REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-630** For: Violation of Section 255, in relation to Sections 253 (d) and 256, of the NIRC of 1997, as amended
- versus -	
CROSS COUNTRY OIL & PETROLEUM CORP., ARTURO M. ZAPATA AND JACOB VALERIANO, JR., Rm. 3105 31st Floor, World Trade Exchange Bldg., 215 Juan Luna St. Binondo, Manila and/or 176-C San Juan St., Pasay City and/or Blk 121 Lot 6 Ph. 38 Libis Tulya, Caloocan City, Accused.	Members: **UY,** *Chairperson*, and **RINGPIS-LIBAN,** *JJ.* Promulgated: DEC 04 2018 11:20 a.m.

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RESOLUTION

This addresses the **Motion for Reconsideration (of the Resolution dated 05 July 2018**, filed by the accused on July 31, 2018, with plaintiff's **Comment/Opposition to Motion for Reconsideration (of the Resolution dated 05 July 2018)**, filed through registered mail on August 24, 2018 and received by the Court on September 4, 2018.

At the outset, the Second Amended Information[1] filed against the accused indicted them for Violation of Section 255, in relation to Sections 253 (d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, allegedly committed as follows:

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[1] Docket, Vol. I, pp. 141 to 143.

> "That on July 2014 and thereafter, in Metro Manila, and within the jurisdiction of this Honorable Court, accused CROSS COUNTRY OIL AND PETROLEUM CORPORATION, ARTURO M. ZAPATA and JACOB VALERIANO, JR. as President and Treasurer, respectively conspiring and confederating with one another, did then and there willfully, unlawfully, and feloniously fail to pay the corporation's basic deficiency value-added tax for taxable year 2010 in the amount of One Billion Twenty One Million Eight Hundred Fifty Four Thousand Six Hundred Fifty Three Pesos and Sixty Centavos (₱1,021,854,653.60) exclusive of penalties, surcharges and interest, despite final assessment, including prior and post notices and demands to pay, the latest of which was issued by the BIR on July 15, 2014, to the damage and prejudice of the government."

Thereafter, accused Arturo M. Zapata (accused Zapata) and Jacob Valeriano, Jr. (accused Valeriano, Jr.) pleaded not guilty to the crime charged.[2] Then, the prosecution presented its witnesses.

After the prosecution rested its case on March 22, 2018,[3] accused filed *via* courier on April 4, 2018 their *Motion for Leave to File the Attached Demurrer to Evidence*. Then, the Court granted the said motion and admitted the attached *Demurrer to Evidence*.[4]

On July 5, 2018, the Court denied the accused's *Demurrer to Evidence*.[5]

Hence, the instant motion.

Accused assail the Court's Resolution dated July 5, 2018 on the following grounds:

> (1) the assessment conducted by the Bureau of Internal Revenue (BIR) was void either under Letter of Authority (LOA) No. 030-2010-00000442 dated October

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[2] Certificates of Arraignment, Docket, Vol. I, pp. 144 to 145.
[3] Resolution, Docket, Vol. II, pp. 517 to 518.
[4] Resolution dated April 11, 2018, Docket, Vol. II, p. 542.
[5] Resolution, Docket, Vol. II, pp. 573 to 583.

20, 2010 (first LOA) or LOA No. 030-2011-00000616 dated July 22, 2011 (second LOA); and

(2) the presumption of proper service of mail does not apply in this case for plaintiff's failure to prove that there was proper mailing.

Accused contend that the Court erred in ruling that the first LOA served validly on accused and covered the taxable period of January to June 2010, validated effectively the assessment made by the BIR. Accused allege that the second LOA covered the taxable period of January 1, 2010 to December 31, 2010 but served beyond the required 30-day period. The testimony of plaintiff's witness allegedly showed that the second LOA intended to replace the first LOA. Thus, accused insist that the issuance of the second LOA superseded the first LOA, and such belated service to the accused of the second LOA nullified the assessment and the examination that revenue officers subsequently conducted.

Accused point out that the revenue officers examined the books of accounts and other accounting records of accused Cross Country for taxable period from January 1, 2010 to December 31, 2010 and not just for the half year as indicated in the first LOA. Since the second LOA was void and the first LOA only covered January to June 2010, the assessment is allegedly void.

According to the accused, the two other divisions of the Court of Tax Appeals (CTA) already granted their Demurrer to Evidence respectively filed in CTA Crim. Case Nos. O-629 and O-631 which are similar to the instant case and involve the same parties, witnesses, prosecution's documentary exhibits, and taxable year being assessed. The only difference is the alleged type of tax assessed and the amount of assessment. Accused claim that the subject first and second LOAs in this case were exactly the same first and second LOAs being questioned in the CTA Case Nos. O-629 and O-631.

Further, accused aver that based on the prosecution's documentary exhibits, there was improper mailing of the notices, thus, the presumption of proper service did not arise. Accused asserts that although the *Notice of Informal Conference* (NIC) dated May 2, 2013 was served on accused, the subsequent amended NIC dated October 20, 2013 was served through private courier LBC.

Allegedly, the prosecution failed to show any proof that the amended NIC was properly mailed to accused Cross Country.

Accused stand that plaintiff had no proof to show that the latter mailed the PAN to them. Accused likewise state that mere presentation of the registry receipt of the mailed *Final Assessment Notice* (FAN)/*Final Letter of Demand* (FLD) is insufficient to prove that the accused received the same. According to accused, plaintiff should have presented the testimony of a person from the Philippine Post Office or from the private courier who served the FAN/FLD to the accused. As such, accused negate that they willfully refused to pay their deficiency tax since they were not informed of the assessment issued against them.

On the other hand, plaintiff maintains that the two LOAs were validly issued and duly served upon accused Cross Country. Plaintiff insists that the right to due process was not violated as the subject NIC, amended NIC, PAN, and FAN/FLD were duly served to the accused and their stockholders of the corporation. According to plaintiff, BIR exerted all efforts to serve the aforesaid documents upon the accused although the latter failed to notify the BIR of any transfer of registered business address. Plaintiff points out that the accused Arturo M. Zapata and general manager of accused Cross Country signed a Notice of Company Disclosure to inform the management of WTEB that accused Cross Country was no longer a tenant of Asia Cargo Container Line, Inc. effective May 1, 2012 due to company closed. Hence, plaintiff posits that accused Cross Country was duty bound to update its registration status pursuant to Section 236 of the Tax Code of 1997, as amended, by filing an application for registration updated (BIR Form No. 1905) with its Regional District Office when it transferred business from its Binondo office.

The Court finds that the arguments raised by the accused to assail the Resolution dated July 5, 2018 were mere rehash which had already been passed upon extensively in the said Resolution.

Notwithstanding, upon revisits of the evidence presented by the prosecution, the Court finds merit that a demurrer to evidence should be sustained.

A demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.[6]

In this case, accused was charged of violation of Section 255, in relation to Sections 253 (d) and 256, of the NIRC of 1997, as amended, the provisions of which state:

> "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."
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> "SEC. 253. **General Provisions. –**
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> xxx xxx xxx
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> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge, and employees responsible for the violation."

[6] *Singian, Jr. vs. Sandiganbayan,* G.R. Nos. 195011-19, September 30, 2013.

> "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 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) but not more than One hundred thousand pesos (₱100,000)."

Based on the foregoing, the following elements must be proved by sufficient evidence to hold accused Cross Country liable for the crime charged:

1. the corporate taxpayer is required to pay the deficiency value-added tax (VAT) due stated on the final assessment issued by the BIR and it failed to pay such tax; and

2. the accused willfully fails to pay the corporate taxes.

As to accused Arturo M. Zapata (accused Zapata) and Jacob Valeriano, Jr. (accused Valeriano, Jr.), it must be proved that they are the president, general manager, branch manager, treasurer, officer-in-charge or employee responsible for the violation of the corporate taxpayer to be held liable in this case.

The term "willfully" generally connotes a voluntary, intentional violation of a known legal duty.[7]

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse.[8]

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[7] Mertens Law of Federal Income Taxation, Volume 15, 1988 Ed., Chapter 55A, p. 76.
[8] Black's Law Dictionary, 6th Ed., p. 1599.

Accordingly, the Court is duty bound to determine whether the prosecution established by sufficient evidence that based on the FAN/FLD, accused is required to pay the deficiency VAT and that accused has knowledge of the existence of a FAN/FLD but the latter willfully failed to pay the same despite of such knowledge. Also, since willfulness involves the mental state of the taxpayer, it is imperative for the Court to scrutinize and evaluate carefully the evidence presented by the prosecution to determine whether such evidence sufficiently establish the elements of the crime charged, especially if accused willfully, intentionally, and feloniously failed to pay the deficiency tax.

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.[9] Thus, when the accused files a demurrer, the court must evaluate whether the prosecution evidence is sufficient enough to warrant the conviction of the accused beyond reasonable doubt.[10]

In the case of People of the *Philippines vs. Go, et al.*[11], the Supreme Court held that the power of the courts to grant demurrer in criminal cases should be exercised with great caution, *viz*:

> "The power of courts to grant demurrer in criminal cases should be exercised with great caution, because not only the rights of the accused - but those of the offended party and the public interest as well - are involved. Once granted, the accused is acquitted and the offended party may be left with no recourse. Thus, in the resolution of demurrers, judges must act with utmost circumspection and must engage in intelligent deliberation and reflection, drawing on their experience, the law and jurisprudence, and delicately evaluating the evidence on hand."

In its Resolution dated March 22, 2018, the Court admitted the prosecution's documentary exhibits, to wit:

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[9] *Singian, Jr. vs. Sandiganbayan (3rd Division)*, G.R. Nos. 195011-19, September 30, 2013.
[10] *People vs. Go*, G.R. No. 191015, August 6, 2014.
[11] G.R. No. 191015, August 6, 2014.

Exhibit No.	*Description*
P-1	2010 Annual Income Tax Return of Cross Country Oil and Petroleum Corp. (BIR Form 1702)
P-2	Letter of Authority SN:eLA201000014091/LOA-030-2010-00000442 dated October 20, 2010
P-3	Checklist of Requirements dated October 20, 2010
P-4	First Request for Presentation of Records
P-6	Second and Final Notice December 8, 2010
P-7	Memorandum requesting for the issuance of Subpoena Duces Tecum
P-8	Subpoena Duces Tecum (SDT No. RR6-2012-0202) dated may 02, 2012
P-9	Letter of Authority SN:eLA201000045507/LOA-030-2011-00000616 dated July 22, 2011
P-10	Notice for Informal Conference dated May 2, 2013 with Computation of Deficiency Taxes and Details of Discrepancies
P-10-1	Computation of Deficiency Taxes for taxable year 2010
P-10-2	Details of Discrepancies dated May 02, 2013
P-11	Revenue Officer's Audit Report on Value-Added Tax (BIR Form 0507)
P-12	Notice for Informal Conference (Amended dated October 10, 2013 with attached Computation of Deficiency Taxes and Details of Discrepancies
P-12-1	Computation of Deficiency Taxes for taxable year 2010
P-12-2	Details of Discrepancies dated October 10, 2013
P-12-3	Courier Receipts, LBC for Ms. Catherine Fong, Mr. Arturo M. Zapata and Angelica R. Veloso
P-12-4	Courier Receipts, LBC for Jacob Valeriano, Kenneth Co Pundanera & Catherine Lopez Fong
P-13	Report of Investigation
P-14	1st Indorsement dated November 07, 2013
P-15	Assignment Slip
P-16	Revenue Officer's Audit Report on Value-Added Tax (BIR Form 0507)
P-17	Preliminary Assessment Notice (PAN) dated December 3, 2013 with Details of Discrepancies
P-17-1	Details of Discrepancies
P-19	Assessment Notice (FAN) No. 30-10-VT-5556 dated January 9, 2014 for deficiency VAT in the amount of ₱1,625,875,527.57
P-20	Formal Letter of Demand (FLD) dated January 9, 2014 with Details of Discrepancies
P-20-1	Details of Discrepancies (Annex A)
P-20-2	Details of Discrepancies (Annex B)
p-21	Memorandum dated January 15, 2014 [Proof of service of Final Assessment Notice (FAN) and FLD]
P-21-1	Transmittal for registered mail
P-21-2	Registry Receipts

P-22	1st Indorsement dated April 7, 2014
P-23	Preliminary Collection Letter (PCL) dated June 19, 2014 with Registry Receipt No. 904709
P-24	Final Notice Before Seizure (FNBS) dated July 15, 2014 with Registry Receipt No. 905928
P-25	Memorandum dated August 4, 2014
P-26	Memorandum of Assignment dated September 3, 2014
P-27	General Information Sheet from Securities and Exchange Commission (SEC)
P-27-1	Name of Arturo Zapata as President
P-27-2	Name of Jacob Valeriano as Treasurer
P-28	Warrant of Distraint and/or Levy
P-29	Warrant of Garnishment-Metrobank
P-29-1	Warrant of Garnishment-BPI
P-29-2	Warrant of Garnishment-Union Bank
P-29-3	Warrant of Garnishment-Sterling Bank of Asia
P-30	Memorandum dated November 22, 2014
P-31	Joint-Affidavit of Florentino Racuya and Jeffry Camba consisting of three (3) pages
P-32	Complaint-Affidavit of Jefferson T. Ocampo consisting of six (6) pages
P-33	Commissioner of Internal Revenue's (CIR) Referral Letter to the Department of Justice (DOJ)
P-34	Judicial Affidavit of RO Jeffry P. Camba
P-34-1	Signature above the printed name "Jeffry P. Camba"
P-35	Judicial Affidavit of RO Fernando R. Gonzales
P-35-1	Signature above the printed name "Fernando R. Gonzales"
P-36	Judicial Affidavit of RO Ma. Paz Arcilla
P-36-1	Signature above the printed name "Ma. Paz Arcilla"
P-37	Judicial Affidavit of RO Dennis
P-37-1	Signature above the printed name "Dennis V. Ruelo"
P-38	Judicial Affidavit of RO Jefferson T. Ocampo
P-38-1	Signature above the printed name "Jefferson T. Ocampo

The *Second Amended Information* states that accused failed to pay the amount of ₱1,021,854,653.60 representing deficiency VAT despite final assessment and demand to pay.[12]

Apparently, this case is rooted when accused failed to pay the assessment for deficiency VAT. It presupposes that the said assessment is valid, thus, the BIR has the right to collect such deficiency taxes.

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[12] Docket, Vol. I, pp. 141 to 142.

Prosecution failed to prove by competent evidence that the BIR sent the PAN to the accused; thus, the FAN/FLD is void on the ground that the right of the accused to due process was violated.

Nevertheless, the records reveal that the prosecution failed to prove by sufficient evidence that the BIR sent the PAN and that the constructive service made by the revenue officers complied with the pertinent prevailing rules and regulations.

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

> "SEC. 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: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> **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.**" (*Emphasis supplied*)

Relative hereto is Section 3.1.2 of Revenue Regulations (RR) No. 12-99 to implement the aforesaid provision, to wit:

> "3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of

demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties."

In the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[13], the Supreme Court pronounced that the sending of a PAN to taxpayer to inform him of the assessment made is part of the due process requirement in the issuance of a deficiency tax assessment and absence of which renders nugatory any assessment made by the tax authorities, to wit:

> "Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.
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> xxx xxx xxx
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> From the provision quoted above, **it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities**. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void." (*Emphasis supplied.*)

The prosecution formally offered the PAN[14] dated December 3, 2013 as Exhibit "P-17", and the Court admitted the same. In this instance, the prosecution established that BIR indeed issued a PAN.

However, to prove that the BIR sent the said PAN to the accused, the prosecution formally offered the Courier Receipts LBC

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[13] G.R. No. 185371, December 8, 2010.
[14] Docket, vol. I, pp. 217 to 218.

for Jaime Cariño and Arturo Zapata and Philpost for the President, Cross Country Oil and Petroleum Corporation and Courier Receipts LBC for Cross Country Oil and Petroleum Corporation, Elsie Esquillo and Jacob Valeriano as Exhibits "P-18-1" and "P-18-2", respectively, which the Court denied admission for failure to present the originals for comparison.[15] In this instance, it is evident that the prosecution failed to prove the fact of mailing of the PAN.

Further, a scrutiny of the PAN shows that Revenue Officers (RO) F. Racuya and V. Camba constructively served the PAN to the accused Cross Country's president on December 7, 2013.[16] The PAN likewise shows that a certain MC. Libay witnessed the said constructive service.

Section 3.1.7 of RR No. 12-99 provides:

> "3.1.7 *Constructive Service.* – If the notice to the taxpayer herein required 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. If the same is personally served on the taxpayer or his duly authorized representative who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. **Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same.** The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case." (*Emphasis supplied.*)

Based on the foregoing, constructive service is effected by leaving the notice in the premises of the taxpayer and that this should be attested to, witnessed and signed by at least two revenue officers other than the revenue officer who constructively served the notice.

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[15] Resolution dated March 22, 2018, docket, vol. II, p.518.
[16] Exhibit "P-17", docket, Vol. II, p. 218.

Applying these rules, the Court finds that the BIR failed to comply with the requirements of a valid constructive service of the PAN.

The Court notes that the constructive service of the PAN was not effected in the premises of accused Cross Country, the subject taxpayer in this case. Instead, the PAN was served to the residence address of the President of accused Cross Country.

Likewise, only a certain MC. Libay witnessed the constructive service made by ROs Racuya and Camba, contrary to the requirements under Section 3.1.7 of RR No. 12-99 that at least two revenue officers other than the one who made the service should attest and witness the said service.

At this juncture, it is clear that the BIR failed to serve the PAN to accused Cross Country.

Following the pronouncement of the Supreme Court in the case of *Metro Star Superama, Inc.*[17], the absence of the service of the PAN to accused Cross Country to inform of the assessment for deficiency VAT renders the subsequently issued FAN/FLD void on the ground that the right of the said accused to due process was violated.

An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.[18]

Moreover, in the case of *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*[19], the Supreme Court held that the issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated taxpayer's right to due process when no valid notice of assessment was sent to it, *viz*:

> "It might not also be amiss to point out that petitioner's issuance of the First Notice Before Issuance of Warrant of Distraint

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[17] *Ibid.*
[18] *Adamson vs. Court of Appeals*, G.R. Nos. 120935 and 124557, May 21, 2009.
[19] G.R. No. 198677, November 26, 2014.

and Levy violated respondent's right to due process because no valid notice of assessment was sent to it. An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made."

It is a well-settled rule that a void assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[20]

The Supreme Court laid down the guidelines in resolving a demurrer to evidence in the case of *Republic vs. Gimenez*[21], *viz*:

"This court has laid down the guidelines in resolving a demurrer to evidence:

A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. Where the plaintiff's evidence together with such inferences and conclusions as may reasonably be drawn therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is prima facie insufficient for a recovery.

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[20] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.
[21] G.R. No. 174673, January 11, 2016.

Furthermore, this court already clarified what the trial court determines when acting on a motion to dismiss based on demurrer to evidence:

What should be resolved in a motion to dismiss based on a demurrer to evidence is *whether the plaintiff is entitled to the relief based on the facts and the law*. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case, excluding technical aspects such as capacity to sue. . . . (Emphasis supplied, citation omitted)"

Considering that the FAN/FLD is void, the *Final Notice Before Seizure* dated July 15, 2014 is likewise void. Thus, since the FAN/FLD is invalid, the accused is not required to pay the deficiency VAT.

Clearly, the prosecution failed to prove by sufficient evidence that the elements of the crime charged were attendant in this case.

WHEREFORE, premises considered, accused's **Motion for Reconsideration (of the Resolution dated 05 July 2018** is **GRANTED**. Accordingly, the instant case is **DISMISSED** for failure of the prosecution to present sufficient evidence to warrant conviction beyond reasonable doubt. Further, the Assessment Notice No. 30-10-VT-5556 dated January 9, 2014, Formal Letter of Demand dated January 9, 2014, and Final Notice Before Seizure dated July 15, 2014, and Warrants of Garnishment are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice