REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

JIMMY BARO SADONGDONG,
Sitio Tagpisa, Brgy. Ocayan,
Bataraza, Palawan,
Accused.

CTA CRIM. CASE NOS. O-915 & O-916
For: Violation of Section 255 of the NIRC of 1997, as amended.

Members:

RINGPIS-LIBAN, *P.J*,
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:

9:15 AM

x - x

DECISION

FERRER-FLORES, J.:

THE CASE

Before the Court are two **Informations** filed on May 16, 2022, charging accused **Jimmy Baro Sadongdong (Sadongdong)** for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, for alleged willful failure to pay deficiency income tax and value-added tax (VAT) for taxable year (TY) 2015.

The accusatory portions in the respective *Informations* read as follows:

CTA Crim. Case No. O-915[1]

INFORMATION

The undersigned accuses **Jimmy Baro Sadongdong**, owner of Amy's Manpower Services and Amy's Trading and Trucking Services, for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

> That on or before March 18, 2018 in Puerto Princesa City, Palawan Philippines, and within the jurisdiction of this Honorable Court, accused Jimmy Baro Sadongdong, a registered taxpayer with Revenue Region No. 006-Manila, Revenue District No. 036-Puerto Princesa, with Tax Identification No. 216-208-392, required by law to file Income Tax returns and pay the tax due thereon, accused, did then and there willfully, unlawfully and feloniously fail and refuse to pay deficiency income tax in the amount of Php4,722,310.75 (excluding charges and penalties thereon) for taxable year 2015, despite due assessment, notice and demand, the latest of which was the Final Notice Before Seizure dated March 18, 2018, which payment is required by the pertinent provisions of the National Internal Revenue Code of 1997, as amended, thereby depriving the government of the needed revenues to sustain public service, to its damage and prejudice.
>
> CONTRARY TO LAW.
>
> Manila for Quezon City, May 23, 2021.

CTA Crim. Case No. O-916[2]

INFORMATION

The undersigned accuses **Jimmy Baro Sadongdong**, owner of Amy's Manpower Services and Amy's Trading and Trucking Services, for violation of Section 255 of the National Internal Revenue Code of 1997, as amended, committed as follows:

> That on or before March 18, 2018 in Puerto Princesa City, Palawan, Philippines, and within the jurisdiction of this Honorable Court, accused Jimmy Baro Sadongdong, a registered taxpayer with Revenue Region No. 006-Manila, Revenue District No. 036-Puerto Princesa, with Tax Identification No. 216-208-392, required by law to file value-added tax returns and pay the tax due thereon, accused, did then and there willfully, unlawfully and feloniously fail and refuse to pay deficiency value-added tax in the amount of Php1,090,975.32 (excluding charges and penalties thereon) for taxable year 2015, despite due assessment, notice and demand, the latest of which was the Final Notice Before

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[1] Docket – Vol. I (CTA Crim. Case No. O-915), pp. 5 to 7.
[2] Docket (CTA Crim. Case No. O-916), pp. 5 to 7.

> Seizure dated March 18, 2018, which payment is required by the pertinent provisions of the National Internal Revenue Code of 1997, as amended, thereby depriving the government of the needed revenues to sustain public service, to its damage and prejudice.
>
> CONTRARY TO LAW.
>
> Manila for Quezon City, May 23, 2021.

FACTUAL ANTECEDENTS

Accused Sadongdong is a registered taxpayer with the Bureau of Internal Revenue (BIR) under Revenue District Office (RDO) No. 36 – Puerto Princesa City, Palawan with Tax Identification Number (TIN) 216-208-392,[3] and registered address at FD-12 Barite St., Rio Tuba, Batarza, Palawan.[4] He is the owner of Amy's Manpower Services and Amy's Trading and Trucking Services.

On June 8, 2017, the Letter of Authority (LOA) No. LOA-036-2017-00000078/SN: eLA201100089854[5] dated May 17, 2017 authorizing Revenue Officer (RO) Gerald Mart Gatinga and Group Supervisor (GS) Ryan Gatpandan, to conduct an examination of the books of account and other accounting records of accused Sadongdong for TY 2015 was personally served upon accused. The Request for Presentation of Accounting Records was likewise served upon accused on same date.[6]

Thereafter, the First Request for Presentation of Records dated June 27, 2017[7] and Second and Final Request for Presentation of Records dated July 10, 2017[8] were served to accused Sadongdong *via* registered mail on June 28, 2017 and July 11, 2017, respectively.

On March 14, 2018, a Notice of Informal Conference (NIC) dated March 6, 2018[9] was received by a certain Marly S. Gaganao, the alleged authorized representative of accused Sadongdong.

On September 12, 2018, the BIR issued the Preliminary Assessment Notice (PAN) with Details of Discrepancies[10] assessing accused Sadongdong

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3 Par. 3, Memorandum for the Accused dated September 10, 2025, Docket – Vol. II (CTA Crim. Case No. O-915), p. 523; Par. 2 and Par. 6, Pre-Trial Brief for the Accused, Docket – Vol. I (CTA Crim. Case No. O-915), p. 342.
4 Exhibit "P-6", Docket – Vol. I (CTA Crim. Case No. O-915), p. 199.
5 Exhibit "P-1", *Id.* at 60.
6 Exhibit "P-2", *Id.* at 61.
7 Exhibit "P-3", *Id.* at 62.
8 Exhibit "P-4", *Id.* at 63.
9 Exhibit "P-5", *Id.*at 64.
10 Exhibit "P-7", *Id.* at 67 to 72.

of deficiency income tax, VAT, expanded withholding tax (EWT), documentary stamp tax (DST), inclusive of interest and surcharges, and compromise penalty for TY 2015 in the aggregate amount of ₱9,033,932.83. The same was purportedly served upon accused Sadongdong *via* registered mail on September 20, 2018.[11]

Without any protest to the PAN, the Final Assessment Notices (FAN)[12] and Formal Letter of Demand (FLD) with Details of Discrepancies,[13] both issued on October 22, 2018, were served *via* registered mail on October 24, 2018[14] and by personal service on October 26, 2018.[15] The FLD found accused Sadongdong liable for deficiency income tax, VAT, EWT, DST, inclusive of interest and surcharges and compromise penalty for TY 2015 in the aggregate amount of ₱8,844,077.05.

On February 26, 2019, a Memorandum of Assignment was issued directing Seizure Agent (SA) Marcelino Doctor and GS Geraldine Joy Dela Cruz to conduct collection and enforcement strategies.[16]

Based on records, accused Sadongdong did not file any protest to the FAN/FLD nor an appeal to this Court to challenge the assessments. Preliminary Collection Letters (PCL) dated March 4, 2018[17] and Final Notices Before Seizure (FNBS) dated March 18, 2019[18] were thus issued and served *via* registered mail to accused requesting payment of its deficiency tax liabilities for TY 2015.

On April 1, 2019, another Memorandum of Assignment was issued directing SA Danirose Tortillas and GS Felicidad Dela Rosa to conduct collection and enforcement strategies.[19]

Despite the foregoing efforts, however, the deficiency tax liabilities remained unpaid; thus, Commissioner of Internal Revenue (CIR) Caesar R. Dulay wrote a letter to the then Secretary of Justice Menardo I. Guevarra,[20] referring the Complaint-Affidavit[21] executed by RO Tortillas, for preliminary investigation and the filing of appropriate informations in court, if evidence so warrants.

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11 Exhibit "P-10", Docket – Vol. I (CTA Crim. Case No. O-915), p. 73.
12 Exhibit "P-8", Exhibit "P-8-a", Exhibit "P-8-B", Exhibit "P-8-C", and, Exhibit "P-8-D"; *Id.* at 24 to 28.
13 Exhibit "P-9", *Id.* at 29 to 34.
14 Exhibit "P-11", *Id.* at 35.
15 Exhibit "P-14", *Id.* at 37.
16 Exhibit "P-15", *Id.* at 76.
17 Exhibits "P-16", "P-16-a" and "P-16-b", *Id.* at 77 to 79.
18 Exhibits "P-17", "P-17-a" and "P-17-b", *Id.* at 80 to 82.
19 Exhibit "P-19", *Id.* at p. 83.
20 *Id.* at 15 to 16.
21 Exhibit "P-20", *Id.* at 17 to 23.

The Department of Justice (DOJ), through its Resolution dated May 23, 2021,[22] recommended the filing of *Informations* for accused Sadongdong's willful failure to pay deficiency income tax and deficiency VAT for TY 2015.

PROCEEDINGS BEFORE THIS COURT

For an orderly presentation of these consolidated cases, the Court deems it proper to state the proceedings for each case prior to consolidation. Thereafter, the Court shall summarize the evidence presented and the arguments raised by each party.

CTA Crim. Case No. O-915

On May 16, 2022, the prosecution filed an *Information* before this Court,[23] charging the accused for the offense of willful failure to pay deficiency income tax for TY 2015, in violation of Section 255 of the NIRC of 1997, as amended.

The case was initially raffled to the Third Division of this Court.

The Third Division of this Court issued a Resolution on June 7, 2022 ordering the plaintiff to submit the original or certified true copy of the 1) Resolution dated May 23, 2021; 2) Certification of Referral Letter dated September 4, 2020; and, 3) Complaint-Affidavit of Danirose Tortillas dated September 4, 2020.[24]

In compliance with the above Resolution, plaintiff filed on June 21, 2022 its *Manifestation with Motion for Consolidation*[25] attaching thereto the originals of the aforementioned documents except the Complaint-Affidavit of Danirose Tortillas dated September 4, 2020 which was still a photocopy. The Court thus ordered the plaintiff to submit the original or a certified true copy of the same.[26]

The plaintiff thereafter filed on July 26, 2022 its *Compliance with Manifestation*[27] with attached original copy of the Complaint-Affidavit of Danirose Tortillas dated September 4, 2020.

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22 Docket – Vol. I (CTA Crim. Case No. O-915), pp. 8 to 13.
23 *Id.* at 5 to 7.
24 Resolution dated June 7, 2022; *Id.* at 85 to 86.
25 *Id.* at 87 to 90.
26 Resolution dated July 4, 2022; *Id.* at 112 to 113.
27 *Id.* at 115 to 116.

In a Resolution dated August 5, 2022,[28] the Third Division granted the plaintiff's *Motion for Consolidation* and ordered the consolidation of CTA Crim. Case No. O-915, with CTA Crim. Case No. O-916 pending with the Second Division of this Court. The Court likewise found the existence of probable cause for the issuance of warrant of arrest against the accused. Thus, the Warrant of Arrest dated August 16, 2022 was issued against the latter.[29]

On October 5, 2022, the National Bureau of Investigation (NBI) filed a *Return of Warrant of Arrest*, stating that accused Sadongdong voluntarily surrendered, and posted the required bail bond for his provisional liberty.[30]

The Court, thereafter, received a Transmittal Letter dated September 22, 2022 filed by Atty. Princess Katherine C. Vergara, Clerk of Court V, Regional Trial Court (RTC)-Puerto Princesa City, forwarding a copy of the Order of Release of accused Sadongdong in Criminal Case No. O-915, together with other supporting documents.[31]

<u>CTA Crim. Case No. O-916</u>

On May 16, 2022, the plaintiff filed an *Information* before this Court,[32] charging accused Sadongdong for the offense of willful failure to pay deficiency VAT for TY 2015, in violation of Section 255 of the NIRC of 1997, as amended.

The case was initially raffled to the Second Division of this Court.

The Court, thereafter, issued the Resolution dated June 7, 2022[33] finding probable cause for the issuance of warrant of arrest against accused Sadongdong. Thus, the Warrant of Arrest dated June 8, 2022[34] was issued against the latter.

On June 21, 2022, the plaintiff filed *via* registered mail a *Manifestation with Motion for Consolidation*,[35] which was granted by the Court in the Resolution dated July 5, 2022.[36] Accordingly, CTA Crim. Case No. O-916 was consolidated with CTA Crim Case No. O-915, the case bearing the lowest docket number.

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28 Docket – Vol. I (CTA Crim. Case No. O-915), pp. 125 to 128.
29 *Id.* at 131 to 132.
30 *Id.* at 136.
31 *Id.* at 139 to 154.
32 Docket (CTA Crim. Case No. O-916), pp. 5 to 7.
33 *Id.* at 88 to 91.
34 *Id.* at 92.
35 *Id.* at 93 to 95.
36 *Id.* at 98 to 100.

On July 14, 2022, the NBI filed a *Return of Warrant of Arrest* dated July 8, 2022,[37] stating that accused Sadongdong voluntarily surrendered, and posted the required bail bond for his provisional liberty.

Thereafter, on July 26, 2022, the Court received a Transmittal Letter dated July 4, 2022[38] filed by Atty. Princess Katherine C. Vergara, Clerk of Court V, RTC-Puerto Princesa City, forwarding a copy of the Order of Release of accused Sadongdong in Criminal Case No. O-916, together with other supporting documents.

<u>Consolidation of Cases:</u>

On July 5, 2022, the Second Division of this Court issued a Resolution ordering the consolidation of CTA Crim. Case Nos. O-915 and O-916, subject to the conformity of the Third Division. Subsequently, in its Resolution dated August 5, 2022, the Third Division granted the plaintiff's *Motion for Consolidation* and, accordingly, ordered the consolidation of CTA Crim. Case No. O-915, with CTA Crim. Case No. O-916 pending before the Second Division of this Court.

Thereafter, the Arraignment and Pre-Trial Conference was set on November 17, 2022.[39] The Court, however, received on November 22, 2022 a *Manifestation and Urgent Motion for Cancellation and Resetting* from accused Sadongdong stating that he has yet to secure the services of a counsel; thus, he requests that the Arraignment and Pre-Trial Conference be reset to a later date.[40]

On December 7, 2022, the Court issued a Resolution setting the Arraignment and Pre-Trial Conference to February 22, 2023.[41]

On February 16, 2023, the Court received the *Plaintiff's Preliminary Conference Brief with Manifestation*[42] and *Offer of Testimony Revenue Officer Gerald Mart C. Gatinga with attached Judicial Affidavit,*[43] both dated November 14, 2022.

On February 27, 2023, accused Sadongdong filed an *Urgent Motion for Cancellation and Resetting and Request for Appearance via Video*

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37 Docket (CTA Crim. Case No. O-916), p. 107.
38 *Id.* at 111 to 125.
39 Docket – Vol. I (CTA Crim. Case No. O-915), pp. 157 to 158.
40 *Id.* at 159 to 160.
41 *Id.* at 163 to 164.
42 *Id.* at 176 to 182.
43 *Id.* at 183 to 191.

Conference,[44] stating therein that while it had secured the services of a counsel from the Integrated Bar of the Philippines (IBP) Legal Aid for his tax cases pending before the RTC in Palawan, said counsel could not appear for his cases before this Court. Thus, he prays that the Arraignment and Pre-Trial Conference set on February 22, 2023 be further reset to another date. He likewise manifests that, he is based in Bataraza, Palawan and requests that he be allowed to appear online through video conference during the hearing of the consolidated cases.

On March 21, 2023, the Court issued a Resolution setting the Arraignment and Pre-Trial Conference of accused Sadongdong to April 19, 2023 *via* video conference.[45]

During the scheduled arraignment on April 19, 2023, accused Sadongdong appeared *via* videoconference and manifested that he still has not obtained the services of a counsel. Thus, the arraignment and pre-trial conference was reset to May 24, 2023.[46]

When arraigned on May 24, 2023, accused Sadongdong, duly assisted by his counsel, entered a plea of "NOT GUILTY" to the offenses charged against him.[47] The *Pre-Trial Brief for the Accused* was filed on June 8, 2023[48] and the Preliminary Conference held on September 7, 2023.[49]

At the Pre-Trial Conference held on October 24, 2023,[50] accused Sadongdong manifested that he is waiving his appearance for the subsequent hearings. The parties likewise stipulated on the following facts and issues:

Stipulated Facts

1. The jurisdiction of the Court over the instant case; and,
2. The identity of the accused that he is the same person charged in this case.

Stipulated Issues

1. Whether or not the accused is guilty beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended; and,

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44 Docket – Vol. I (CTA Crim. Case No. O-915), p. 315.
45 *Id.* at 320 to 321.
46 Minutes of the Hearing via video conference held on, and Order dated, April 19, 2023, *Id.* at p. 327.
47 Minutes of the Hearing held on, and Order dated, May 24, 2023, *Id.* at 336; Certificate of Arraignment dated May 24, 2023, *Id.* at 339.
48 *Id.* at 342 to 345.
49 Minutes of the Preliminary Conference held on September 7, 2023, *Id.* at 348 to 353; Preliminary Conference Report, *Id.* at 354.
50 Minutes of the Hearing held on, and Order dated, October 24, 2023, *Id.* at 359 to 360.

2. Whether or not due process was accorded to the accused from the time of assessment to the filing of this case before the DOJ.

The Pre-Trial Order was issued on October 24, 2023,[51] thus terminating the pre-trial.

On November 28, 2023, accused Sadongdong, through counsel, filed a *Waiver of Appearance* during the trial of the case.[52]

Trial then ensued.

Plaintiff presented the following witnesses by way of Judicial Affidavits: 1) Mr. Gerald Mart C. Gatinga, 2) Ms. Edna A. Ortalla, 3) Mr. Khristian Roy G. Orot, 4) Mr. Benhur C. Nacorda, and, 5) Ms. Geraldine Joy C. Dela Cruz. Moreover, considering the stipulations of the parties in open court, the testimony of its supposed last witness, Ms. Danirose B. Tortilla was dispensed with.[53]

After the presentation of its last witness, the Court granted plaintiff 15 days from February 8, 2024 within which to file its Formal Offer of Evidence (FOE), and the accused was granted the same period to file his comment/opposition thereto. The initial presentation of evidence for the accused was set on April 30, 2024.

Plaintiff filed its *Formal Offer of Evidence*[54] on February 13, 2024, with *Comments and Objections (to the Prosecution's Formal Offer of Evidence)* filed by accused.[55]

In the Resolution dated April 12, 2024,[56] the Court admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8 to P-8-d", "P-9", "P-10", "P-11", "P-12 to P-12-d", "P-13", "P-14", "P-15", "P-16 to P-16-b", "P-17 to P-17-b", "P-18", "P-19", "P-20", "P-21 and P-21-a", "P-22 to P-43", "P-44", "P-44-a", "P-45", "P-45-a", "P-46", "P-46-a", "P-47", "P-47-a", "P-48", and "P-48-a", while Exhibits "P-49" and "P-49-a" were noted without action since both parties made stipulations in open court and agreed to dispense with the testimony of Ms. Tortillas. The Court denied Exhibit "P-14-a" for not being found in the records.

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51 Docket – Vol. I (CTA Crim. Case No. O-915), pp. 361 to 365.
52 *Id.* at 366.
53 Minutes of the Hearing held on, and Order dated February 8, 2024, *Id.* at 377.
54 *Id.* at 386 to 400.
55 *Id.* at 401 to 408.
56 *Id.* at 411 to 412.

On April 26, 2024, plaintiff filed its *Motion for Reconsideration (Re: Resolution dated April 12, 2024)*,[57] which was granted by the Court in its Resolution dated April 30, 2024, thereby admitting Exhibit "P-14-a".[58]

On April 29, 2024, accused Sadongdong filed a *Motion for Leave to file Demurrer to Evidence*,[59] which was granted by the Court in its Resolution dated April 30, 2024.[60] Accused was thus given a period of 15 days or until May 15, 2024 to file the same. Plaintiff was given the same period to file its comment thereon. The hearing for the testimony of accused Sadongdong was then set on July 11, 2024.

Thereafter, accused Sadongdong filed his *Demurrer to Evidence* on May 15, 2024,[61] with *Comment (Re: Demurrer to Evidence)* filed by plaintiff on June 10, 2024.[62] In the meantime, the hearing for the testimony of accused Sadongdong was cancelled until further orders from the Court.

On July 29, 2024, the Court issued a Resolution denying the *Demurrer to Evidence* filed by accused Sadongdong.[63]

During the hearing on January 21, 2025, accused testified by way of *Judicial Affidavit.* His testimony was completed and terminated after re-direct examination. There being no other witnesses for the defense, the Court gave accused 10 days to file his FOE, and plaintiff was granted the same period to file its comment thereon.[64]

On February 12, 2025, plaintiff filed its *Comment/Opposition (Re: Formal Offer of Evidence for the Accused dated January 22, 2025)*.[65] On March 11, 2025, however, the Judicial Records Division issued a Records Verification Report stating that accused failed to submit his FOE.[66] Thus, in a Resolution dated March 21, 2025, accused Sadongdong was ordered to submit a copy of his FOE.[67]

On April 25, 2025[68] and May 13, 2025,[69] the Judicial Records Division issued Records Verification Reports reiterating that accused failed to submit

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57 Docket – Vol. I (CTA Crim. Case No. O-915), pp. 413 to 415.
58 *Id.* at 427 to 428.
59 *Id.* at 416 to 422.
60 *Id.* at 425.
61 *Id.* at 429 to 437.
62 Docket – Vol. II (CTA Crim. Case No. O-915), pp. 444 to 452.
63 *Id.* at 456 to 468.
64 Minutes of the Hearing held on, and Order dated January 21, 2025, *Id.* at 496.
65 *Id.* at 499 to 502.
66 Records Verification dated March 11, 2025, *Id.* at 503.
67 *Id.* at 506 to 507.
68 Records Verification dated April 25, 2025, *Id.* at 508.
69 Records Verification dated May 13, 2025, *Id.* at 509.

his FOE. Thus, on May 19, 2025, the Court issued a Resolution ordering accused Sadongdong for the second time, to submit a copy of his FOE.[70]

On June 20, 2025, accused Sadongdong filed the *Formal Offer of Evidence for the Accused.*[71] In the Resolution dated July 30, 2025, the Court admitted Exhibits "A-1", "A-1-a", "A-1-b", "A-2", "A-2-a", "A-3", "A-3-a", and "A-4". Moreover, the Court gave the parties a period of 30 days from receipt of the resolution within which to file their respective memoranda.[72]

The *Memorandum for the Accused* was filed on September 10, 2025.[73] Meanwhile, plaintiff filed its *Memorandum* on September 11, 2025.[74]

In the Minute Resolution dated September 30, 2025, the Court noted the parties' respective memoranda and submitted the case for decision.[75]

EVIDENCE FOR THE PROSECUTION

To establish the culpability of the accused, plaintiff presented its witnesses, Mr. Gatinga, Ms. Ortalla, Mr. Orot, Mr. Nacorda, and Ms. Dela Cruz, whose testimonies during their direct examination, cross-examination and/or responses to clarificatory questions propounded by the Court are summarized as follows:

1. Testimony of Mr. Gatinga:[76]

Revenue Officer (RO) Gatinga testified, by way of *Judicial Affidavit*, that he was previously assigned at RDO No. 36, Revenue Region (RR) No. 6-Manila.[77] His duties and responsibilities include, among others, the investigation and examination of all internal revenue tax cases.[78]

He further testified that he was designated under LOA No. LOA-036-2017-00000078 dated May 17, 2017 to audit the books of accounts and other accounting records of accused Sadongdong for TY 2015;[79] and, that the said LOA together with the Request for Presentation of Accounting

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70 Docket – Vol. II (CTA Crim. Case No. O-915), p. 510.
71 *Id.* at 512 to 517.
72 *Id.* at 520 to 521.
73 *Id.* at 523 to 533.
74 *Id.* at 535 to 545.
75 *Id.* at 546.
76 Exhibit "P-44", Docket – Vol. I (CTA Crim. Case No. O-915), pp. 186 to 191; Transcript of Stenographic Notes (TSN) dated November 28, 2023.
77 Q&A No. 6, Exhibit "P-44", Docket – Vol. I (CTA Crim. Case No. O-915), p. 187.
78 Q&A No. 7, *Id.* at 187.
79 Q&A No. 9, Docket – Vol. I (CTA Crim. Case No. O-915), p. 187.

Records/Checklist of Requirements dated May 18, 2017 was served to accused Sadongdong on June 8, 2017.[80]

According to RO Gatinga, accused failed to present the books of accounts and other accounting records for TY 2015. A First Request for Presentation of Records dated June 27, 2017 was, thus, issued and served upon accused.[81] After accused's partial compliance therewith, a Second and Final Request for Presentation of Records dated July 10, 2017 was issued and served upon accused.[82] Due to accused's alleged failure to comply, an NIC dated March 6, 2018 was issued and served upon accused.[83]

Thereafter, he prepared a Memorandum showing that accused has deficiency income tax, VAT, EWT, and penalties. He then recommended the issuance of a PAN against the accused.

During cross-examination, RO Gatinga confirmed that the LOA and Request for Presentation of Accounting Records and Checklist of Requirements dated May 18, 2017 were personally served and received by accused. He further testified that the First Request for Presentation of Records dated June 27, 2017 and Second and Final Request for Presentation of Records dated July 10, 2017 were served through registered mail, but has no knowledge of who actually received these documents. As to the service of the NIC dated March 6, 2018, he testified that it was served personally and was received by Marvin S. Urando, the alleged secretary of accused.

When asked how he arrived at the computation of the accused's deficiency income tax, RO Gatinga explained that it was based on the taxable income reflected in the accused's ITR, to which he made several adjustments, including overstatement of depreciation, disallowance for non-withholding of taxes, unsupported salaries, and other related expenses.

RO Gatinga further testified that the amount of unsupported salaries was determined by comparing the reported salaries and allowances, government-mandated benefits, and other employee benefits with the payroll documents submitted by the accused. He admitted, however, that these payroll documents are no longer in his possession, and he is uncertain whether these were returned to accused. He explained that, as a matter of procedure, documents are ordinarily returned to the taxpayer after audit. When asked how he computed the "salaries and allowances per FS", RO Gatinga clarified that the figures were taken from the taxpayer's financial statements.

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[80] Q&A No. 13, Docket – Vol. I (CTA Crim. Case No. O-915), p. 188.
[81] Q&A No. 16, *Id.* at 188.
[82] Q&A No. 19, *Id.* at 189.
[83] Q&A No. 22, *Id.* at 189.

With respect to the computation of the alleged deficiency VAT, RO Gatinga testified that he derived the amount by applying 12% VAT to an administration fee of 10%, which he computed by subtracting the salaries and wages of employees from the sales per financial statements. He likewise confirmed that the accused was not a VAT-registered taxpayer. Nevertheless, he asserted that the accused was required to register as a VAT taxpayer once a certain threshold is reached. Based on his approximation of the accused's sales, salaries, and administration fees, RO Gatinga claimed that the accused had already exceeded the threshold as early as the first month.

During re-direct examination, RO Gatinga clarified that the sales per financial statements considered in the computation of deficiency VAT was declared by accused himself.

<u>2. Testimony of Ms. Ortalla</u>: [84]

Ms. Ortalla, Chief of the Review and Evaluation Section of the Assessment Division, RR No. 6-Manila,[85] testified, by way of *Judicial Affidavit*, that her duties include, among others, the review of the assessment made by the ROs.[86]

She further testified that she reviewed the assessment made by the ROs on the deficiency taxes of the accused for TY 2015; and, that the entire docket of accused was forwarded to the Assessment Division for review when the accused failed to appear for an informal conference. Subsequently, the PAN with Details of Discrepancies dated September 12, 2018 was issued.[87] When accused failed to file a reply to the PAN, however, they issued the FAN and the corresponding FLD with Details of Discrepancies both dated October 22, 2018, which were allegedly personally received by accused.[88] When accused failed to pay his deficiency taxes for TY 2015, the Assessment Division then indorsed the tax docket of the accused to the Collection Division to conduct collection and enforcement strategies.[89]

On cross-examination, Ms. Ortalla was asked how she served the PAN with Details of Discrepancies and the FAN. She clarified that under the Review and Evaluation Section, they are only tasked to review and were not the ones who served the PAN and FAN. Thus, she has no knowledge as to the service of the same.

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84 Exhibit "P-45", Docket – Vol. I (CTA Crim. Case No. O-915), pp. 204 to 208; TSN dated November 28, 2023.
85 Q&A No. 4, Exhibit "P-45", *Id.* at 205.
86 Q&A No. 6, Exhibit "P-45", *Id.* at 205.
87 Q&A No. 9, Exhibit "P-45", *Id.* at 205.
88 Q&A No. 13, Exhibit "P-45", *Id.* at 205 to 206.
89 Q&A No. 16, Exhibit "P-45", *Id.* at 206.

3. <u>Testimony of Mr. Orot</u>: [90]

RO Orot testified, by way of *Judicial Affidavit*, that he is currently assigned at RDO No. 36 Puerto Princesa, Palawan, RR No. 6-Manila. His duties include, among others, the investigation and examination of all internal revenue tax cases and serve notices to taxpayers.[91]

According to RO Orot, he personally served the FAN and FLD with Details of Discrepancies to accused Sadongdong and that the signature on top of "Printed Name & Signature" on the said documents belong to the accused. He also prepared the Memorandum dated October 30, 2018, stating that he personally served a copy of the FAN and FLD to the accused at his registered business address.[92]

During cross-examination, RO Orot testified that he was directed by his office to travel to Palawan to personally serve the FAN and FLD to accused Sadongdong. He further stated that, before and after such service, he was not instructed to serve any other notices to the accused. He further testified that after effecting service, he informed the accused to proceed to the BIR office to confer with the RO assigned to handle the case.

In response to the Court's clarificatory questions, RO Orot testified that he personally served the FAN/FLD with Details of Discrepancies to the accused on October 26, 2018. He likewise confirmed that accused's signature appears on the left portion of the assessment notices.

4. <u>Testimony of Mr. Nacorda</u>: [93]

Mr. Nacorda testified, by way of *Judicial Affidavit*, that he is the designated Mailing-in-Charge of the Administrative Division, RR No. 6-Manila.[94] His duty includes sending by registered mail BIR correspondences to taxpayers.[95]

According to Mr. Nacorda, his office caused the service of the PAN and FAN/FLD to the accused.[96] The PAN with Details of Discrepancies dated September 12, 2018 was served to the accused *via* registered mail on September 20, 2018 under Registry Receipt No. RD983224961ZZ. While the FAN and/or FLD with Details of Discrepancies dated October 22, 2018 was

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[90] Exhibit "P-46", Docket – Vol. I (CTA Crim. Case No. O-915), pp. 238 to 241; TSN dated January 16, 2024.
[91] Q&A No. 6, Exhibit "P-46", *Id.* at 239.
[92] Q&A No. 9, Exhibit "P-46", *Id.* at 239.
[93] Exhibit "P-47", *Id.* at 229 to 232; TSN dated February 8, 2024.
[94] Q&A No. 4, Exhibit "P-47", *Id.* at 230.
[95] Q&A No. 5, Exhibit "P-47", *Id.* at 230.
[96] Q&A No. 7, Exhibit "P-47", *Id.* at 230.

served to the accused on October 24, 2022 under Registry Receipt No. RD983223232ZZ.[97]

He further testified that, as per the records of their office, the mail matter containing the PAN with Details of Discrepancies and the FAN and/or FLD with Details of Discrepancies were not returned unserved by the postmaster to their office.[98]

During cross-examination, Mr. Nacorda confirmed that the transmittal to the post office with a list of the taxpayers served with the PAN did not contain an annotation that it was not returned and served. It only shows that it was received by the post office but not by the accused.

In response to the Court's clarificatory questions, Mr. Nacorda confirmed that there were no return cards showing that it was received by accused and who received them.

5. Testimony of Ms. Dela Cruz: [99]

RO Dela Cruz testified, by way of *Judicial Affidavit*, that she was previously assigned as a Seizure Agent, Collection Division, RR No. 6-Manila.[100] She testified that, as a Seizure Agent, her duties included enforcement of collection of delinquent accounts of taxpayers thru administrative remedy by sending collection notices/demand letters and serving Warrant of Distraint and/or Levy (WDL) and Warrant of Garnishment before banks and/or tax lien notice before the Registry of Deeds in order to attach real properties of delinquent taxpayers.[101]

Under Memorandum of Assignment AMT MOA-2019-3054 dated February 26, 2019, she was tasked to enforce the collection of the 2015 internal revenue tax case of accused.[102] She then evaluated the tax docket of accused, and prepared and caused the service of the PCL with Registry Receipt Nos. RE016331230ZZ, RE016331243ZZ and RE016331257ZZ.[103] Since accused failed to pay the deficiency tax assessment, she then prepared and caused the service of the FNBS with Registry Receipt Nos. RE044064795ZZ, RE044064781ZZ and RE044064778ZZ.[104] Because accused still failed to pay the deficiency taxes, her office prepared a Memorandum dated March 29, 2019 recommending that accused's docket be

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[97] Q&A No. 8, Exhibit "P-47", Docket – Vol. 1 (CTA Crim. Case No. O-915), p. 230.
[98] Q&A No. 13, Exhibit "P-47", *Id.* at 231.
[99] Exhibit "P-48", *Id.* at 258 to 262; TSN dated February 8, 2024.
[100] Q&A No. 6, Exhibit "P-48", *Id.* at 259.
[101] Q&A No. 7, Exhibit "P-48", *Id.* at 259.
[102] Q&A Nos. 9 & 10, Exhibit "P-48", *Id.* at 259.
[103] Q&A No. 12, Exhibit "P-48", *Id.* at 260.
[104] Q&A No. 15, Exhibit "P-48", *Id.* at 260.

forwarded to AMS Unit II for issuance of a WDL and Warrant of Garnishment.[105]

During cross-examination, RO Dela Cruz confirmed that she has no proof that the accused received the PCL and FNBS, which were both sent through registered mail to the accused.

In response to the Court's clarificatory question, RO Dela Cruz likewise confirmed that there were no corresponding return cards.

Instead of presenting another witness for the plaintiff, the parties entered into a stipulation of facts for the following matters stated in the *Judicial Affidavit* of Ms. Danirose Tortillas – that a WDL and Warrants of Garnishment were issued in this case, the former was sent by registered mail with no return card, and the latter served to different banks, and that a Complaint-Affidavit was executed in this case.

EVIDENCE FOR THE ACCUSED

To counter the foregoing evidence of the prosecution, the defense, presented the accused Sadongdong, whose testimony during his direct examination, cross-examination and re-direct examination is summarized as follows:[106]

Accused Sadongdong testified, by way of *Judicial Affidavit*, that he did not receive any notices regarding the preliminary investigation conducted by the DOJ.[107] He claimed that the BIR did not exercise any civil remedy to collect the alleged deficiency taxes from him, neither did they file any suit against him to collect the alleged taxes due him for TY 2015. The BIR instead filed criminal cases against him for failure to pay the alleged deficiency taxes.[108]

He further states that, according to the *Informations* filed, he allegedly committed the crime on or before March 18, 2018. As of the said date, however, the BIR was still undergoing its review of his case and the collection phase for the deficiency taxes have not yet begun. He testified that the FAN

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[105] Q&A No. 17, Exhibit "P-48", Docket – Vol. I (CTA Crim. Case No. O-915), p. 261.
[106] Judicial Affidavit of Mr. Jimmy B. Sadongdong dated November 27, 2024, Docket – Vol. II (CTA Crim. Case No. O-915), pp. 472 to 478; TSN dated January 21, 2025.
[107] Q&A No. 5, Judicial Affidavit of Mr. Jimmy B. Sadongdong dated November 27, 2024, *Id.* at 474.
[108] Q&A Nos. 10 & 11, Judicial Affidavit of Mr. Jimmy B. Sadongdong dated November 27, 2024, *Id.* at 475.

was issued only on October 22, 2018 and he was given until November 22, 2018 within which to pay the deficiency taxes.[109]

Finally, he categorically denied having received notices sent by the BIR through registered mail.

During cross-examination, accused confirmed that he received the Assessment Notices and FLD; and that it was his signature appearing therein. When asked what he did after receiving the Assessment Notices and FLD, accused said that he went to the BIR office but the officer in charge of his case was not there. He likewise confirmed that he did not file any protest to the BIR.

On re-direct examination, accused Sadongdong confirmed that he was aware that he was being asked to pay a liability but the Assessment Notices were dated October 22, 2018 and the BIR was giving him until November 22, 2018 to pay. The *Informations* filed in Court, however, state that he committed the alleged criminal acts on or before March 18, 2018.

THE ISSUE

The Pre-Trial Order[110] limits the issue of the case as follows:

1. Whether or not accused is guilty beyond reasonable doubt for violation of Section 255 of the NIRC of 1997, as amended; and,

2. Whether or not due process was accorded to the accused from the time of assessment to the preliminary investigation of this case to the DOJ.

ARGUMENTS OF THE PARTIES

Plaintiff's arguments

Plaintiff argues that all elements of the crime to support a criminal conviction for violation of Section 255 of the NIRC of 1997, as amended, are present in this case.

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[109] Q&A Nos. 12 ,13 & 14, Judicial Affidavit of Mr. Jimmy B. Sadongdong dated November 27, 2024, *Id.* at 475.

[110] B. Issues, Pre-Trial Order, Docket – Vol. I (CTA Crim. Case No. O-915), p. 362.

As to the alleged non-receipt of notices sent through registered mail, plaintiff argues that the presumption that a letter duly directed and mailed was received in the regular course of mail applies to the instant case. Plaintiff asserts that, while it is true that receipt of the notices sent through registered mail is only a disputable presumption, it has presented sufficient evidence that would have supported its claim that accused has received the said notices.

Further, plaintiff reiterates that service of PCL and FNBS may also be done by registered mail. Thus, if notice to the taxpayer is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer.

Plaintiff contends that it was able to establish that accused was duly notified and was made aware of the PAN, PCL and FNBS considering that the same was served to him through registered mail at his business and known addresses. Accused did not present any documentary evidence to rebut the presumption that he received the PAN, PCL and FNBS.

On the issue of prescription, plaintiff maintains that the applicable prescriptive period for violation of Section 255 of the NIRC of 1997, as amended, is five years and not three years as alleged by the accused.

Accused's counter-arguments

Accused Sadongdong argues that he cannot be convicted for willful failure to pay taxes on or before March 18, 2018, when the notices to pay such taxes were not received by the accused, and when at the time of the alleged commission of the offenses, the taxes were not yet due because the BIR had given him until November 22, 2018 to pay the deficiency taxes due.

He claims that he did not receive the PCL and FNBS issued by the BIR. He submits that the registry return receipts presented by the prosecution are only evidence of sending mail matter, and not evidence of receipt by the addressee. Thus, accused cannot be presumed to have received them and could not be presumed to have willfully and feloniously failed to pay any deficiency taxes.

He emphasizes that he could not have committed the crimes charged on or before March 18, 2018, as alleged in the *Informations*, because the BIR had not yet completed the assessment on the said date. He points out that the assessment notices themselves show that he was given until November 22, 2018, to settle the alleged deficiency taxes. He maintains that the date stated in the *Informations* are material to the liability of the accused, and that it was upon these very *Informations* that he was arraigned. Hence, any error committed by the prosecution in specifying the material dates in the *Informations* must be taken against the prosecution, not the accused.

Finally, accused argues that the period to collect the deficiency taxes had prescribed on April 15, 2019. Thus, any case filed to collect the taxes after the said date had already prescribed and the criminal action to penalize the non-payment of the same cannot prosper.

THE COURT'S RULING

Before delving into the elements of the offense charged against accused Sadongdong, the Court deems it necessary, for an orderly disposition of the case, to first resolve a preliminary matter consistently raised by the accused both in his *Memorandum* and during trial.

Accused Sadongdong argues that he cannot be convicted for willful failure to pay taxes **on or before March 18, 2018**, as alleged in the *Informations*, because the FAN/FLD explicitly granted him until **November 22, 2018** within which to pay the assessed deficiency taxes. Thus, he could have not committed the crime charged since the taxes were not yet due as of the said date.

A plain reading of the *Informations* reveals that the accused allegedly committed the offenses "on or before March 18, 2018", when he willfully, unlawfully and feloniously failed and refused to pay the assessed deficiency income tax and VAT for TY 2015, *despite due assessment, notice and demand*, the latest of which was purportedly the FNBS dated March 18, 2018. In addition, the *Complaint-Affidavit* executed by RO Tortillas similarly avers that the FNBS dated March 18, 2018 were issued by the BIR and served upon accused through registered mail.[111]

Upon careful scrutiny of the records, however, the Court notes that the FNBS[112] is dated **March 18, <u>2019</u>**, and not March 18, 2018, as erroneously stated in the *Informations* and the *Complaint-Affidavit*. The Court further notes that the said notice was mailed to the accused on even date, as evidenced by Registry Receipt Nos. RE044064795ZZ, RE044064781ZZ and RE044064778ZZ.

Despite this discrepancy, the Court finds that there can be no serious doubt that both the *Informations* and the prosecution's evidence refer to one

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[111] Exhibit "P-20"; Par. 16 of the Complaint-Affidavit of Danirose Tortillas, Docket – Vol. I (CTA Crim. Case No. O-915), p. 21.

[112] Exhibits "P-17", "P-17-a", "P-17-b", *Id.* at 80 to 82.

and the same set of acts: the accused's willful failure to pay, despite notice and service of assessment notices covering deficiency income tax and VAT for TY 2015, and despite subsequent demand for payment of the assessed deficiency taxes.

In *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*,[113] the Supreme Court ruled that the crime of failure to pay tax is committed only after receipt of the final notice and demand for payment, coupled with willful refusal to pay the taxes due within the allotted period, *viz.*:

xxx xxx xxx

> **Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued.** This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only after receipt was coupled with the willful refusal to pay the taxes due within the allot[t]ed period. The two criminal informations, having been filed on June 23, 1970, are well-within the five-year prescriptive period and are not time-barred. (*Emphasis supplied*)

The Supreme Court reaffirmed this interpretation in *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep Presiding Judge of RTC Quezon City, Branch 105, and the People of the Philippines*,[114] where it held that the offense of failure to pay deficiency income tax can only be deemed committed after the taxpayer has been served a notice and demand for payment of the deficiency taxes, *viz.*:

xxx xxx xxx

> We agree with the Solicitor General that the offense has not prescribed. Petitioner was charged with failure to pay deficiency income tax after repeated demands by the taxing authority. In Lim, Sr. v. Court of Appeals, we stated that[,] **by its nature[,] the violation could only be committed after service of notice and demand for payment of the deficiency taxes upon the taxpayer**. Hence, it cannot be said that the offense has been committed as early as 1980, upon filing of the income tax return. This is so because prior to the finality of the assessment, the taxpayer has not committed any violation for nonpayment of the tax. **The offense was committed only after the finality of the assessment coupled with taxpayer's willful refusal to pay the taxes within the allotted period.** (*Emphasis supplied*)

Records show that the FAN/FLD with Details of Discrepancies were issued on October 22, 2018, which accused received on October 26, 2018.

[113] G.R. Nos. L-48134-37, 18 October 1990.
[114] G.R. No. 127777, October 1, 1999.

Despite receipt of the FAN and the corresponding FLD with Details of Discrepancies, however, the accused did not file any administrative protest as prescribed under Section 228 of the NIRC of 1997, as amended. As such, the subject deficiency income tax and VAT assessment became final, executory and demandable on **November 26, 2018,**[115] or after the lapse of the 30-day period within which accused should file a protest. It is, thus, on the said date that the offense of failure to pay deficiency tax provided for under Section 255 of the NIRC of 1997, as amended, is deemed committed.

Be that as it may, what unmistakably appears to the Court is that the erroneous date appearing in the *Informations* is the result of a mere clerical oversight. A simple comparison of the FNBS readily reveals that the correct date is March 18, 2019, which is clearly after the period previously granted to the accused to settle the deficiency tax assessments. Such inaccuracy is not fatal to the prosecution's case. If anything, it is a defect that neither impairs the rights of the accused nor alters the nature of the offenses charged.

It must be emphasized that every court has the positive duty to consider and give due regard to everything on record that is relevant and competent to its resolution of the ultimate issue presented for its adjudication.[116]

Accused Sadongdong, nonetheless, argues that the date alleged in the *Informations* are material to the liability of the accused, and that it was upon these very *Informations* that he was arraigned. Hence, any error committed by the prosecution in specifying the material dates in the *Informations* must be taken against the prosecution, not the accused.

Indeed, an accused has the right to be informed of the nature and cause of the accusation against him.[117] It is required that the acts and omissions complained of as constituting the offense must be alleged in the Information.[118]

In crimes, however, where the date of commission is not a material element, it is not necessary to allege such date with absolute specificity or certainty in the information. The Rules of Court merely requires, for the sake of properly informing an accused, that the date of commission be approximated:

> Sec. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; **the approximate**

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115 The 30th day falls on November 25, 2018 (Sunday).
116 *Commissioner of Internal Revenue vs. Jerry Ocier*, G.R. No. 192023, November 21, 2018.
117 Article III, Section 14 (2) of the 1987 Constitution.
118 Section 6, Rule 110, Revised Rules on Criminal Procedure.

> **date of the commission of the offense**; and the place where the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information.
>
> xxx xxx xxx
>
> Sec. 11. Date of commission of the offense. - **It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission**. (*Emphasis supplied*)

Here, accused Sadongdong is charged with violation of Section 255 of the NIRC of 1997, as amended, arising from his alleged willful failure to pay deficiency income tax and VAT for TY 2015, despite due assessment, notice, and demand. In this offense, time is not a material element. What the prosecution is required to be establish is that the accused had the duty to pay tax, that he failed to do so at the time required by law, and that such failure to pay was willful.

Since the date of commission of the offense is not required with exactitude, the allegation in an Information of a date of commission different from the one eventually established during the trial would not, as a rule, be considered as an error fatal to prosecution. In such cases, the erroneous allegation in the information is just deemed supplanted by the evidence presented during the trial.[119]

Nevertheless, accused Sadongdong must be acquitted for failure of the prosecution to prove beyond reasonable doubt the elements of the crime charged, as will be discussed herein.

Plaintiff failed to prove beyond reasonable doubt the elements of the crime charged against accused Sadongdong.

To secure a conviction of an accused in criminal cases, all the elements of the crime charged must be proven beyond reasonable doubt,[120] and the absence of any or all of such elements would warrant the acquittal of the accused.

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[119] *People of the Philippines vs. Rael Delfin*, G.R. No. 201572, July 9, 2014.
[120] *People of the Philippines vs. William Calleja y Caganda*, G.R. No. 250865, June 16, 2021.

In the present consolidated cases, accused Sadongdong is charged with violation of Section 255 of the NIRC of 1997, as amended, which provides as follows:

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

Based on the foregoing, to sustain a conviction of the crime of willful failure to pay tax under Section 255 of the NIRC of 1997, as amended, the following elements must be satisfied:

1. The accused was required under the NIRC of 1997, as amended, or its rules and regulations to pay any tax;
2. The accused failed to pay the required tax; and,
3. The accused willfully failed to pay such tax.

A scrutiny of the foregoing elements reveals that the second and third requisites are inextricably anchored on the first. Necessarily, it is only when the first element is established that the remaining elements must be determined to exist. Stated otherwise, there can be no willful failure to pay a tax if there is no requirement to pay the same at all.

As to the *first* element, the prosecution must prove that the accused is required to pay tax under the NIRC of 1997, as amended, its rules and regulations.

Here, accused Sadongdong's obligation to pay tax arose from assessment notices which he allegedly failed to pay despite notice and demand, the latest of which was the FNBS dated March 18, 2018. Inasmuch as the alleged deficiency income tax and VAT arose from an assessment, as alleged in the *Informations*, it becomes necessary for the plaintiff to prove that it issued the subject assessment notices in strict compliance with Section 228 of the NIRC of 1997, as amended.

Section 228 of the NIRC of 1997, as amended, provides:

> Section 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x
>
> xxx xxx xxx
>
> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> 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. (*Emphasis added*)

From the foregoing, it is clear that the taxpayer must be informed in writing of the factual and legal bases of the assessment. Otherwise, the assessment is void. This requirement is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[121] Thus, non-compliance with Section 228 does not only render the assessment void but also finds no validation in any provision in the NIRC of 1997, as amended.[122]

Corollary thereto, Section 3.1.7 (formerly Section 3.1.6) of RR No. 12-99,[123] as amended by RR No. 18-2013,[124] and renumbered by RR No. 7-2018,[125] explicitly prescribes the permissible modes of service of the PAN, FLD/FAN, and FDDA, as follows:

> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:

[121] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

[122] *Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. No. 159694 & 163581, January 27, 2006.

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

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

[125] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

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> 3.1.7 Modes of Service. — The notice (**PAN/FLD/FAN**/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) **The notice shall be served through personal service** by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> **In case personal service is not practicable, the notice shall be served by substituted service or by mail.**
>
> xxx xxx xxx
>
> (iii) **Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered.** A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Based on the above rules and regulations, service may be made through the following modes: 1) personal service; 2) substituted service; and, 3) service by mail.

In the present case, it is undisputed that the FAN/FLD with Details of Discrepancies issued on October 22, 2018 was personally served upon the accused on October 26, 2018.

The prosecution's witness, RO Orot, testified that he personally served the FAN/FLD with Details of Discrepancies to the accused. The accused, on cross-examination, likewise admitted having received the assessment notices and confirmed that the signatures appearing thereon are his, to wit:[126]

[126] TSN dated January 21, 2025, pp. 7 to 9.

Atty. Cayabyab:

Mr. Witness, in your Judicial Affidavit, you attached a certain document marked as Exhibit 2 for the defense and marked as Exhibit P-8 for the prosecutor. Also, P-8-A for the prosecution and P-9, correct?

Witness:

Yes, ma'am.

Atty. Cayabyab:

I will show you these documents, and kindly tell us, and there appears to be a signature in these documents.

Justice Liban:

Isa-isahin mo yung documents.

Atty. Cayabyab:

The first document is Assessment Notice, which is marked as Exhibit P-8 for the prosecution. Kindly go over the same. Is this the document attached to your Judicial Affidavit?

Witness:

Yes, Ma'am.

Atty. Cayabyab:

On the lower portion thereof, there appears to be a signature. Do you know whose signature is this?

Witness:

Sa akin po yan, Ma'am.

Atty. Cayabyab:

The next document attached to your Judicial Affidavit is also an Assessment Notice marked as Exhibit P-8-A for the prosecution. There is also a signature appears [sic] below the said document, whose signature is this?

Witness:

Sa akin po.

Atty. Cayabyab:

Also, a document marked as Exhibit P-9 for the prosecutor, there also appears a signature below, whose signature is that?

Witness:

Sa akin po.

Atty. Cayabyab:

So can you confirm with me, Mr. Witness, that you received the Assessment Notice marked as Exhibit P-8, another Assessment Notice marked as P-8-A, and Formal Letter of Demand marked as Exhibit P-9. Did you receive those documents?

Justice Liban:

Natanggap nyo ho yang mga yan?

Witness:

Opo, Your Honors.

With respect to the PAN, the prosecution's witness, Ms. Ortalla testified that their office issued the PAN with Details of Discrepancies on September 12, 2018.[127] Mr. Nacorda, on the other hand, testified that his office caused the service of the PAN with Details of Discrepancies dated September 12, 2018 to the accused which was served *via* registered mail on September 20, 2018 under Registry Receipt No. RD983224961ZZ.[128] Mr. Nacorda confirmed, however, that there were no return cards showing that it was received by accused and who received them.[129]

The accused, on the other hand, denies receiving the notices sent by the BIR *via* registered mail, which includes the PAN:[130]

Q17: Did you receive the notices sent by the BIR via registered mail?

A17: No, sir. I categorically deny that I have received BIR notices through registered mail.

In sum, while the accused admits having personally received the FAN/FLD, he denies receiving the notices sent by the BIR *via* registered mail, which includes the PAN.

In *Commissioner of Internal Revenue vs. Arturo E. Villanueva, Jr.*,[131] the Supreme Court enunciated that if the taxpayer denies having received an assessment notice from the BIR, it becomes incumbent upon the latter to prove that such notice was, in fact, received by the addressee, *viz.*:

> As applied to issuance of deficiency tax assessments, the Court, in *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue (Barcelon)*, ruled that **if the taxpayer denies ever having received an assessment notice from the BIR, it becomes incumbent upon the latter to prove *that such notice was, in fact, received by the addressee*.** To discharge this burden, it is essential for the BIR to present independent evidence, such as the registry receipt issued by the Bureau of Posts, or the registry return card *which would have been signed by the taxpayer or the*

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[127] Q&A No. 9, Judicial Affidavit of Edna A. Ortalla, Docket – Vol. I (CTA Crim. Case No. O-915), p. 205.

[128] Q&A No. 9, Judicial Affidavit of Mr. Benhur C. Nacorda, *Id.* at 230.

[129] TSN dated February 8, 2024, p. 7.

[130] Page 5 of the Judicial Affidavit of Mr. Jimmy B. Sadongdong, Docket – Vol. II (CTA Crim. Case No. O-915), p. 476.

[131] G.R. No. 249540, February 28, 2024.

latter's authorized representative, showing that the assessment notice was released, mailed, or sent to the taxpayer. If such document cannot be located, the BIR may submit a certification issued by the Bureau of Posts and other pertinent document which is executed with the latter's intervention. Thus, in *Barcelon*, the Court found the BIR record book showing the name of the taxpayer, the kind of tax assessed, the registry receipt number, and the date of mailing of the assessment as incompetent evidence to prove actual receipt by the taxpayer.

In the more recent case of *Commissioner of Internal Revenue v. T Shuttle Services, Inc. (T Shuttle)* where the taxpayer also denied receipt of the PAN and FAN, the Court, reiterating the doctrine in *Barcelon*, clarified that **mere presentation of registry receipts, absent any authentication or identification that the signature appearing therein is the taxpayer's or his or her authorized representative's, is insufficient to prove actual receipt by the taxpayer**.

> As ruled by the CTA *En Banc, the CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN.* It held that the witnesses for *the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives. It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent.* xxx xxx xxx *(Boldfacing supplied; Citations omitted; Italics in original text)*

As a corollary, in *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*, the Supreme Court ruled as follows:[132]

> **If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment** in the clue course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee. (*Emphasis supplied*)

Based on the foregoing, it is clear that, while a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to rebuttal. Consequently, the direct denial thereof shifts the burden to the sender to prove that the said letter was actually received by the addressee.

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132 G.R. No. 202695, February 29, 2016.

In addition, to prove the fact of mailing, respondent must present the Registry Receipt issued by the Bureau of Posts or the Registry Return card which would have been signed by the taxpayer or its authorized representative. In the absence of the said documents, a Certification issued by the said Bureau of Posts, and any other pertinent document executed with its intervention, must be presented to establish the fact of mailing.

To prove that the PAN with attached Details of Discrepancy was served upon petitioner *via* registered mail, plaintiff merely presented the transmittal with Registry Receipt No. RD983224961ZZ, as proof of mailing. The prosecution's own witness, Mr. Nacorda, admitted during cross-examination that there was nothing in the transmittal that would show that the PAN was actually received by the accused:[133]

ATTY. ATANANTE:

> On Question and Answer No. 13, you were asked, "Based on the records of your office, what happened to the mail matter containing the PAN with Details of Discrepancies dated November 3, 2011?", and you answered, "**As per records of our office, the mail matter containing the PAN with Details of Discrepancies dated September 12, 2018** and the FAN/FLD with Details of Discrepancies dated October 22, 2018 **were not returned and served by the postmaster to our office**."

RO NACORDA:

> Yes, sir.

ATTY. ATANANTE:

> In your answer, "As per records of our office", what records of your office are you referring to in this answer?

RO NACORDA:

> The transmittal of the mailing, sir.

ATTY. ATANANTE:

> So, the transmittal of the mailing section?

RO NACORDA:

> Registry return receipt.

ATTY. ATANANTE:

> What document is that, the transmittal?

RO NACORDA:

> Yes, sir.

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[133] TSN dated February 8, 2024, pp. 5 to 7.

ATTY. ATANANTE:
And what is contained in the transmittal?

RO NACORDA:
The transmittal to the post office with a certain list of the names of the taxpayers served with the PAN.

ATTY. ATANANTE:
But you said here, "were not returned and served", so is there a statement there that it was not returned?

RO NACORDA:
It's the transmittal of the person.

ATTY. ATANANTE:
Well, you mentioned "as per record", and you mentioned it's the transmittal **so if the transmittal is shown to you, would there be an annotation there that it was not returned and served?**

RO NACORDA:
No, sir.

ATTY. ATANANTE:
So, there's nothing in the transmittal?

RO NACORDA:
None, sir.

ATTY. ATANANTE:
That it was received?

RO NACORDA:
Received by the post office.

ATTY. ATANANTE:
But not by the accused Jimmy Baro Sadongdong?

RO NACORDA:
Yes, sir.

Glaringly, there were no registry return cards offered in evidence to prove actual receipt by the accused. In fact, even plaintiff's witness, Mr. Nacorda, confirmed that no corresponding return cards were available to show that it was received by the accused:

JUSTICE MODESTO-SAN PEDRO:

I have a question. Mr. Nacorda, you mentioned registry receipts to prove the fact of mailing the documents you mentioned. **Were there corresponding return cards to show that it was received by the accused and who received them?**

RO NACORDA:

***Hindi po nakabalik sa* office *yung* return card Your Honors.**

JUSTICE MODESTO-SAN PEDRO:

So, *wala.*

RO NACORDA:

***Wala po* Your Honors.**

From the foregoing, it is evident that the plaintiff failed to clearly and satisfactorily prove that the PAN was indeed received by the accused. The failure to prove that the PAN was actually received by accused renders the entire assessment process null and void.

In *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*,[134] the Supreme Court elucidated that service and actual receipt of the PAN is part and parcel of due process in the issuance of a deficiency tax assessment that the BIR must strictly comply with. Failure to properly serve the same renders the FAN void and without effect, *viz.*:

> This is consistent with the oft-repeated principle that the sending and actual receipt of the PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment that the BIR must strictly comply with. Certainly, the importance of this preliminary stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.
>
> **Having failed to properly serve petitioner with the NIC and the PAN, it necessarily follows that the succeeding FAN was void and without effect.**

Since the assessment is null and void, the *first element* of the offense charged – that accused was a person required to pay tax – was not established. Without a valid assessment, accused had no legal obligation to pay the alleged deficiency.

Consequently, with regard the *second* element, accused cannot be said to have failed to pay the taxes since there is no deficiency income tax and VAT

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134 G.R. No. 244202, July 10, 2023.

liability arising from a valid assessment to speak of. Hence, the *second* element is likewise absent in this case.

Finally, with the *second* element not proven, there is likewise no act or omission which the Court may characterize as willful. As such, the *third* element is also not satisfied herein.

All told, plaintiff failed to prove beyond reasonable doubt that accused willfully failed to pay the alleged deficiency income tax and VAT assessed by the BIR. Accordingly, acquittal of the accused is in order.

CIVIL ASPECT

With respect to the civil aspect of the case, the Supreme Court had already settled in *People vs. Joel C. Mendez* (*Mendez case*)[135] that the government must prove by competent evidence, other than assessment, the amount to which the civil liability for unpaid taxes may be based, *viz.*:

> The foregoing provision has long existed in the 1939, 1973, and 1977 Tax Codes. Indeed, the tax laws expressly allowed the institution of court proceedings, whether by civil or criminal action, for the collection of tax without assessment in three cases: (1) the taxpayer filed a false return; (2) the taxpayer filed a fraudulent return with the intent to evade taxes; and (3) in case of willful neglect to file a return. Nevertheless, **the government must prove by competent evidence (other than an assessment) the amount on which the civil liability for unpaid taxes may be based**. (*Emphasis supplied*)

Clearly, plaintiff must present competent and sufficient proof of the tax liability of the accused other than an assessment.

In a more recent case, *People vs. Rebecca S. Tiotangco*,[136] the Supreme Court, citing the *Mendez* case,[137] further clarified the necessity of presenting competent evidence to prove the civil liability of the accused, to wit:

> At this juncture, we clarify that the order for payment of taxes in the criminal case despite the absence of a valid assessment is not a violation of the taxpayer-accused's right to due process. The essence of due process is that taxpayers are able to present their case and adduce supporting evidence. Since both the civil and criminal liabilities will be tried jointly, the taxpayer-accused can dispute the alleged deficiency taxes in the same criminal action by presenting competent evidence. **Unlike in a civil case for collection, where notices of the assessment are part of the due process requirement, a precise computation and final determination of a deficiency tax is not required in a criminal case for tax violations**. As

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135 G.R. Nos. 208310-11 & 208662, March 28, 2023.
136 G.R. No. 264192, November 13, 2023.
137 *Supra*, at note 136.

> decreed in Mendez, **in a criminal action for tax violation, the government must prove not only the guilt of the accused by proof beyond reasonable doubt, but also the civil liability for taxes by competent evidence (other than an assessment).** *(Emphasis supplied)*

In this case, however, the plaintiff failed to present competent evidence to establish the accused's civil liability, apart from the documentary and testimonial evidence stemming from the void assessment.

Thus, the Court has no basis upon which it can determine the civil liability of the accused.

WHEREFORE, premises considered, accused **JIMMY BARO SADONGDONG** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

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

Further, the cash bail bond posted by accused Jimmy Baro Sadongdong is hereby **DISCHARGED** and shall be **RELEASED** to him upon presentation of the proper documents, in accordance with the usual accounting rules and regulations.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice