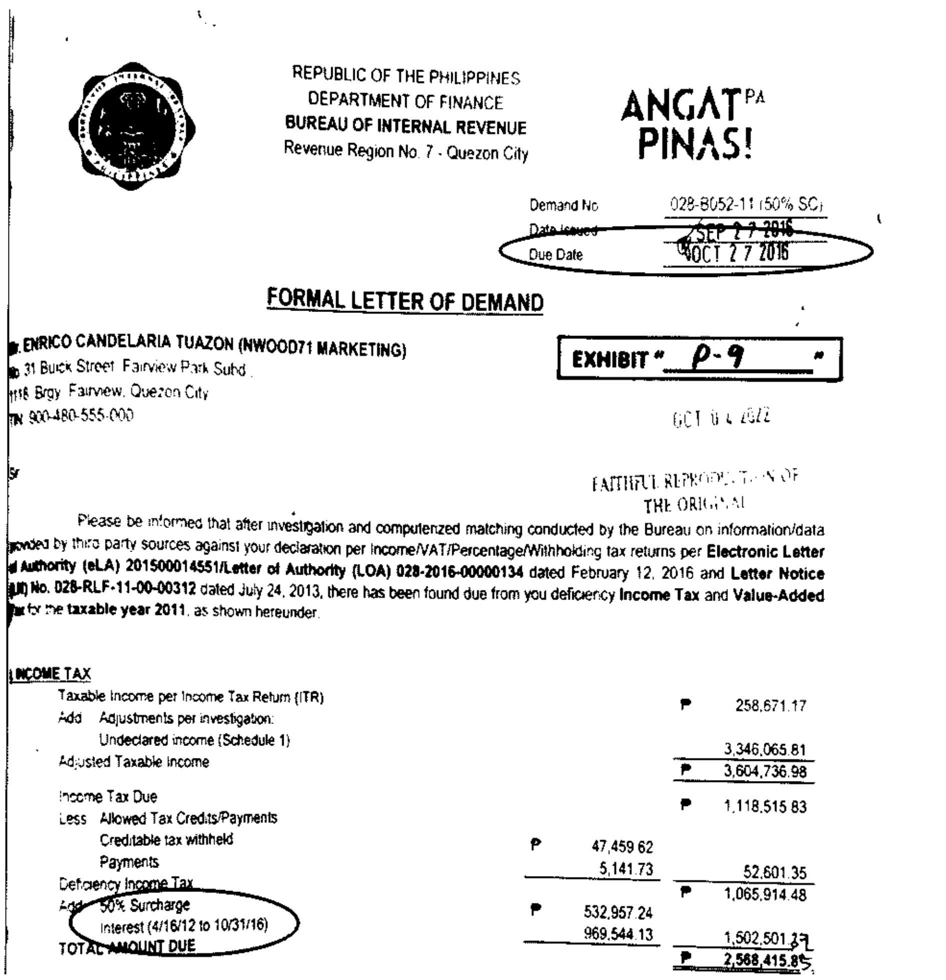
PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE ISSUANCE OF PAYMENT FORM (BIR FORM NO. 0605) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE ______ TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO THE CHIEF, ASSESSMENT DIVISION, 5th FLOOR, RR # 7, QUEZON CITY

IMPORTANT

IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING (WITH FACTUAL & LEGAL BASES) WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITH THE AUTHORIZED BIR OFFICIAL WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF. OTHERWISE, THE SAME BECOMES FINAL AND UNAPPEALABLE PURSUANT TO THE PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT

On the other hand, the FLD indicates a certain "Due Date" in the upper right hand corner as shown below:



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Revenue Region No. 7 - Quezon City

ANGAT PA PINAS!

Demand No 028-B052-11 (50% SC)
~~Date Issued~~ SEP 27 2016
Due Date OCT 27 2016

FORMAL LETTER OF DEMAND

ENRICO CANDELARIA TUAZON (NWOOD71 MARKETING)
31 Buick Street Fairview Park Subd.
1118 Brgy Fairview, Quezon City
TIN 900-480-555-000

EXHIBIT "P-9"

FAITHFUL REPRODUCTION OF THE ORIGINAL

Sir

Please be informed that after investigation and computerized matching conducted by the Bureau on information/data provided by third party sources against your declaration per Income/VAT/Percentage/Withholding tax returns per **Electronic Letter of Authority (eLA) 201500014551/Letter of Authority (LOA) 028-2016-00000134** dated February 12, 2016 and **Letter Notice (LN) No. 028-RLF-11-00-00312** dated July 24, 2013, there has been found due from you deficiency **Income Tax** and **Value-Added Tax** for the **taxable year 2011**, as shown hereunder.

INCOME TAX

Taxable Income per Income Tax Return (ITR)		₱ 258,671.17
Add Adjustments per investigation:		
Undeclared income (Schedule 1)		3,346,065.81
Adjusted Taxable Income		₱ 3,604,736.98
Income Tax Due		₱ 1,118,515.83
Less Allowed Tax Credits/Payments		
Creditable tax withheld	₱ 47,459.62	
Payments	5,141.73	52,601.35
Deficiency Income Tax		₱ 1,065,914.48
Add 50% Surcharge	₱ 532,957.24	
Interest (4/16/12 to 10/31/16)	969,544.13	1,502,501.37
TOTAL AMOUNT DUE		₱ 2,568,415.85

The Court, however, agrees with accused that such due date is couched in general terms and did not specify that it is the due date for payment. The date is also too equivocal; it could even refer to the due date when the FLD/FAN must be served to the taxpayer.

Moreover, the interest on the assessment is calculated until 31 October 2016, as shown in the reproduced FLD above. The Court finds that it is irreconcilable for the BIR to compute interest until 31 October 2016 if the due date is on 27 October 2016.

Taking the foregoing into consideration, the Court herby holds that FLD/FAN lacks the due date within which the payment of assessed taxes should be made, thus rendering it void.

An invalid assessment bears no fruit. Therefore, the PCL, FNBS, and WDL issued pursuant to the assessment are likewise ineffectual.

An invalid assessment negates the alleged willful failure to pay taxes

Accused is charged with alleged violation of ***Section 255 of the Tax Code***, which states that:

> "**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. x x x"
> (Emphasis and underscoring supplied.)

Based on the above provision, the following are the elements which need to be proven in order to sustain a conviction:

1. The **accused was required under the Tax Code to pay any tax**, make a return, keep any record, or supply 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;

2. The **accused failed to pay the required tax**, make a return or keep the required record, or supply the correct and accurate information; and
3. The **accused willfully failed to pay the tax**, make the return, keep the record, or supply the 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 or regulations.[32]

To reiterate, the Court finds that the subject FLD/FAN are void. Accordingly, the legal obligation on the part of accused to pay the subject deficiency tax assessment did not arise.

In the absence of a valid assessment for deficiency tax, accused cannot be said to have failed to pay the assessed taxes, much more to have done so willfully, as required under ***Section 255 of the Tax Code***.[33] Hence, the third element to find conviction thereof is deemed not present.

All told, the Court holds that the prosecution was not able to establish, with competent and sufficient evidence, the guilt of accused for willful failure to pay any tax that would warrant a conviction under ***Section 255 of the Tax Code***.

WHEREFORE, premises considered, the Demurrer to Evidence filed by accused is hereby **GRANTED**. The above-captioned case against the accused is hereby **DISMISSED** for insufficiency of evidence.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On official business.)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[32] People of the Philippines vs. Christopher John Junio Coronel, CTA Crim. Case Nos. O-585 & O-586, *Resolution*, 8 October 2019.

[33] People of the Philippines vs. Cross Country Oil & Petroleum Corporation, CTA Crim. Case No. O-631, *Resolution*, 13 March 2018.