REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GENOVEVA S. SUAREZ,
Petitioner,

CTA EB CRIM. NO. 066
(CTA Crim. Case No. A-4)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

- versus –

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

NOV 19 2019
3:07 p.m.

x---x

DECISION

CASTAÑEDA, JR., *J.:*

This is an appeal, by way of Petition for Review,[1] filed by petitioner Genoveva S. Suarez (Suarez) under Section 9(b), Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) of the Decision dated July 5, 2018 (Assailed Decision)[2] and the Resolution dated February 20, 2019 (Assailed Resolution)[3] both rendered by the Third Division of this Court

[1] Court *En Banc's* Docket, pp. 1-18.
[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Ma. Belen M. Ringpis-Liban; Court *En Banc*'s Docket, pp. 21-39.
[3] Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justice Ma. Belen M. Ringpis-Liban; Court *En Banc*'s Docket, pp. 40-46.

(Court in Division) in CTA Crim. Case No. A-4 entitled *"People of the Philippines v. Genoveva S. Suarez"*. The Assailed Decision affirmed with modification the decision rendered by the Regional Trial Court of Manila, Branch 21, in Criminal Case No. 08-263206, finding petitioner guilty of violation of Section 255 of the National Internal Revenue Code of 1997, as amended (1997 NIRC).

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, the appealed Decision dated June 2, 2016 rendered by Branch 21 of the Regional Trial Court of Manila in Criminal Case No. 08-263206 is hereby **AFFIRMED with modifications** as to the penalties imposed.
>
> Appellant Genoveva S. Suarez, is hereby sentenced to suffer an indeterminate imprisonment ranging from one (1) year and three (3) months, as minimum, to three (3) years and three (3) months, as maximum, and to pay a fine of Ten Thousand Pesos (Php10,000), pursuant to Section 255 of NIRC of 1997, as amended, with subsidiary imprisonment in case she has no property with which to meet the said fine, pursuant to Section 280 of the NIRC of 1997, as amended.
>
> On the other hand, 21st Century Entertainment, Inc. is hereby ordered to pay Php458,333.11, representing the aggregate amount of basic deficiency Income Tax, Improperly Accumulated Earnings Tax, Minimum Corporate Income Tax, Expanded Withholding Tax and Value-Added Tax for taxable year 2000.
>
> In addition, 21st Century Entertainment, Inc., shall also pay the following:
>
> a) twenty-five percent (25%) surcharge on the total basic deficiency tax, pursuant to Section 248(A)(3) of the NIRC of 1997, as amended;
>
> b) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Minimum Corporate Income Tax, Improperly Accumulated Earnings Tax computed from the dates indicated below until December

31, 2017 pursuant to Section 249(B) of the NIRC of 1997, as amended;

Tax type	Reckoning date for the computation of Deficiency Interest
Income Tax	April 15, 2001
Value-Added Tax	January 25, 2001
Expanded Withholding Tax	January 15, 2001
Minimum Corporate Income Tax	April 15, 2001
Improperly Accumulated Earnings Tax	April 15, 2001

c) delinquency interest at the rate of twenty percent (20%) per annum on the unpaid amount (basic deficiency tax + 25% surcharge + 20% deficiency interest which have accrued as afore-stated in (b), computed from March 17, 2006 until December 31, 2017 pursuant to Section 249(C) of the NIRC of 1997, as amended); and

d) delinquency interest at the rate of twelve percent (12%) per annum on the unpaid amount (basic deficiency tax + 25% surcharge + 20% deficiency interest which have accrued as afore-stated in (b), computed from January 1, 2018 until the amount is fully paid pursuant to the relevant provisions of the Republic Act No. 10963, otherwise known as the TRAIN Law which took effect on January 1, 2018).

e) Finally, 21st Century Entertainment, Inc. shall pay a fine of Php50,000.00, as mandated in Section 256 of the NIRC of 1997, as amended.

SO ORDERED."

Assailed Resolution:

"**WHEREFORE,** the **Motion for Reconsideration** filed by appellant on July 27, 2018 is **DENIED** for lack of merit.

SO ORDERED." ge

THE FACTS

The facts of the present case, as culled from the records, are as follows:[4]

> "Appellant Genoveva S. Suarez was the Executive Vice-President (EVP) of 21st Century Entertainment, Inc. (21st Century) during the period relevant to this case.
>
> On January 23, 2004, the Commissioner of Internal Revenue (CIR) issued Final Assessment Notices (FANs) and Final Letters of Demand (FLDs) to 21st Century, demanding payment for deficiency Income Tax (IT), Improperly Accumulated Earnings Tax (IAET), Minimum Corporate Income Tax (MCIT), Expanded Withholding Tax (EWT), Value-Added Tax (VAT) and Compromise Penalty, in the aggregate amount of Seven Hundred Forty-Seven Thousand Nine Hundred Sixty-Four and 49/100 Pesos (Php747,964.49) for taxable year (TY) 2000.
>
> On February 26, 2004, 21st Century, represented by its Vice-President, John S. Suarez, filed a Protest against the FLDs and requested the Bureau of Internal Revenue (BIR) for reinvestigation of the assessment issued against it.
>
> The said Protest Letter was forwarded by BIR Revenue Region No. 6, Manila, Assessment Division to Revenue District Office (RDO) No. 31 for appropriate action via the 1st Indorsement dated September 20, 2004.
>
> On December 5, 2005, the case docket of 21st Century was forwarded to Revenue Region No. 6, Chief Collection Division, for enforcement of collection as 21st Century failed to submit within sixty (60) days from date of protest supporting documents to refute the assessment.
>
> On December 19, 2005, Revenue District Officer, Petronilo C. Fernando, of RDO No. 31, Sta. Cruz, Manila issued the First Notice of Delinquent Account to 21st Century, requiring it to settle its tax deficiencies, lest the case shall be referred to the BIR Legal Division for legal action. This was followed by a Second Notice of Delinquent Account issued on January 3, 2006 addressed to appellant as the Treasurer of 21st Century, informing the latter that the case had been referred to the BIR Legal Division and reiterating advice to settle the tax

[4] Court *En Banc*'s Docket, pp. 22-26 (Citations omitted).

deficiency the soonest to avoid the issuance of a Warrant of Distraint and/or Levy (WDL) or Garnishment.

On March 17, 2006, a Final Notice before Seizure (FNBS) addressed to Richard Suarez was issued to 21st Century through registered mail, copy furnished appellant, among others.

On August 24, 2006, appellant sent a Letter to RDO No. 31, Manila, requesting for additional time to secure the services of an external accountant to assist 21st Century in putting its accounting records in order so that it could provide the BIR evidence supporting its 2000 Financial Statements/Income Tax Returns. Appellant also obliged to settle through compromise 21st Century's tax liability, should there be any.

On November 28, 2006, the CIR issued a WDL and served it upon 21st Century on February 26, 2007, indicating Richard S. Suarez as the taxpayer's authorized representative.

On March 7, 2017, the BIR issued a Warrant of Garnishment to Equitable-PCI Bank Head Office against the account of 21st Century sufficient to cover its tax liability in the amount of Php747,964.29.

In a Memorandum dated May 28, 2007, Revenue Officer (RO) II Dionisio P. Singson referred the case to the Chief of the Collection Enforcement Section of RDO No. 31, Sta. Cruz, Manila, for filing of appropriate action in court for failure of 21st Century to pay its delinquent tax liability.

On August 21, 2008, the Office of Manila City Prosecutor filed an Information against appellant for violation of Section 255, in relation to Sections 253(d) and 256 with the RTC, Manila, committed as follows:

> That on or about January 23, 2004, and continuously up to present, in the City of Manila, Philippines, the said accused being then the President of 21st CENTURY ENTERTAINMENT, INC. with business address at Room 207 Tiaoqui Bldg., Sta. Cruz, Manila, and therefore the responsible officer of the said Corporation, to whom notices and demands were made by the Bureau of Internal Revenue, represented in this case by ATTY. HABARI LUCMAN BALT, to pay the Corporation's overdue tax obligations amounting to PhP747,964.49 under BIR Assessment Notice No. 31-2000, did then and there willfully, unlawfully and

> knowingly fail, refuse and neglect to pay the Bureau of Internal Revenue the said amount of PhP747,964.49 despite due notice and demand without formally protesting and appealing the same with the proper authority, to the damage and prejudice of the Government of the Republic of the Philippines sin (*sic*) the same sum of PhP747,964.49, Philippine currency.
>
> CONTRARY TO LAW.
>
> The case was raffled to Manila RTC Branch 21 which issued a Warrant of Arrest against appellant on August 29, 2008.
>
> On January 27, 2007, appellant posted a cash bond in the reduced amount of P10,000.00 for her provisional liberty.
>
> When arraigned on February 4, 2009, appellant, duly assisted by counsel, pleaded 'NOT GUILTY' of the crime charged.
>
> During the trial, the prosecution presented Ma. Paz Arcilla, Armando Macatangay and Dionisio Singson as its witnesses. After offer of evidence, the prosecution rested.
>
> On April 7, 2016, appellant filed a Motion for Leave of Court to File Demurrer to Evidence, which was denied on April 14, 2016, for having been filed out of time pursuant to Section 23, paragraph 3 of Rule 119 of the Rules of Court.
>
> On the same date, appellant waived presentation of evidence for her defense.
>
> On June 2, 2016, the RTC rendered the assailed Decision, convicting appellant of the crime charged.
>
> On June 15, 2016, appellant filed a Notice of Appeal with the RTC, which gave it due course on June 17, 2016. In the same order, the Court directed the RTC to transmit the entire record of the case to this Court for disposition.
>
> With appellant's filing of her Brief on October 21, 2017 and that of appellee on December 21, 2016, the case was submitted for decision on July 18, 2017."

On July 5, 2018, the Court in Division rendered the Assailed Decision. gz

Aggrieved, petitioner filed a Motion for Reconsideration but the Court in Division likewise denied the same for lack of merit in the Assailed Resolution.

On March 20, 2019, petitioner filed the present Petition for Review.

In a Resolution dated April 11, 2019,[5] the Court *En Banc* directed the respondent to file a Comment to the Petition for Review within ten (10) days from receipt thereof.

Within the extended period granted by the Court *En Banc*,[6] respondent filed his Comment (To Petition for Review)[7] on May 6, 2019.

Thus, in a Resolution dated May 29, 2019,[8] the present Petition for Review was submitted for decision.

THE ISSUES

Petitioner submits the following issues for decision of the Court *En Banc*:[9]

I. Whether or not the Prosecution has proven beyond reasonable doubt that Petitioner is an accountable officer of the 21st Century Entertainment, Inc.; and

II. Whether or not the admissions of Petitioner would be enough to warrant her conviction for the violation of Section 255 in relation to Sections 253(d) and 256 of the 1997 National Internal Revenue Code.

THE COURT *EN BANC*'S RULING

The Petition for Review lacks merit.

In the present case, petitioner Genoveva S. Suarez was found guilty of violating Section 255 in relation to Sections 253(d) and 256 of the 1997 NIRC. These provisions read as follows: Je

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[5] *Id.*, pp. 60-61.
[6] Minute Resolution dated April 30, 2019, Court *En Banc*'s Docket, p. 65.
[7] Court *En Banc*'s Docket, pp. 66-69.
[8] *Id.*, pp. 71-72.
[9] *Id.*, p. 10.

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

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

SEC. 253. ***General Provisions.*** —

xxx xxx xxx

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

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

Based on the foregoing provisions, the following elements must be established by the prosecution to secure the conviction of accused in the present criminal case, to wit:

1. That a **corporate taxpayer is required under the 1997 NIRC to pay any tax**, make a return, keep any record, or supply correct and accurate information; and

2. That the **corporate taxpayer failed to pay the required tax**, make a return or keep the required record, or supply the correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; and

3. That **accused, as the employee responsible for the violation, willfully failed 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. *(Emphasis supplied)*

With respect to the first and second elements, the Court in Division held as follows:[10]

> "It cannot be disputed that the corporate taxpayer required to pay the assessed deficiency taxes in the aggregate amount of Php747,964.49 for TY 2000 is no other than 21st Century, which despite demand, failed to pay the taxes due.
>
> All the documents presented by the prosecution and admitted by the Court point to no other than 21st Century as the corporate taxpayer against which the BIR issued the FANs and FLDs demanding payment of deficiency IT, IAET, MCIT, EWT, VAT and Compromise Penalty, in the total amount of Php747,964.49 for TY 2000. By filing a protest to the FAN/FLDs on February 26, 2004 and requesting for a reinvestigation, 21st Century, through its Vice-President, John S. Suarez, effectively admitted that it is the corporate taxpayer against whom the assessment was issued. The protest however, remained unsubstantiated as 21st Century was unable to submit supporting documents to refute the subject assessment, rendering it final and demandable. To pursue collection of the subject deficiency taxes, the BIR sent two (2) Notices of Delinquent Account to 21st Century, one addressed to appellant

[10] *Id.*, p. 30.

> as its Treasurer. On March 17, 2006, the BIR issued a Final Notice before Seizure which was served upon 21st Century through registered mail. All the foregoing events remain unrefuted for appellant opted to waive presentation of evidence in her defense.
>
> It is therefore beyond cavil that 21st Century Entertainment, Inc. is the corporate taxpayer in this case required by law to pay the taxes due but failed. Appellant, Genoveva S. Suarez practically pinned down 21st Century as she tried to extricate herself from the indictment declaring that the prosecution was able to prove that 21st Century failed to pay the assessed deficiency taxes due from it." *(Citations omitted)*

The above findings remain uncontroverted and the Court *En Banc* sees no reversible error committed by the Court in Division in arriving at the same. Accordingly, these findings must stand.

It is as regards the presence of the third element that petitioner takes exception. Petitioner claims that the Court in Division erred in affirming her conviction because no evidence was presented to establish her true position in 21st Century Entertainment, Inc. (the "Corporation").[11] She contends that she was convicted as a "responsible officer" of the Corporation yet no evidence was presented to prove the same.[12] According to petitioner, Section 253(d) of the 1997 NIRC expressly enumerates those that may be responsible for any violation of the penal provisions of the 1997 NIRC committed by a corporation.[13] Petitioner posits that her position as Executive Vice-President (EVP) of the Corporation is not included in the said enumeration and thus cannot be considered as a corporate officer within the realm of Section 256 of the 1997 NIRC.[14] Petitioner likewise stresses that the prosecution failed to prove her involvement in the Corporation.[15]

Petitioner also maintains that the fact that she asked for a reasonable time to pay the Corporation's liabilities is not an admission of her personal liability.[16] On the contrary, petitioner asserts that her August 24, 2006 letter is actually an evidence that it was only she who had the good faith intention of paying the Corporation's tax deficiency.[17] According to petitioner, her August 24, 2006 letter does not, in any way, prove that she should be held liable for the crime charged.[18] She contends that her admissions cannot be treated as a confession but merely established the following facts: (1) that

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[11] *Id.*, pp. 10-12.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*, pp. 12-16.
[17] *Id.*
[18] *Id.*

petitioner admitted that the Corporation is liable for non-payment of taxes; and (2) that petitioner was the EVP at the time of assessment.[19] Petitioner also posits that the law punishes the officers responsible for the non-payment of taxes and not the officers who sought to pay them.[20]

Petitioner's position is untenable.

A corporation, being an artificial person created by fiction of law, can only act through its directors, officers, agents, or employees.[21] Where the business of the corporation involves a violation of the law, the rule is that all those who participated in the illegal act are liable and must necessarily suffer its consequences.[22] In *Alfredo Ching v. Secretary of Justice*,[23] the liability of corporate agents for crimes committed by the corporation was discussed by the Supreme Court in this wise:

> "**If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment.** However, a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined.
>
> A crime is the doing of that which the penal code forbids to be done, or omitting to do what it commands. A necessary part of the definition of every crime is the designation of the author of the crime upon whom the penalty is to be inflicted. When a criminal statute designates an act of a corporation or a crime and prescribes punishment therefor, it creates a criminal offense which, otherwise, would not exist and such can be committed only by the corporation. But when a penal statute does not expressly apply to corporations, it does not create an offense for which a corporation may be punished. On the other hand, **if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty therefor to be suffered by the officers, directors, or employees of such corporation or other persons responsible**

[19] *Id.*
[20] *Id.*
[21] *Lozada v. Mendoza*, G.R. No. 196134, October 12, 2016, 805 SCRA 680; *Zaragoza v. Tan*, G.R. No. 225544, December 4, 2017, 847 SCRA 450.
[22] *People v. Tan Boon Kong*, G.R. No. L-32652, March 15, 1930, 54 Phil. 609 citing *Grall and Ostrand's Case*, 103 Va., 855, and authorities there cited.
[23] G.R. No. 164317, February 6, 2006, 481 SCRA 609, 635-636.

> **for the offense, only such individuals will suffer such penalty. Corporate officers or employees, through whose act, default or omission the corporation commits a crime, are themselves individually guilty of the crime.**
>
> The principle applies whether or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, **by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act.** Moreover, all parties active in promoting a crime, whether agents or not, are principals. Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact.

The foregoing rules are statutorily embodied in Sections 253(d) and 256 of the 1997 NIRC as quoted above.

The Court *En Banc* agrees with the conclusion reached by the Court in Division that petitioner's judicial admission that she was the EVP of the Corporation[24] at the time of assessment coupled with the proof that petitioner sent a letter dated August 24, 2006 addressed to Mr. Petronilo Fernando, Revenue District Officer of BIR RDO No. 31[25] wherein petitioner acknowledged that the Corporation's tax assessment case has become "delinquent account" and also requested for considerable time to put its accounting records in order to be able to settle the Corporation's tax liabilities by way of compromise, firmly established the fact that petitioner is a responsible officer of the Corporation and thus, must be held liable for the criminal infraction committed by the latter.

The tenor of the petitioner's letter unmistakably shows that: (1) petitioner was personally aware of the subject assessment against the Corporation; (2) petitioner knew that the said assessment has become "delinquent account"; and (3) petitioner, as the Corporation's EVP, was actually involved in or in charge of the process of settling the Corporation's tax liabilities. The purported settlement by way of compromise of the Corporation's deficiency taxes, however, failed to materialize and the protest to the Final Assessment Notice (FAN) was never substantiated, which consequently led to the finality of the subject assessment.

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[24] Pre-Trial Order dated February 7, 2014, RTC Docket, p. 265.
[25] Exhibit "CCC", RTC Docket, p. 416.

Contrary to petitioner's assertion, the prosecution need not prove her involvement with the Corporation because she herself judicially admitted the same. It also bears stressing that her position as the Corporation's EVP is covered by Sections 253(d) and 256 of the 1997 NIRC given that these provisions penalize not only the partner, president, general manager, branch manager and treasurer but also the officers-in-charge and employees responsible for the violation.

On the question of whether the non-payment of taxes by the Corporation was committed knowingly, intentionally, and with willful intent to disregard the obligation prescribed by law, the Court *En Banc* quotes with approval the Court in Division's disquisition on the matter:

> "It is undisputed that 21st Century, through its responsible officers, such as appellant, was aware of the subject assessment as early as the issuance of the assessment notices. Appellant never denied receipt from the BIR of the following documents pertinent to the subject assessment, to wit: Assessment Notices with accompanying Demand Letters for deficiency IAET, MCIT, EWT, VAT, IT, in the total amount of Php747,964.49 for taxable year 2000, including increments, and compromise penalty, all dated January 23, 2004; First Notice and Second Notice of Delinquent Account dated December 19, 2005 and January 2, 2006, respectively; Final Notice before Seizure dated March 1, 2006, Warrant of Distraint and/or Levy and Warrant of Garnishment to Equitable-PCI Bank Head Office. Initially, it tried to assail the subject assessment by filing a protest, which for unexplained reason, was never substantiated and which rendered the subject assessment final and demandable. The BIR even tried to avail of administrative remedies to collect the deficiency taxes but failed, ushering the institution of the present criminal case against appellant.
>
> Appellant cannot feign ignorance of the assessment, let alone knowledge of the Company's obligation to pay the assessed taxes. Aware of possible legal consequences, she even wrote the BIR on behalf of the Company requesting time to organize its record and if warranted, to pay the tax liability by way of compromise, but she failed to pursue this direction.
>
> All said, the prosecution was able to establish the guilt of appellant beyond moral certainty of violation of Section 255, in relation to Sections 253(d) and 256 of the NIRC, as amended." *(Citations omitted)*

In sum, the Court *En Banc* finds no reason to modify much less reverse the Assailed Decision and Resolution.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

On Official Time
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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-versus-

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Respondent.

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Bacorro-Villena, and
Modesto-San Pedro, JJ.

Promulgated:

NOV 19 2019 3:07 p.m.

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SEPARATE OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by Genoveva S. Suarez.

I, however, take exception to the disposition in the assailed Decision dated June 2, 2016 of Branch 21, Regional Trial Court (RTC) of Manila, in Criminal Case No. 08-263206, in so far as it ordered 21st Century Entertainment, Inc. to pay deficiency taxes for taxable year 2000 in the amount of Php458,333.11, plus surcharge, deficiency and delinquency interests, and fine in the amount of Php50,000.00 as mandated in Section 256 of the National Internal Revenue Code (NIRC) of 1997, as amended.

I submit that the RTC of Manila was bereft of jurisdiction to render judgment against 21st Century Entertainment, Inc.

First, a reading of the Information in Criminal Case No. 08-263206 reveals that 21st Century Entertainment, Inc. was not an accused thereon. The aforesaid Information only charged Genoveva S. Suarez, as the then President of 21st Century Entertainment, Inc., for violation of Section 255, in relation to Section 253(d) of the NIRC, of 1997, as amended.

Second, even assuming that 21st Century Entertainment, Inc. was an accused in Criminal Case No. 08-263206, 21st Century Entertainment, Inc. was never the subject of an arraignment (thru its responsible officers) wherein it was allowed to enter a plea after being informed of the nature and cause of accusation against it.

In *Alfredo Ching vs. The Secretary of Justice, et.al*,[1] the Supreme Court elucidated on the prosecution of a corporation for a crime where the imposable penalty is fine, *viz.*:

> "If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, **a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined**." (Boldfacing supplied)

Section 256 of the NIRC of 1997, as amended, provides that any corporation, association or general co-partnership liable for any of the acts or omissions penalized under the NIRC, in addition to the penalties imposed therein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty Thousand Pesos (₱50,000.00) but not more than One Hundred Thousand Pesos (₱100,000).

Arraignment is always indispensable in any criminal prosecution as the Constitution itself mandates that an accused has the right to be informed of the nature and cause of any accusation against him.[2] In fact, it is only after an accused has been informed of the

[1] G. R. No. 164317, February 6, 2006.
[2] Section 14(2), Article III, 1987 Constitution.

accusation through an arraignment that trial may proceed in *absentia*.[3]

Not being an accused in Criminal Case No. 08-263206 and *sans* an arraignment, 21st Century Entertainment, Inc. cannot be convicted of the crime charged in the Information and ordered to pay the fine imposed under Section 256 of the NIRC of 1997, as amended, without violating its right to be informed of the nature and cause of the accusations against it, not to mention its right to due process.

In fine, I submit that the Decision dated June 2, 2016 of the RTC of Manila in Criminal Case No. 08-263206 is a void judgment in so far as 21st Century Entertainment, Inc. is concerned. It is settled that a void judgment or order has no legal and binding effect. It does not divest rights and no rights can be obtained under it; all proceedings founded upon a void judgment are equally worthless; it is considered a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head.[4]

All told, I *CONCUR* in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] *Id.*
[4] Karen Go vs. Lamberto Echavez, G.R. No. 174542, August 3, 2015.