REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case Nos. O-819 and O-820**
- versus -	Members: **DEL ROSARIO**, *PJ, Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
HERNANE PACINO MENDOZA H.P. Mendoza Construction Grapes St., Sunrise Homes San Juan, Taytay, Rizal, *Accused.*	Promulgated: JUL 06 2022 ; 8:34 a.m.

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DECISION

REYES-FAJARDO, *J.*:

On March 3, 2020, two (2) Informations were filed against accused Hernane Pacino Mendoza, indicting him for two (2) counts of violation of Section 255 of the National Internal Revenue Code (NIRC), as amended, the accusatory portions of which respectively state:

CTA Crim. Case No. O-819

> That on or about October 25, 2018 and thereafter, in Taytay, Rizal, and within the jurisdiction of this Honorable Court, accused Hernane Pacino Mendoza, the proprietor of H.P. Mendoza Construction, which is registered at BIR RDO No. 46 – Cainta/Taytay, Rizal, with Taxpayer Identification Number 282-079-873, did then and there, willfully, unlawfully and feloniously fail to pay the basic value-added tax deficiencies for taxable year 2011 in the amount of Two Million Eight Hundred Two Thousand Two Hundred Fifty Eight Pesos and Nine Centavos (Php2,802,258.09), exclusive of surcharge and interest, despite final assessment, including prior and post notices, and formal demands

to pay, the latest being in the nature of Demand Before Suit issued on October 25, 2018, to the damage and prejudice of the government.[1]

CTA Crim. Case No. O-820

That on or about October 25, 2018 and thereafter, in Taytay, Rizal, and within the jurisdiction of this Honorable Court, accused Hernane Pacino Mendoza, the proprietor of H.P. Mendoza Construction, which is registered at BIR RDO No. 46 – Cainta/Taytay, Rizal, with Taxpayer Identification Number 282-079-873, did then and there, willfully, unlawfully and feloniously fail to pay the basic income tax deficiencies for taxable year 2011 in the amount of Three Million Nine Hundred Eighty Eight Thousand Two Hundred Ninety Pesos and Thirty Seven Centavos (Php3,988,290.37), exclusive of surcharge and interest, despite final assessment, including prior and post notices, and formal demands to pay, the latest being in the nature of Demand Before Suit issued on October 25, 2018, to the damage and prejudice of the government.[2]

On March 3, 2020, the prosecution filed a Motion for Consolidation and Joint Trial of CTA Crim. Case Nos. O-819 and O-820.[3]

In the Resolution dated June 4, 2020,[4] the Court: 1) consolidated CTA Crim. Case No. O-820, pending before its Third Division with CTA Crim. Case No. O-819, pending before its First Division, subject to conformity of the former; 2) found probable cause against accused in CTA Crim. Case No. O-819; 3) directed the issuance of warrant of arrest against him; and 4) fixed the amount of bail at ₱60,000.00.

In the Resolution dated July 1, 2020,[5] the Court: 1) noted its Third Division's conformity on the consolidation of CTA Crim. Case No. O-820 with CTA Crim. Case No. O-819; 2) found probable cause against accused on the tax offense charged in CTA Crim. Case No. O-820; 3) directed the issuance of warrant of arrest against him; and 4) fixed the amount of bail at ₱60,000.00.

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1 Docket (CTA Crim. Case No. O-819), p. 5.
2 Docket (CTA Crim. Case No. O-820), p. 5.
3 Docket (CTA Crim. Case No. O-819), pp. 60-61; and Docket (CTA Crim. Case No. O-820), pp. 61-62.
4 Docket (CTA Crim. Case No. O-819), pp. 63-65.
5 *Id.* at pp. 74-76.

Two (2) Warrants of Arrest dated June 9, 2020[6] and July 7, 2020[7] were issued against accused in these consolidated cases.

By Orders dated October 20, 2020[8] and October 27, 2020,[9] the warrants of arrest previously issued against accused in CTA Crim. Case Nos. O-819 and O-820 were respectively lifted in view of his voluntary appearance, along with his posting of the required bail bonds in cash.

In the Hearing held on November 18, 2020, accused pleaded not guilty to the offenses charged in these consolidated cases.[10]

On December 7, 2020, the parties filed their Joint Stipulation of Facts and Issues.[11]

On February 10, 2021, the Court issued a Pre-Trial Order.[12]

During trial, the prosecution presented the following witnesses: 1) Revenue Officer (RO) Francisco M. Diokno; 2) RO Mary Arlene C. Kaamiño; 3) RO Carmina Janine L. Ang; and 4) RO Vanessa R. Valencia.

RO Francisco M. Diokno[13] is a Group Supervisor with the item of RO II (Assessment) in the Bureau of Internal Revenue (BIR), assigned at RDO No. 46, Cainta/Taytay, Rizal. Among his duties and responsibilities is the supervision of audit and investigation of tax cases assigned to his subordinates. He recounted:

In a Letter Notice (LN) dated March 26, 2013, the BIR computerized matching system compared the information/data provided by third party sources against accused's declaration per

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6 Docket (CTA Crim. Case No. O-819), pp. 66-68.
7 Docket (CTA Crim. Case No. O-820), pp. 66-68.
8 Docket (CTA Crim. Case No. O-819), pp. 118-119.
9 *Id.* at pp. 131-132.
10 Order dated November 18, 2020. *Id.* at pp. 176-178.
11 *Id.* at pp. 320-325.
12 *Id.* at pp. 350-367.
13 Judicial Affidavit of Francisco M. Diokno. Exhibits "P-33" and "P-33-A." Identified during the Hearing held on January 27, 2021.

VAT return. It was found that for TY 2011, accused had undeclared sales amounting to ₱23,836,497.98.

On January 19, 2015, a Letter of Authority (LOA) dated January 8, 2015 was served to Nanimae Mendoza, authorizing him, RO Francisco M. Diokno, to examine and audit accused's books of account and other accounting record for TY 2011.

On February 2 and March 3, 2015, Maeflor Mendoza received the BIR's First Notice, and Second and Final Notice for Presentation of Record, respectively. Accused failed to produce the requested documents in said notices. Thus, he recommended for the issuance of a Subpoena Duces Tecum (SDT) against accused, which was granted by BIR Legal Division through the issuance of the SDT on June 15, 2015.

On June 23, 2015, he served the SDT dated June 15, 2015 to Kime Lorenza Iligan.

He then prepared a Memorandum, recommending for the issuance of a Preliminary Assessment Notice (PAN) against accused. The PAN was personally served by RO Mary Arlene C. Kaamiño to Nanimae Mendoza.

There being no response or reply by accused within the fifteen (15)-day period prescribed by rules and regulations, a Final Assessment Notice, Formal Letter of Demand with Details of Discrepancy (FAN/FLD) all dated November 17, 2016 were issued against him. RO Mary Arlene C. Kaamiño served said FAN/FLD to Marilyn F. Ocate.

RO Mary Arlene C. Kaamiño[14] is a RO IV (Assessment) in the BIR, assigned at RDO No. 46, Cainta/Taytay, Rizal. She confirmed the testimony of RO Diokno that she personally served: *one,* the PAN to Nanimae Mendoza; and *two,* the FAN/FLD to Marilyn F. Ocate.

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14 Judicial Affidavit of Mary Arlene C. Kaamiño. Exhibits "P-34" and "P-34-A." Identified during the Hearing held on January 27, 2021.

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She added that since accused did not file any administrative protest to the FAN/FLD within thirty (30) days from receipt thereof, the assessment attained finality. Thus, she indorsed accused's case docket for TY 2011 to the collection division for the execution of summary and administrative remedies.

RO Carmina Janine L. Ang[15] is assigned in the BIR collection division tasked to conduct the execution of summary remedies for the collection of delinquent taxes. She stated that the BIR sent by registered mail to accused a Preliminary Collection Letter (PCL) dated May 19, 2017, followed by a Final Notice Before Seizure (FNBS) dated May 26, 2017, to afford him due process. As accused failed to pay said delinquent taxes for TY 2011, the BIR Collection Division proceeded to enforce its summary remedies for collection against him.

RO Vanessa R. Valencia[16] is assigned in the BIR Collection Division tasked to conduct the execution of summary remedies for the collection of delinquent taxes. She testified that due to accused's non-payment of delinquency taxes despite repeated demands, a warrant of distraint and/or levy (WDL), followed by warrants of garnishment (WOG) were issued against him. Accused's case docket was thereafter indorsed to the BIR Legal Division for the issuance of and service of a Demand Before Suit to him.

To cap up their testimonies, the prosecution's witnesses affirmed that they were the ROs who signed the Department of Justice (DOJ) Investigation Data Form, executed the Joint Complaint Affidavit (JCA) dated March 21, 2019 against accused, as well as the persons named in the Referral Letter dated March 21, 2019 issued by the Commissioner of Internal Revenue (CIR).

On February 24, 2021, the prosecution offered the following pieces of evidence for consideration of the Court:[17]

Exhibit	Description
"P-1"	Letter Notice No. 046-RLF-11-00-00203 dated March 26, 2013

15 Judicial Affidavit of Carmina Janine L. Ang. Exhibits "P-35" and "P-35-A." Identified during the Hearing held on February 10, 2021.

16 Judicial Affidavit of Vanessa R. Valencia. Exhibits "P-36" and "P-36-A." Identified during the Hearing held on February 10, 2021.

17 Plaintiff's Formal Offer of Evidence. Docket (CTA Crim. Case No. O-819), pp. 368-377.

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"P-1-A"	Details of Taxpayer's Customers' Records
"P-2"	Follow-up Letter
"P-3"	Letter of Authority No. LOA-046-2015-00000034/eLA201100091815 dated January 8, 2015
"P-4"	First Notice/Request for Presentation of Records
"P-5"	Second and Final Notice/Request for Presentation of Records
"P-6"	Memorandum Re: Recommendation for Issuance of Subpoena Duces Tecum
"P-7"	Subpoena Duces Tecum dated June 15, 2015
"P-8"	Memorandum for Issuance of Preliminary Assessment Notice
"P-9"	Revenue Officer's Audit Report on Income Tax
"P-10"	Revenue Officer's Audit Report on Value Added Tax
"P-11"	Preliminary Assessment Notice dated October 21, 2016 together with Details of Discrepancies
"P-12"	Affidavit of Service of Preliminary Assessment Notice
"P-13"	Assessment Notice Demand No. 046-B038-11 dated November 17, 2016 for deficiency Income Tax
"P-13-A"	Assessment Notice Demand No. 046-B038-11 dated November 17, 2016 for deficiency Value-Added Tax
"P-14"	Formal Letter of Demand No. 046-B038-11 (50% SC) dated November 17, 2016, together with Details of Discrepancies
"P-15"	Affidavit of Service of Final Assessment Notice & Formal Letter of Demand
"P-16"	Preliminary Collection Letter dated May 19, 2017
"P-17"	Final Notice Before Seizure dated May 26, 2017
"P-18"	Warrant of Distraint and/or Levy dated February 22, 2018
"P-19"	Warrant of Garnishment received by Metropolitan Bank & Trust Company
"P-20"	Warrant of Garnishment received by Banco de Oro
"P-21"	Warrant of Garnishment received by Bank of the Philippine Islands
"P-22"	Warrant of Garnishment received by Philippine Savings Bank
"P-23"	Warrant of Garnishment received by Philippine Bank of Communications
"P-24"	Warrant of Garnishment received by Development Bank of the Philippines
"P-25"	Warrant of Garnishment received by China Banking Corporation

"P-26"	Warrant of Garnishment received by United Coconut Planters Bank
"P-27"	Warrant of Garnishment received by Rizal Commercial Banking Corporation
"P-28"	Warrant of Garnishment received by Security Bank
"P-29"	Demand Before Suit dated October 25, 2018
"P-29-A"	Registry Receipt dated October 30, 2018
"P-29-B"	Registry Return Receipt indicating date of receipt on November 14, 2018
"P-30"	Investigation Data Form dated March 21, 2019
"P-31"	Referral Letter dated March 21, 2019
"P-32"	Joint Complaint Affidavit dated March 21, 2019
"P-33"	Judicial Affidavit of Revenue Officer Francisco Diokno
"P-33-A"	Signature of Revenue Officer Francisco Diokno
"P-34"	Judicial Affidavit of Revenue Officer Mary Arlene C. Kaamiño
"P-34-A"	Signature of Revenue Officer Mary Arlene C. Kaamiño
"P-35"	Judicial Affidavit of Revenue Officer Carmina Janine L. Ang
"P-35-A"	Signature of Revenue Officer Carmina Janine L. Ang
"P-36"	Judicial Affidavit of Revenue Officer Vanessa R. Valencia
"P-36-A"	Signature of Revenue Officer Vanessa R. Valencia

By Resolution dated July 28, 2021,[18] Exhibits **"P-1," "P-1-A," "P-2," "P-3," "P-4," "P-5," "P-6," "P-7," "P-8," "P-9," "P-10," "P-11," "P-12," "P-13," "P-13-A," "P-14," "P-15," "P-16," "P-17," "P-18," "P-19," "P-20," "P-21," "P-22," "P-23," "P-24," "P-25," "P-26," "P-27," "P-28," "P-29," "P-29-A," "P-30," "P-31," "P-32," "P-33," "P-33-A," "P-34," "P-34-A," "P-35," "P-35-A," P-36,"** and **"P-36-A** were admitted as evidence for the prosecution. Exhibit **"P-29-B"** was denied admission as evidence for failure to present the original thereof for comparison. The prosecution rested its case.

For the defense, accused **Hernane P. Mendoza**[19] was presented as sole witness. He narrated:

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18 *Id.* at pp. 403-404.

19 Judicial Affidavit of Hernane P. Mendoza. Exhibit "A-5" and "A-5-A." Identified in the Hearing held on March 30, 2022.

In 1989, he worked as a construction laborer and became a foreman/leadman in 1994. From 1998 to 2004, he was unemployed. From 2005-2010, he was again re-employed as a foreman. In the course of his employment, he learned, while working with Project Engineers/Managers to read building or construction plans.

In 2011, his employer, the owner of DDT Konstruct, Inc. (DDT) told him to form a single proprietorship whereby he would supply DDT with workers/laborers under his supervision through a "Pasa-Payroll" system. He agreed. Accordingly, he directly supplied labor to DDT and Hilmarc's Construction Corp. (HCC).

Under the "Pasa-Payroll" system, he prepared weekly accomplishment report and billing for the labor supplied to DDT and HCC. Upon payment by DDT and HCC, he would first deduct the salaries of his workers/laborers; he then would take the remainder thereof as his weekly profits. Also, for 2011, some of his collections from DDT and HCC were insufficient to pay for the salaries of his workers which resulted in losses.

He disclaimed any intention of not paying his taxes due to the government for 2011. In fact, he hired a freelance bookkeeper on said year to settle said tax obligations.

Sometime in December of 2012, until early January-February of 2013, his place at Grape St., Sunrise Homes, San Juan, Taytay, Rizal which is near Manila Bay, was inundated by flood caused by "Habagat," resulting in the destruction of papers and record of his transactions.

When he received a letter from the BIR sometime in the middle of 2013, he tried, but failed to locate his freelance bookkeeper. Hence, he got scared and went to Bacolod.

During his stay in Bacolod, he communicated with his children pertaining to BIR matters. When he knew that there were standing warrants of arrest against him, he borrowed money for his transportation expense to go back to Metro Manila and to pay for the respective bail bonds.

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On April 5, 2022, the defense offered[20] the following exhibits for consideration of the Court:

Exhibit	Description
"A-1"	"Kontra-Salaysay" of the accused signed on November 11, 2020
"A-4"	Photo showing flooded area of accused residence
"A-4-A"	Photo showing flooded area of accused residence
"A-5"	Judicial Affidavit of Accused Hernane P. Mendoza

By Resolution[21] dated May 12, 2022, Exhibits **"A-1"** and **"A-5"** were admitted as evidence for the defense. However, Exhibits **"A-4"** and **"A-4-A"** were denied admission as evidence since said documents were not identified by a competent witness.

Hence, this Decision.

ISSUES

For resolution are: *first,* whether or not the deficiency assessment issued against accused for TY 2011 have become final, executory, and demandable; and *second,* whether or not accused is guilty of the crimes charged for violation of Section 255 of the NIRC, as amended.[22]

OUR RULING

Accused must be acquitted.

Section 255 of the NIRC, as amended reads:

> 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**

[20] Formal Offer of Exhibits (For the Accused). Docket (CTA Crim. Case No. O-819), pp. 426-430.

[21] *Id.* at pp. 437-438.

[22] *Supra* note 12.

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> **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 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.
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> ... (Boldfacing supplied)

Our Constitution and our laws dearly value individual life and liberty and require no less than moral certainty or proof beyond reasonable doubt to offset the presumption of innocence. Courts are tasked to determine whether the prosecution has submitted sufficient legally admissible evidence showing beyond reasonable doubt that a crime has been committed, and that the accused committed it.[23]

Thus, to sustain a conviction for willful failure to pay taxes punishable under Section 255 of the NIRC, as amended, the prosecution must prove beyond reasonable doubt the existence of the following elements: *first,* a person is required by the NIRC, as amended, or by duly promulgated rules and regulations, to pay taxes due; and *second,* such person willfully failed to pay said taxes.

Significantly, *Tupaz v. Ulep*[24] declares that the offense of willful failure to pay tax may be committed:

> ... after service of notice and demand for payment of the deficiency taxes upon the taxpayer.... 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....

Accused was charged for two (2) counts of willful failure to pay taxes. Allegedly, he willfully failed to pay the deficiency VAT[25] and

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[23] *People of the Philippines v. Agustin,* G.R. No. 247718, March 3, 2021.

[24] G.R. No. 127777, October 1, 1999.

[25] *Supra* note 1.

IT[26] due against him for TY 2011 based on the final and executory FAN/FLD. However, accused is not required to pay such taxes because the FAN/FLD is void. Being void, such assessment never attained finality.[27] Consider:

First, there was no valid service of the FAN/FLD to accused.

Section 228 of the NIRC, as amended,[28] as implemented by Section 3[29] of Revenue Regulations (RR) No. 12-99,[30] as amended by RR No. 18-2013 ordains that the taxpayer is guaranteed a period of thirty (30) days from receipt of the FAN/FLD to file a valid administrative protest thereto,[31] lest there be violation of the taxpayer's right to due process on assessment.

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26 *Supra* note 2.

27 In *Commissioner of Internal Revenue v. T-Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020, it was ruled that the finality of an assessment is premised on the validity thereof. In reverse, if the assessment is void, it may not attain finality.

28 SEC. 228. Protesting of Assessment. - ...

...

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

... (Boldfacing supplied)

29 SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

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3.1.4 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 (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) his name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

30 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

31 In *Commissioner of Internal Revenue v. T-Shuttle Services, Inc., supra* note 27, the Supreme Court held that "A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by

RO Kaamiño testified that on November 17, 2016, she personally served[32] the FAN/FLD to accused, through his niece[33] Marilyn F. Ocate at Grape St., Sunrise Homes, San Juan, Taytay, with an Affidavit of Service dated November 18, 2016[34] as proof thereof. She deduced the supposed authority of Marilyn F. Ocate to represent accused in this wise:

ATTY. OLA-A

Q In your answer to Question No. 13, you said that the FAN and FLD were served a certain Marilyn F. Ocate which you said was the authorized representative of the Accused. How did you know that this person Marilyn F. Ocate was the authorized representative of the Accused?

MS. KAAMIÑO

A Again, **she claimed to be the authorized representative of the taxpayer**.

ATTY. OLA-A

Q Did you ask for her Identification card?

MS. KAAMIÑO

A Yes, but no ID was presented.

ATTY. OLA-A

That would be all, your Honors.[35]

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JUSTICE MANAHAN

But with regard to Ms. Ocate, is not bearing the same family name as Mendoza, what did she claim why is she an authorized representative?

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the taxpayer, and must demand payment of the taxes described therein within a specific period.'"

32 Answer to Question No. 13, Judicial Affidavit of Mary Arlene C. Kaamiño. Exhibits "P-34" and "P-34-A."

33 *Infra* note 40.

34 Exhibit "P-15."

35 Transcript of Stenographic Notes (TSN) of Hearing held on January 27, 2021, pp. 32-33. Boldfacing supplied.

MS. KAAMIÑO

She said she is the authorized representative of the subject taxpayer, your Honors.

JUSTICE MANAHAN

In what capacity has she become an authorized representative?

MS. KAAMIÑO

She said she is the authorized representative, your Honors.

JUSTICE MANAHAN

As I said, is it good practice that you just take the answer of the person just like that because if she claims she is the authorized representative, what do you normally demand to prove that she is indeed the representative of the taxpayer?

MS. KAAMIÑO

Actually, your Honors, I requested for an identification card, your Honors.

JUSTICE MANAHAN

Did you even ask whether she works for the company?

MS. KAAMIÑO

She said she is working with the company and that she is the authorized representative, your Honors.[36]

Meanwhile, accused went to Bacolod approximately in the middle of 2013,[37] and went back to Metro Manila in 2020.[38] Undeniably, he was not in Taytay, Rizal at the time RO Kaamiño served the FAN/FLD to Marilyn F. Ocate on November 17, 2016. Accused also admitted that he communicates with his *children* on BIR

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36 *Id.* at pp. 34-35. Boldfacing supplied.

37 Answer to Question Nos. 12 and 13, Judicial Affidavit of Hernane Mendoza. Exhibits "A-5" and "A-5-A."

38 Answer to Question No. 17, Judicial Affidavit of Hernane Mendoza. Exhibits "A-5" and "A-5-A." Accused stated that he went back to Metro Manila to face his criminal charges after knowing that warrants of arrest in these cases were issued against him. Said warrants of arrest were issued in 2020.

matters while he was at Bacolod.[39] Marilyn F. Ocate is the niece,[40] and not a child of accused.

Article 1869 of the Civil Code[41] states that agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, *knowing* that another person is acting on his behalf without authority. Pertinently, the law makes no presumption of agency and proving its existence, nature and extent is incumbent upon the person alleging it.[42] The prosecution failed in this regard.

Indeed, RO Kaamiño simply relied on the representation made by Marilyn F. Ocate to establish that the latter is accused's authorized representative. Other than the bare assertion by Marilyn F. Ocate, there is clearly no evidence of express agency between accused and Marilyn F. Ocate. Moreover, *sans* any positive acts or representations of accused, *i.e.*, silence or lack of action, or his failure to repudiate the agency, from which circumstances of implied agency may be based, Marilyn F. Ocate is *not* the authorized representative of accused. Precisely, no valid service of the FAN/FLD was made to accused. *Country Bankers Insurance Corporation v. Keppel Cebu Shipyard, et al.* is on point:

> [T]he ignorance of a person dealing with an agent as to the scope of the latter's authority is no excuse to such person and the fault cannot be thrown upon the principal. A person dealing with an agent assumes the risk of lack of authority in the agent. **He cannot charge the principal by relying upon the agent's assumption of authority that proves to be unfounded**....[43]

Second, the BIR's FAN/FLD issued to accused is not the assessment contemplated by law. Section 6(A) of the NIRC, as amended, provides that the tax or deficiency tax so assessed shall be paid upon notice and demand from the CIR or his duly authorized

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39 Answer to Question No. 18, Judicial Affidavit of Hernane Mendoza. Exhibits "A-5" and "A-5-A."

40 Per Affidavit of Service dated November 18, 2016, exhibit "P-15"; and notation on the FAN for IT covering TY 2011, stating that accused is Marilyn F. Ocate's uncle, exhibit "P-13."

41 Republic Act No. 386.

42 *Yun Kwang Byun v. Philippine Amusement and Gaming Corporation,* G.R. No. 163553, December 11, 2009.

43 G.R. No. 166044, June 18, 2012, citing *Manila Memorial Park Cemetery, Inc. v. Linsangan,* G.R. No. 151319, November 22, 2004. Boldfacing supplied.

representative.[44] An assessment is described as a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[45]

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,[46] the tax assessment therein was invalidated for lack of due dates in the assessment notices,[47] along with failure to provide a fixed and determinate amount of taxes due. These infirmities permeated the BIR's FAN/FLD issued against accused, rendering such assessment void. For instance:

One, the FLD dated November 17, 2016[48] states that accused was requested to pay the deficiency IT and VAT for TY 2011 within the time shown in the enclosed assessment notice. Yet, the respective due dates on the FAN for IT[49] and VAT[50] covering TY 2011 remained unaccomplished, thereby demonstrating the absence of the BIR's demand for payment against accused.

Two, the same FLD dated November 17, 2016[51] contains the following notation: "*Please note that the interest and total amount due will have to be adjusted if paid after the date specified herein.*" Since the total amount due is subject to change depending on accused's date of payment, said FLD lacks a fixed and determinate amount of tax liability.

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44 SEC. 6. *Power of the Commissioner to Make and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

(A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

... (Boldfacing supplied)

45 *Commissioner of Internal Revenue v. Megabucks Merchandising Corp.*, CTA EB No. 1974, February 12, 2020, citing *Adamson v. Court of Appeals*, G.R. No. 120935, May 21, 2009.

46 G.R. No. 215957, November 9, 2016.

47 The principle that an assessment is void because of lack of due dates thereon was applied in the recent case of *Republic of the Philippines, represented by the Bureau of Internal Revenue v. First Gas Power Corporation*, G.R. No. 214933, February 15, 2022.

48 Exhibit "P-14."

49 Exhibit "P-13."

50 Exhibit "P-13-A."

51 *Supra* note 48.

In fine, the *first* element is wanting since accused is not required to pay the deficiency IT and VAT for TY 2011 under a void FAN/FLD issued by the BIR. The absence thereof negates the presence of the *second* element given that he is justified in not paying such taxes under a void assessment. Hence, accused's acquittal on the charges hurled against him must ensue.

Anent accused's civil liability arising from the crimes charged in these cases, Section 205 of the NIRC, as amended, reads:

> **SEC. 205.** ***Remedies for the Collection of Delinquent Taxes.*** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from **delinquency** shall be:
>
> ...
>
> (b) By civil or **criminal action.**
>
> **The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.**
>
> ...[52]

As presently formulated, the order to pay taxes subject of these cases rests upon concurrence of the following conditions: *first,* the tax subject of the criminal case is delinquent; and *second,* there must be valid final determination thereof by the CIR. None of these conditions were met. To expound:

A tax is considered delinquent when an assessment for deficiency tax has become final, executory, and demandable, and that the taxpayer has not paid the same within the period given in the notice of assessment.[53] Conversely, when an assessment is void and did not attain finality, the taxes assessed therein may not be considered delinquency taxes.

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52 Boldfacing supplied.

53 Atty. Eufrocina M. Sacdalan-Casasola, National Internal Revenue Code (Annotated), Vol. 2, Rex Publishing Company, Inc. (2012), p. 1169.

Additionally, in *People of the Philippines v. Court of Tax Appeals-Third Division and William Villarica,*[54] *(Villarica)* the Supreme Court held that adherence with due process on assessment is crucial in the pursuit of the *civil* aspect of the criminal case for willful attempt in any manner to evade or defeat any tax imposed in the NIRC, as amended, punishable under Section 254 thereof.

Macario Lim Gaw, Jr. v. Commissioner of Internal Revenue[55] further explains that "[u]nder Sections 254 and 255 of the NIRC, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. ..." Evidently, tax evasion also includes willful failure to pay taxes due punishable under Section 255 of the NIRC, as amended.

Just as the validity of an assessment is essential in pursuing the civil aspect of the crime of willful attempt in any manner to evade or defeat any tax imposed in the NIRC, as amended punishable under Section 254 thereof, as ruled in *Villarica,* so too should the same standard be applied in willful failure to pay tax due punishable under Section 255 of the same Code such as the instant cases. The reason being the *civil* liability arising from both crimes is essentially the same— recovery of taxes due from the taxpayer.

Again, the FAN/FLD issued by the BIR to accused in these cases are void and never attained finality. Hence, neither the IT and VAT for TY 2011 based thereon become delinquent taxes within the purview of the law, nor did the CIR issued a valid final determination of accused's tax liability. *Ergo,* the Court may not order the civil liability for payment of taxes arising from the crimes charged herein. To stress, a void assessment bears no valid fruit.[56]

WHEREFORE, accused Hernano Pacino Mendoza is **ACQUITTED** of the crimes charged under the two (2) Informations

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[54] G.R. No. 248802, Resolution dated June 21, 2021.

[55] G.R. No. 222837, July 23, 2018.

[56] *Commissioner of Internal Revenue v. Unioil Corporation,* G.R. No. 204405, August 4, 2021; *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation,* G.R. No. 197945, July 9, 2018; and *Commissioner of Internal Revenue v. Reyes,* G.R. No. 159694, January 27, 2006.

in CTA Crim. Case Nos. O-819 and O-820 on the ground of reasonable doubt. No pronouncement as to civil liability.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

I concur with the result.
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice