REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case Nos. O-867 and O-868** (NPS Docket No. XVI-INV-19F-00229)
	For: Violation of Section 255 of the National Internal Revenue Code of 1997, as amended.
-versus-	Members:
MA. LUISA REYES ANGULO (Cluster 2, 7E Greenhills Garden Condominium, 1110 Boni Serrano Avenue, Quezon City),	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
	Promulgated:
Accused.	OCT 08 2024 8:38 a.m.

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DECISION

ANGELES, *J.*:

Accused Ma. Luisa Reyes Angulo (Angulo) is charged before this Court of violation of Section 255 of the 1997 National Internal Revenue Code, as amended (NIRC) in the two *Informations* both filed on March 08, 2021, docketed under CTA Crim. Case Nos. O-867 and O-868, quoted below:

CTA Crim. Case No. O-867 (Value-Added Tax)

> "The undersigned prosecutor of the Department of Justice, with the approval of the Commissioner of Internal Revenue, hereby accuses **MA. LUISA REYES ANGULO** of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:
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> That on or prior to 04 October 2018, and thereafter, and within the jurisdiction of this Honorable Court,

> accused **MA. LUISA REYES ANGULO,** as the sole proprietress of M.R. Enterprises, registered with the Revenue District Office No. 40 – Cubao, Quezon City, of the Bureau of Internal Revenue, with Tax Identification Number 119-425-835-000, required by law to file value-added tax returns and pay corresponding income tax, did then and there wilfully, unlawfully, and feloniously, by failing to supply correct accurate information in her value-added tax return for taxable year 2011, failed to pay deficiency value-added tax in the amount of Three Million Seven Hundred Twenty-One Thousand Seven Hundred and 64/100 Pesos (P3,721,700.64), exclusive of surcharge and interest, for taxable year 2011, despite notices and demands, the latest of which was the Demand Before Suit dated 04 October 2018, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."[1]

CTA Crim. Case No. O-868 (Income Tax)

"The undersigned, prosecutor of the Department of Justice, with the approval of the Commissioner of Internal Revenue, hereby accuses **MA. LUISA REYES ANGULO** of violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> That on or prior to 04 October 2018, and thereafter, and within the jurisdiction of this Honorable Court, accused **MA. LUISA REYES ANGULO,** as the sole proprietress of M.R. Enterprises, registered with the Revenue District Office No. 40 – Cubao, Quezon City, of the Bureau of Internal Revenue, with Tax Identification Number 119-425-835-000, required by law to file income tax returns and pay the corresponding income tax, did then and there wilfully, unlawfully, and feloniously, by failing to supply correct accurate information in her income tax return for taxable year 2011, failed to pay deficiency income tax in the amount of Ten Million Nine Hundred Sixty-Nine Thousand Nine Hundred Twenty-Three and 22/100 Pesos (P10,969,923.22), exclusive of surcharge and interest, for taxable year 2011, despite notices and demands, the latest of which was the Demand Before Suit dated 04 October 2018, to the damage and prejudice of the Government of the Republic of the Philippines.

CONTRARY TO LAW."[2]

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[1] Division Docket, CTA Crim. Case No. O-867, Vol. I, p. 6.
[2] Division Docket, CTA Crim. Case No. O-868, p. 5.

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Facts

Proceedings Before the BIR

Accused Angulo is the sole proprietor of M.R. Enterprises registered with the Revenue District Office (RDO) No. 40, Cubao, Quezon City, under Taxpayer's Identification No. (TIN) 119-425-835-000.[3]

On November 20, 2012, a Letter Notice (LN) No. 040-RLF-11-00-00029 was issued by then Commissioner of Internal Revenue, Kim S. Jacinto-Henares, to the accused, inviting the latter to present any documentary evidence regarding the computerized matching conducted by the Bureau of Internal Revenue (BIR) on information provided by third party sources against the accused's declarations per value-added tax (VAT) returns for the calendar year (CY) ended 2011.[4]

On June 24, 2013, a Letter of Authority (LOA) No. SN: eLA201100037575 (LOA-040-2013-00000214) was issued, authorizing Revenue Officer (RO) Jeremy Makinano and Group Supervisor (GS) Eduardo Felix of RDO No. 40-Cubao, to examine the books of accounts and other accounting records of accused for all internal revenue taxes for CY 2011.[5]

Thereafter, a Notice for Informal Conference (NIC) was issued on November 29, 2013, informing the accused that the report of RO Makinano and GS Felix showed that there are still deficiency taxes due and collectible from the accused, and that the latter's representative may arrange for an informal conference within fifteen (15) days from receipt thereof. [6]

In a Preliminary Assessment Notice (PAN) dated November 13, 2014, signed by Revenue Region No. 7-Quezon City, Regional Director (RD) Alfredo V. Misajon, the accused was informed of the alleged deficiency income tax, VAT, expanded withholding tax and compromise penalty for CY 2011.[7]

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[3] Accused's Pre-trial Brief, Proposed Stipulation of Facts, Division Docket, Vol. I, CTA Crim. Case No. O-867, p. 125.
[4] Exhibit "P-1", Division Docket, Vol. I, CTA Crim. Case No. O-867, p. 386.
[5] Exhibit "P-2", Division Docket, Vol. I, CTA Crim. Case No. O-867, p. 387.
[6] Exhibit "P-3", Division Docket, Vol. I, CTA Crim. Case No. O-867, p. 388.
[7] Exhibit "P-6", Division Docket, Vol. I, CTA Crim. Case No. O-867, pp. 393-396.

Subsequently, in the Formal Letter of Demand (FLD)[8] issued on December 1, 2014 and signed by RD Misajon, the accused was requested to pay the alleged deficiency taxes on or before December 31, 2014 as shown in the attached Assessment Notices[9] all dated December 1, 2014. On December 23, 2014, the accused's Protest with request for reinvestigation was received by the BIR.[10]

On April 26, 2017, a Final Decision on Disputed Assessment (FDDA) was issued against the accused, reiterating the assessments covered by the FLD dated December 1, 2014.[11]

A Preliminary Collection Letter[12] dated October 3, 2017 and a Final Notice Before Seizure[13] dated October 16, 2017, were issued against the accused. Afterwards, a Warrant of Distraint and/or Levy[14] was issued on December 13, 2017 covering the alleged delinquent taxes of accused for CY 2011.

On June 27, 2019, BIR officers Atty. Feliciano A. Verzosa, Jr., Carmina Janine L. Ang, and Mary Joy M. Arendayen, assigned at the Legal Division and Collection Division, executed a *Joint Complaint-Affidavit* to initiate a criminal complaint against the accused for one (1) count of willful failure to pay taxes for CY 2011 in violation of Section 255 of the 1997 NIRC.[15]

Likewise, on June 27, 2019, then Commissioner of Internal Revenue, Caesar R. Dulay, wrote a letter to the Secretary of the Department of Justice (DOJ), Menardo I. Guevarra, referring the abovementioned *Joint Complaint-Affidavit* for preliminary investigation and filing of criminal information against herein accused, if evidence so warrants.[16]

Consequently, Assistant State Prosecutor of the DOJ, Loverhette Jeffrey P. Villordon, issued a Resolution on November 27, 2020, approved by the DOJ Prosecutor General, Benedicto A. Malcontento, finding sufficient evidence to indict herein accused of violation of Section 255 of the 1997 NIRC.

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[8] Exhibit "P-7", Division Docket, Vol. I, CTA Crim. Case No. O-867, pp. 398-402.
[9] Exhibits "P-7-B" to "7-E", Division Docket, Vol. 1, CTA Crim. Case No. O-867, pp. 403-406.
[10] Exhibit "P-8", Division Docket, Vol. I, CTA Crim. Case No. O-867, pp. 408-411; Exhibit "A-8", Division Docket, Vol. 2, pp. 823-826.
[11] Exhibit "P-9", Division Docket, Vol. I, CTA Crim. Case No. O-867, pp. 412-415.
[12] Exhibit "P-10", Division Docket, Vol. I, CTA Crim. Case No. O-867, p. 416.
[13] Exhibit "P-11", Division Docket, Vol. I, CTA Crim. Case No. O-867, p. 417.
[14] Exhibit "P-12", Division Docket, Vol. I, CTA Crim. Case No. O-867, p. 418.
[15] Par. 2, Joint Complaint-Affidavit, Division Docket, Vol. I, CTA Crim. Case No. O-867, p. 15.
[16]Division Docket, Vol. I, CTA Crim. Case No. O-867, p. 14.

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Proceedings Before the Court

On March 08, 2021, the subject *Informations* were filed with the Court. Finding probable cause, the Court ordered the issuance of warrants of arrest against accused Angulo and fixed the bail bond at Php60,000.00 for each case[17].

On July 09, 2021, accused Angulo appeared and submitted her person to the jurisdiction of this Court and posted the required bail bond in CTA Crim. Case Nos. O-867 and O-868[18], for her provisional liberty. The accused's arraignment for both cases was then set on August 04, 2021[19].

On July 30, 2021, plaintiff filed its *Pre-trial Brief* which was noted by the Court through a *Minute Resolution* dated September 29, 2021[20].

On November 12, 2021, the Court cancelled the hearing previously set on August 04, 2021 in CTA Crim. Case No. O-867, and reset the arraignment and Pre-trial Conference to February 09, 2022[21]. In CTA Crim. Case No. O-868, the Court also cancelled the hearing previously scheduled on August 04, 2021 and the Preliminary Conference on August 05, 2021, and reset the same to January 26, 2022 and January 27, 2022, respectively[22].

On February 07, 2022, accused Angulo filed, in both cases, two *Motions to Reset*, requesting the resetting of the hearing previously set on February 09, 2022 due to conflict in her schedule. Finding merit on the said *Motion to Reset*, the same was granted through a *Resolution* dated February 28, 2022, resetting the arraignment and Pre-trial Conference to April 27, 2022 and May 03, 2022, respectively[23].

During the hearing on April 27, 2022 for CTA Crim. Case No. O-867, accused manifested that her counsel had a conflict of schedule and could not appear in the said hearing. Considering such manifestation and without objection on the part of the prosecution, the hearing was cancelled and reset to May 18, 2022. Counsel for the accused was

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[17] Division Docket, CTA Crim. Case No. O-867, Vol. I, *Resolution* dated March 22, 2021, pp. 63-64; CTA Crim. Case No. O-868, *Resolution* dated March 19, 2021, pp. 63-64.
[18] Division Docket, CTA Crim Case No. O-867, Vol. I, pp 5-76; CTA Crim. Case No. O-868, Vol. I, pp. 74-75.
[19] *Id.*
[20] Division Docket, CTA Crim. Case No. O-867, Vol. 1, p. 91.
[21] Division Docket, CTA Crim. Case No. O-867, Notice of Resetting dated November 12, 2021.
[22] Division Docket, CTA Crim. Case No. O-868, Notice of Resetting dated December 06, 2021.
[23] Division Docket, CTA Crim. Case No. O-867, *Resolution* dated February 28, 2022, p. 96, CTA Crim. Case No. O-868, Resolution dated February 28, 2022, p. 89.

ordered to file the accused's Pre-trial Brief on or before May 10, 2022. Likewise, plaintiff's counsel was given until May 02, 2022 to file a motion to consolidate the case with CTA Crim. Case No. O-868[24].

On May 04, 2022, the Court reset the scheduled May 03, 2022 hearing for CTA Crim. Case No, O-867, to May 20, 2022, in view of Proclamation No. 1356 declaring May 03, 2022 a regular holiday throughout the country in observance of *Eid'l Fitr* (Feast of Ramadan)[25].

On May 12, 2022, a Records Verification Report was issued in CTA Crim. Case No. O-867, stating that no motion to consolidate was filed by the prosecution in CTA Crim. Case No. O-867[26].

During the arraignment of the accused on May 18, 2022, accused Angulo pleaded "not guilty" for both CTA Crim. Case Nos. O-867[27] and O-868[28]. In the same hearing, the Court reset the Pre-trial Conference to July 20, 2022 and directed the counsel for accused to file her Pre-trial Brief on or before July 10, 2022. Lastly, upon motion of the accused's counsel and there being no opposition from the prosecution, the Court consolidated both CTA Crim. Case Nos. O-867 and O-868[29].

On July 12, 2022, the Court issued a Notice regarding the reorganization of the Court's Second and Third Divisions. In view thereof, the Pre-trial Conference of the instant cases was set on July 20, 2022 before the Second Division, and the preliminary conference previously set on July 21, 2022 was cancelled and reset to August 24, 2022[30].

On July 20, 2022, accused filed her *Pre-trial Brief* dated July 18, 2022.[31]

During the Pre-trial Conference on July 20, 2022, counsels for both parties agreed to confer with each other to formulate a summary of admissions and stipulation of facts to be stated in their Joint Stipulation of Facts and Issues (JSFI), including the issues to be resolved, the documentary exhibits listed in their respective Pre-trial Briefs, witnesses to be presented and trial dates. Both counsels were given until August 31, 2022 within which to file their JSFI. Also,

[24] Division Docket, CTA Crim. Case No. O-867, Vol. I, p. 98; CTA Crim. Case No. O-868, p. 91.
[25] Division Docket, CTA Crim. Case No. O-867, Vol. I, p. 99.
[26] Division Docket, CTA Crim. Case No. O-867, Vol. I, p. 100.
[27] Division Docket, CTA Crim. Case No. O-867, Vol. I, p. 102.
[28] Division Docket, CTA Crim. Case No. O-868, p. 100.
[29] Division Docket, CTA Crim. Case No. O-867, Vol. I, p. 105; CTA Crim. Case No. O-868, p. 102.
[30] Division Docket, CTA Crim. Case No. O-867, Vol. I, p. 119.
[31] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 125-133.

plaintiff's counsel was given a period of fifteen (15) days within which to submit the *Judicial Affidavit* of his witness, Revenue Officer Carmina Janine Ang, while accused's counsel was given until August 22, 2022 to submit the *Judicial Affidavit* of the accused. The Court also set the preliminary conference on August 24, 2022 for the marking of the parties' documentary evidence.

On September 09, 2022, plaintiff filed a *Motion to Admit Judicial Affidavit of Carmina Janine L. Ang*, with attached *Compliance* and *Sworn Statement* of Carmina Janine L. Ang[32]. The *Motion* was granted by the Court and the attached *Sworn Statement* of Carmina Janine L. Ang was admitted[33].

Based on records[34], the parties failed to file their JSFI within the prescribed period. Thus, on September 14, 2022, the Court issued a Pre-Trial Order (PTO)[35]. Based on the PTO, the parties agreed for the Court to resolve the following issues:

a. For the criminal aspect: Whether or not accused is liable for violation of Section 255 of the 1997 NIRC, as amended[36].

b. For the civil aspect: Whether or not accused is liable to pay deficiency VAT and income tax amounting to Php3,721,700.64 and Php10,969,923.22, respectively, for taxable year 2011[37].

During the hearing on September 14, 2022, upon joint motion by both counsels, the presentation of the plaintiff's witnesses was cancelled and reset to October 26, 2022, considering that accused's counsel has just received a copy of the Judicial Affidavits of the plaintiff's witnesses. Meanwhile, the Court also granted the oral motion of the accused's counsel to present an additional witness, Norwell Dela Cruz Labog, there being no objection from the prosecution. Relative thereto, accused's counsel was given until December 15, 2022 to submit the Judicial Affidavit of the accused and the additional witness, Norwell Dela Cruz Labog. The Court then scheduled the hearing for the testimony of Norwell Dela Cruz Labog on March 08, 2023[38].

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[32] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 300-310.
[33] Division Docket, CTA Crim. Case No. O-867, Vol. I, p. 315.
[34] Division Docket, CTA Crim. Case No. O-867, Vol. I, *Pre-trial Order* dated September 14, 2022.
[35] *Id.*, p. 317-327.
[36] *Id.*
[37] *Id.*
[38] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 329-330.

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On November 21, 2022, plaintiff filed a *Motion to Present Additional Evidence* with attached *Compliance* and *Judicial Affidavit of RO Leilanie L. Claridad*[39]. In the said *Motion*, plaintiff's counsel stated that there are documents in his possession which corroborate the factual and legal claims of the prosecution, hence, the need to present RO Leilanie L. Claridad[40] (RO Claridad) as witness.

During the hearing held on November 23, 2022, plaintiff's counsel moved to withdraw the presentation of his witnesses, namely: Clarissa P. Floreza, Paula Marie B. Lasam and Mary Grace J. Soriano because their respective testimonies pertain to a different taxable period which is not the subject of the instant cases. The said motion was granted by the Court. Meanwhile, the Court cancelled the hearing pending the resolution of plaintiff's *Motion to Present Additional Evidence*[41].

On December 19, 2022, accused counsel filed a *Submission of Judicial Affidavit* submitting the *Judicial Affidavit* of herein accused[42].

On February 28, 2023, the Court issued a *Resolution* granting the *Motion to Present Additional Evidence* filed by the plaintiff. Accordingly, the Court scheduled the presentation RO Claridad on March 08, 2023, while the hearing scheduled on March 02, 2023 was cancelled. Likewise, the Court had set the presentation of the defense witness Norwell Dela Cruz Labog to July 05, 2023. However, during the hearing on March 08, 2023, the Court noted the manifestation of accused's counsel that she will no longer present Norwell Dela Cruz Labog[43].

During trial for the presentation of the prosecution's evidence, the following witnesses were presented:

1. On October 26, 2022[44], the prosecution presented RO Carmina Janine L. Ang (RO Ang) and RO Mary Joy M. Arendayen (RO Arendayen) as witnesses.

   RO Ang, whose testimony was by way of her *Sworn Statement* executed on September 9, 2022[45], and RO Arendayen, whose

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[39] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 337-349.
[40] Paragraph 3, *Motion to Present Additional Evidence.*
[41] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 351-352.
[42] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 353-360.
[43] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 377-378.
[44] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 332-333.
[45] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 306-310.

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testimony was by way of her *Sworn Statement* executed on May 17, 2022, were presented to prove that: (a) the accused has been the subject of an audit investigation for taxable year 2011; (b) they are the Revenue Officers who conducted the preliminary administrative summary remedies for the collection of the delinquent account of accused for taxable year 2011; (c) the assessments against accused have become final, executory and demandable; (d) the guilt of the accused beyond reasonable doubt; and (e) identify the documents relevant to the foregoing purposes.

2. On March 08, 2023[46], the prosecution presented RO Leilanie L. Claridad (RO Claridad) as witness, whose testimony was by way of her *Judicial Affidavit* executed on November 17, 2022.[47] RO Claridad was presented to prove that: (a) the accused has been the subject of an audit investigation for taxable year 2011; (b) RO Claridad is the Revenue Officer who reviewed the reports submitted by the examiners relating to the conduct of the examination/investigation of the accused's accounting and other business records and documents; (c) the assessments against accused have become final, executory and demandable; (d) the guilt of the accused beyond reasonable doubt; and (e) identify the documents relevant to the foregoing purposes.

On March 28, 2023, plaintiff filed its *Formal Offer of Evidence*[48]. On the other hand, on April 18, 2023, accused filed her *Comments/Objections (to Plaintiff's Formal Offer of Evidence)*[49]. On May 11, 2023, the Court issued a *Resolution* which admitted plaintiff's exhibits except for the following[50]:

1. Exhibits "P-6-B", "P-7-F", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23" and "P-23-A", for failure to have the exhibits identified; and

2. Exhibits "P-54" and "P-54-A", for failure to have the exhibits identified and for failure to present the originals for comparison.

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[46] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 377-378.
[47] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 345-349.
[48] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 379-385.
[49] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 450-457.
[50] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 461-462.

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On May 19, 2023, accused filed a *Motion for Leave to File Demurrer to Evidence*[51], while plaintiff's *Comment/Opposition (To Accused's Motion for Leave to File Demurrer to Evidence* was filed on May 29, 2023[52]. The Court issued a *Resolution* dated June 29, 2023 denying the *Motion for Leave to File Demurrer to Evidence*[53].

On May 29, 2023, a *Resolution* was issued transferring the cases to the Third Division of the Court pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court)[54].

On July 05, 2023[55], before proceeding with the presentation of accused Angulo, plaintiff's counsel manifested her objection to Question Nos. 18 to 22 of accused's *Judicial Affidavit* for being irrelevant as the questions cover a different taxable year. The Court sustained the objection and granted the prayer to strike out the said questions and answers. Accused's counsel then presented Ms. Angulo, whose testimony was by way of her *Judicial Affidavit* executed on December 16, 2022[56], to prove that: (a) accused is the sole proprietor of M.R. Enterprises with previous address at Cluster 2, 7E Greenhills Garden Condominium, 1110 Boni Serrano Avenue, Quezon City; (b) M.R. Enterprises was registered with the Revenue Office District No. 40, Cubao, Quezon City, under TIN No. 119-425-835-000; (c) M.R. Enterprises paid its income tax and VAT for the years 2008 until it stopped its operation in 2014; and (d) accused has moved to its present office at No. 115-A Road 20, Barangay Bahay Toro, Project 8, Quezon City.

On August 02, 2023, accused filed her *Formal Offer of Evidence*[57]. With plaintiff's *Comment /Opposition (Re: Accused's Formal Offer of Evidence dated August 01, 2023)*[58] filed on September 04, 2023, the Court issued a *Resolution* on January 30, 2024 admitting Exhibits "A-10" and "A-10-a" and denying the admission of Exhibits "A-1" to "A-9", inclusive of sub-markings for failure to submit the duly marked exhibits[59].

On February 06, 2024, accused filed a *Motion for Reconsideration and Admit the Enclosed Original Documents*[60]. On the other hand, on February 21, 2024, plaintiff filed a

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[51] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 463-467.
[52] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 471-475.
[53] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 478-479.
[54] Division Docket, CTA Crim. Case No. O-867, Vol. I, p. 470.
[55] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 481-482.
[56] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 354-360.
[57] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 483 – 499.
[58] Division Docket, CTA Crim. Case No. O-867, Vol. I, pp. 501 – 515.
[59] Division Docket, CTA Crim. Case No. O-867, Vol. II, pp. 675 -676
[60] Division Docket, CTA Crim. Case No. O-867, Vol. II, pp. 677 - 829

Comment/Opposition (To Accused's Motion for Reconsideration and Admit the Enclosed Original Documents)[61]. On May 08, 2024, the Court promulgated a *Resolution* partially granting the said *Motion for Reconsideration and Admit the Enclosed Original Documents,* and admitting Exhibits "A-1", "A-2" to "A-2-k", "A-3" to "A-3-k", "A-4" to "A-4-k", "A-5" to "A-5-k", "A-6-j", "A-7" to "A-7-k", and "A-8". The Court, however, denied the admission of Exhibits "A-7-d", "A-7-f" and "A-7-k", for failure to present the originals for comparison and verification during the preliminary conference. Moreover, the Court denied Exhibit "A-9" considering that during the hearing last July 05, 2023, Question Nos. 18 to 22 of accused's *Judicial Affidavit* which relate to the identification of Exhibit "A-9", were stricken-off the record for being irrelevant. As such Exhibit "A-9" was deemed as not identified[62].

In view of plaintiff's *Memorandum* filed on June 13, 2024[63] and accused's *Memorandum* filed on June 14, 2024[64], the instant cases were submitted for decision on July 15, 2024.[65]

Issues

1. For the **criminal aspect**: Whether or not the accused is guilty for violation of Section 255 of the 1997 NIRC, as amended; and

2. For the **civil aspect**: Whether or not accused is liable for the deficiency VAT and income tax amounting to Php3,721,700.64 and Php10,969,923.22, respectively, for taxable year 2011.

Arguments of the Parties

In its *Memorandum*, plaintiff posits that the elements of the offense under Section 255 of the 1997 NIRC are present in the instant cases.

As to the first element, the plaintiff claims that accused Angulo as the proprietor of M.R. Enterprises, is subject to income tax and VAT, pursuant to Sections 24 and 106 of the 1997 NIRC[66].

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[61] Division Docket, CTA Crim. Case No. O-867, Vol. II, pp. 831 – 833.
[62] Division Docket, CTA Crim. Case No. O-867, Vol. II, pp. 836-839.
[63] Division Docket, CTA Crim. Case No. O-867, Vol. II, pp. 840 – 851.
[64] Division Docket, CTA Crim. Case No. O-867, Vol. II, pp. 852 – 871.
[65] Division Docket, CTA Crim. Case No. O-867, Vol. II, *Minute Resolution* dated July 15, 2024, p. 872.
[66] Paragraph 22, Memorandum dated June 13, 2024.

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For the second element, the plaintiff alleges that the FDDA issued on April 26, 2017 which was sent via registered mail to accused Angulo, with May 26, 2017 as its due date, was enough to prove that there was a demand made for the payment of the accused's tax liabilities before filing the of the criminal actions. The plaintiff further asserts that the accused's tax liabilities have long been final, executory, and demandable.

Lastly, for the third element, it is the plaintiff's contention that the accused willfully fails to pay the correct tax considering that her tax liabilities have long been final, executory, and demandable.

On the other hand, in her *Memorandum*, the accused argues that the evidence of the prosecution is not sufficient to prove her guilt beyond reasonable doubt on the ground.

The accused contends that the offense charged has already prescribed when the *Informations* were filed. Accused further alleges that her right to due process was not observed when the deficiency tax assessments were issued. Moreover, according to the accused, the BIR failed to address the accused's protest and merely repeated its original computation. Finally, the accused is of the position that the prosecution failed to prove the element of sending a demand letter.

Ruling of the Court

The Court finds that the prosecution failed to establish the guilt of the accused beyond reasonable doubt.

The Court has jurisdiction over the subject cases

Section 3(b) (1), Rule 4 of the Revised Rules of Court of Tax Appeals (RRCTA) provides that:

> Section 3. Cases within the jurisdiction of the Court in Division – The Court in Division shall exercise:
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> (b) Exclusive jurisdiction over cases involving criminal offenses, to wit:
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> (1) **Original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code** or Tariff and Customs Code and other

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> laws administered by the Bureau of Internal Revenue or the Bureau of Customs, **where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more**;
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> xxx

Based on the foregoing, the Court has original jurisdiction over criminal cases for violations of the 1997 NIRC, where the principal amount of taxes claimed is more than one million pesos, exclusive of charges and penalties. In the present *Informations,* the principal amount of income tax and VAT deficiencies claimed are Php10,969,923.22 and Php3,721,700.64, respectively. Hence, the Court has original jurisdiction over the instant cases.

The prosecution failed to prove the existence of the second and third elements of the offense charged

The instant *Informations* charged the accused with violation of Section 255, of the 1997 NIRC, as amended, for alleged failure to pay deficiency income tax and VAT for taxable year 2011 in the amount of Php10,969,923.22 and Php3,721,700.64, respectively, exclusive of interests and surcharges, despite final assessment notice, including prior and post notices and final notice before suit.

Section 255 of the 1997 NIRC, as amended, provides:

> 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 (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

In *People vs. Mendez*[67], the Supreme Court held that to successfully prosecute a violation of Section 255 of the 1997 NIRC, it must be shown that: (1) the taxpayer is required to pay any tax, make or file a return, keep any record, or supply correct and accurate

[67] G.R. Nos. 208310-11 & 208662, Marh 28, 2023.

information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; (2) the taxpayer failed to do so; and (3) the act is willful.

Based on the foregoing, before a conviction for the offense of willful failure to pay the correct tax during the period required under Section 255 of the 1997 NIRC can be sustained, the following elements must be established beyond reasonable doubt:

1. Accused is required under the 1997 NIRC, as amended, or its rules and regulations to pay any tax;

2. Accused failed to pay the required tax at the time required by law or rules and regulations; and

3. Accused's failure to pay the required tax at the time required by law or rules and regulations is willful.

1st element: Required to pay the correct tax

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

Section 24 (A) (1) of the 1997 NIRC imposes income taxes on taxable income derived for each taxable year from all sources within and without the Philippines by every individual citizen of the Philippines residing therein, other than those specific items of income which are subject to final income taxes.

Meanwhile, Section 106 (A) of the 1997 NIRC imposes VAT on the gross selling price or value in money of every sale of goods and properties, such tax is to be paid by the seller or transferor.

In this case, the prosecution avers that accused Angulo, as the proprietor of M.R. Enterprises, is subject to income tax and VAT, pursuant to Sections 24 and 106 of the 1997 NIRC, respectively.

However, it was observed that the prosecution did not present any documentary evidence that would specifically prove that the accused is required to pay any tax under the 1997 NIRC, its rules and regulations. In its *Formal Offer of Evidence* filed on March 28, 2023, it should be noted that only the following documents were submitted, offered and admitted as plaintiff's evidence:

Exhibits	Description	Purpose
P-1	Letter Notice No. 040-RLF-11-00-00029 dated November 20, 2012	To prove that a computerized third-party matching was conducted by the BIR; To prove that there was under declaration of sales by the accused; To form part of the testimony of RO Claridad.
P-2	Letter of Authority No. 040-2013-000000214 dated June 24, 2013	To prove that the Revenue Officers who conducted the examination were duly authorized; To form part of the testimony of RO Claridad.
P-3	Notice of Informal Conference dated November 29, 2013	To prove that a Notice of Informal Conference was duly issued against the accused; To form part of the testimony of RO Claridad.
P-4	Revenue Officer's Audit Reports	To prove the factual and legal bases of the deficiency taxes; To form part of the testimony of RO Claridad.
P-5	Memorandum for Issuance of Preliminary Assessment Notice	
P-6	Preliminary Assessment Notice dated November 13, 2014	To prove that a properly addressed PAN was duly issued against the accused; To prove the factual and legal bases of the deficiency taxes; To form part of the testimony of RO Claridad.
P-7	Formal Letter of Demand No. 040-B078-11 dated December 31, 2014	To prove that a properly addressed FLD was duly issued against the accused; To prove the factual and legal bases of the deficiency taxes; To form part of the testimony of RO Claridad.
P-8	Protest Letter of Taxpayer	To prove that the protest letter of the taxpayer was received by the plaintiff; To for part of the testimony of RO Claridad.
P-9	Final Decision on Disputed Assessment dated April 26, 2017	To prove that a properly addressed FDDA was duly issued against the accused; To prove the factual and legal bases of the deficiency taxes; To form part of the testimony of RO Claridad.
P-10	Preliminary Collection Letter dated October 3, 2017	To prove that a properly addressed Preliminary Collection Letter was duly served against the accused; To prove that collection proceedings against the accused for the delinquent account was duly executed and implemented; To prove that the delinquent account of the accused has become final, demandable and executory; To form part of the testimony of RO Ang.
P-11	Final Notice Before Seizure dated October 16, 2017	To prove that a properly addressed Final Notice Before Seizure was

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		duly issued against the accused; To prove that collection proceedings against the accused for the delinquent account was duly executed and implemented; To prove that the delinquent account of the accused has become final, demandable and executory; To form part of the testimony of RO Ang.
P-12	Warrant of Distraint and/or Levy dated December 13, 2017	To prove that a properly addressed Warrant of Distraint and/or Levy was duly served against the accused; To prove that collection proceedings against the accused for the delinquent account was duly executed and implemented; To prove that the delinquent account of the accused has become final, demandable and executory; To form part of the testimony of RO Ang.

In addition, the prosecution likewise failed to adduce any evidence that would prove that accused Angulo is the proprietor of M.R. Enterprises.

Nevertheless, the Court notes that in the testimony of the accused by way of her *Judicial Affidavit* executed on December 16, 2022, the accused had admitted that she is the sole proprietor of M.R. Enterprises registered with the Revenue Office District No. 40, Cubao, Quezon City, under TIN No. 119-425-835-000, and that M.R. Enterprises paid its income tax and VAT for the years 2008 until it stopped its operation in 2014.

Moreover, during the hearing on July 5, 2023 for the cross-examination of the accused, she likewise testified that she was issued a certificate of registration by the BIR under the trade name M.R. Enterprises:

Cross-examination of Accused Angulo by Atty. Nañadiego[68]

Atty. Nañadiego:

As a registered tax payer doing business under the trade name of MR Enterprises, **you were issued a certificate of registration by the BIR**?

Witness:

[68] TSN, July 5, 2023 Hearing, pp. 16-17.

Yes maám.

Atty. Nañadiego:

And as a sole proprietor is it safe to assume **that you are familiar with [the taxes] that your business is required to the BIR**?

Witness:

Yes maám actually from 2008 to 2014.

Atty. Nañadiego:

Yes or no only. Can you enumerate those taxes Madam Witness.

Witness:

What do you mean taxes?

Atty. Nañadiego:

The taxes that you are required to pay under your Certificate of Registration.

Witness:

The VAT and the monthly taxes.

Based on the foregoing, it is clear that the accused judicially admitted that she is a registered taxpayer doing business under the trade name of M.R. Enterprises, and that a certificate of registration has been issued to her by the BIR. Further, the accused admitted that M.R. Enterprises had been paying income tax and VAT for the years 2008 to 2014.

In view thereof, the Court finds that the first element of the offense charged was sufficiently established in this case.

2nd element: Failure to pay the correct tax at the time required by law

For the **second element**, the plaintiff claims, in its *Memorandum,* that accused Angulo failed to pay her deficiency taxes at the time required by law or rules or regulations. To prove that accused Angulo failed to pay her deficiency taxes at the time required by law, rules and regulations, and that her tax liabilities have become final, executory and demandable, the plaintiff presented and offered the following as evidence:

1. FDDA issued on April 16, 2017[69];

2. Registry Receipt dated April 27, 2017[70];

3. May 26, 2017 as its due date[71]; and

4. Last Paragraph of the FDDA stating that the assessment shall become final, executory and demandable if she failed to file an appeal with the CTA within thirty (30) days from receipt thereof[72].

According to the plaintiff, the aforementioned pieces of evidence are enough to prove that there was a demand to pay made by the BIR against the accused's tax liabilities which have long been final, executory and demandable. Further, the plaintiff claims that the accused cannot deny the fact she received the FDDA considering that the accused confirmed that she did not change her business address.

On the contrary, the accused denies receipt of the FDDA and argues that aside from the registry receipt presented by the plaintiff, there was no registry return card to prove accused's receipt of the FDDA and no certification from the Office of the Postmaster presented and offered in evidence.

To refute the plaintiff's allegations, the accused presented and offered the following evidence:

1. Receipts of payment and BIR Monthly VAT Tax Declarations (BIR Forms 2550M) for January to December 2011[73], to prove that the accused paid her income taxes and VAT for the taxable year 2011.

2. Undated letter to then Commissioner Kim S. Jacinto-Henarez[74], to prove that the accused filed her protest for the taxable year 2011.

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[69] Exhibit "P-9".
[70] Exhibit "P-9-A".
[71] Exhibit "P-9-B".
[72] Exhibit "P-9-C".
[73] Exhibits "A-4" to "A-k".
[74] Exhibit "A-8".

To determine the receipt of the final notice and demand by the accused, the Court shall consider the testimonial and documentary evidence presented by the plaintiff and the accused.

Upon examination of the records, it was observed that the FDDA issued on April 26, 2017 was alleged to have been served to accused Angulo through registered mail. To establish that the FDDA was served through registered mail, the plaintiff presented the Registry Receipt No. RD 719 490 445 ZZ dated April 27, 2017. However, the plaintiff failed to establish that there was actual receipt of the FDDA by accused Angulo.

Based on the testimony of RO Claridad during the hearing on March 08, 2023, she testified that she did not cause the service of the FDDA and that she did not know whether there was any actual proof of receipt of the FDDA by the accused, *to wit:*

Cross-examination of RO Claridad by Atty. Obispo[75]

Atty. Obispo:

> Ok. So, you said in your Judicial Affidavit that you caused the service of this Final Decision of Disputed Assessment (FDDA) by way of registered mail. If you say caused, **it was not you who went through the post office and have this registered by yourself?**

Witness:

> **We are not the one who went to the post office.**

Atty. Obispo:

> **So, you're not the one who went to the post office to have this registered mail?**

Witness:

> **Yah.**

Atty. Obispo:

> So, you asked another person to have this sent by registered mail. Correct, Madam?

Witness:

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[75] TSN, March 08, 2023 Hearing, pp. 44-47.

Not us, but it is part of our office procedure that there are designated personnel to do such.

Atty. Obispo:

Ok. I don't know if you know this, but there is an option to cause the mailing of the document by way of registered mail with return cards. Did you not ask or your messenger, office messenger, to have this registered by way of registered mail with return card? No?

Witness:

All of the letters sent have return cards.

Atty. Obispo:

All of the letters sent have return cards?

Witness:

If it is sent through the post office. I mean, *kasama po sya pagpinadala*. And did I get your question correctly, Attorney?

Atty. Obispo:

No, no, no. Slowly *lang po*. You said you caused the registration of the registered mail. *Opo*?

Witness:

Yes.

Atty. Obispo:

But it was not you who personally caused the mailing. Correct, Madam?

Witness:

You mean the service?

Atty. Obispo:

Opo, ikaw yong nag mail sa post office. Hindi po kayo, di ba po?

Witness:

Hindi.

Atty. Obispo:

In your Exhibit P-9, there is no return card. Correct, Madam? **In your final decision and disputed assessment, there is no return card?**

Witness:

There is no return card.

Atty. Obispo:

So there is no proof of actual receipt. Correct, Madam?

Witness:

I don't know.

Atty. Obispo:

So, you don't know. So there being none, you do not have any knowledge if this was actually mailed by registered mail because it was not you who mailed it, and you don't also have any actual knowledge as to the actual receipt of this document, correct, Madam? Yes?

Witness:

No, I'm sorry. Can you ask again the question, if it's ok?

Atty. Obispo:

Since it was not you who mailed this, **you do not actually know what transpired in the post office in the actual mailing of this document, correct, Madam?**

Witness:

Yes, Attorney.

As gleaned from the testimony of the plaintiff's witness, RO Claridad, it can be inferred that there was no proof that the FDDA was received by the accused. RO Claridad also admitted that she did not have any knowledge as to what transpired during the actual mailing of the FDDA.

In the case of *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[76], the Supreme Court ruled that the presumption that the notice was received in the regular course of mail is disputable subject to controversion and that a direct denial thereof shifts the burden to the party favored by the presumption to prove that the subject mailed letter was actually received by the addressee, thus:

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[76] G.R. No. 185371, December 8, 2010, citing the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 150764, August 7, 2006.

On the matter of service of a tax assessment, a further perusal of our ruling in Barcelon is instructive, viz:

> Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The onus probandi was shifted to respondent to <u>prove by contrary evidence that the Petitioner received the assessment in the due course of mail</u>. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, <u>this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee</u>** (Republic vs. Court of Appeals, 149 SCRA 351). Thus as held by the Supreme Court in Gonzalo P. Nava vs. Commissioner of Internal Revenue, 13 SCRA 104, January 30, 1965:
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>> "The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269)."
>
> x x x. What is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, Respondent at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts. **This Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing.** Thus:
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>> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, without adequate supporting evidence cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or

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> defense." (Nava vs. CIR, 13 SCRA 104, January 30, 1965).
>
> x x x.
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> **The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued.** Consequently, the government's right to issue an assessment for the said period has already prescribed. (Industrial Textile Manufacturing Co. of the Phils., Inc. vs. CIR CTA Case 4885, August 22, 1996). (Emphases supplied.)

Furthermore, while the prosecution was able to present the Registry Receipt dated April 27, 2017 to establish that service of the FDDA was made via registered mail, the Court, however, finds that the prosecution failed to prove that the FDDA was properly served on the accused.

It should be noted that the BIR's own regulations provide for the modes of service of notices to the taxpayer. Pursuant to Section 3.1.6 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13, the notice (PAN/FLD/FAN/FDDA) to the taxpayer may be served by the Commissioner or his duly authorized representative through personal or substituted service, or by mail. In the instant case, the BIR opted to serve the FDDA via registered mail. The same revenue regulation provides for its requirement in case of service by mail, to *wit*:

> iii. **Service by mail** is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> **The server shall *accomplish the bottom portion of the notice*. He shall also make a *written report under oath* before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, *setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information*.** The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Based on the foregoing, the server is required to accomplish the bottom portion of the notice and execute a written report under oath setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and other relevant information.

Here, the prosecution only presented the Registry Receipt dated April 27, 2017 as evidence that the FDDA was served upon the accused. The said Registry Receipt, however, fails to show who received the same. The only markings thereon are "RD 719 490 445 ZZ" and the date "April 27, 2017".

A careful perusal of the FDDA also shows that the server failed to accomplish the bottom portion of the FDDA. Additionally, there was no evidence on record as to the written report of the server setting forth the manner, place, and the date of service of the FDDA by registered mail, including such other relevant information. More importantly, based on the testimony of RO Claridad as previously discussed, she admitted that she was not the one who personally caused the mailing of the FDDA. As such, the server who actually caused the mailing of the FDDA was not even presented by the prosecution.

Based on jurisprudence[77], the crime of willful failure to pay tax is committed only **after receipt** of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period.

Consequently, with the evidence presented by the prosecution, the Court cannot ascertain whether the FDDA which was allegedly served via registered mail, was actually received by accused Angulo. Accordingly, the Court finds that plaintiff failed to establish the second element that accused Angulo failed to pay the correct tax at the time required by law.

3rd element: Failure to pay the correct tax was willful

For the **third element**, the prosecution must sufficiently prove beyond reasonable doubt that there was a willful refusal to pay the taxes due at the time required by law or rules and regulations.

The term willful or wilful means premeditated, malicious, done with intent, or with bad motive or purpose, or with indifference to the

[77] Emilio E. Lim Sr. vs. Court of Appeals, GR. Nos. L-48134 to 37, October 18, 1990.

natural consequence.[78] The term willful was also discussed in the case of *The United States vs. Ah Chong*[79], as follows:

> **The word "voluntary"** as used in article 1 of the Penal Code **would seem to approximate in meaning the word "willful" as used in English and American statute to designate a form of criminal intent**. It has been said that while the word "**willful**" sometimes means little more than intentionally or designedly, yet it is more frequently understood to extent a little further and approximate the idea of the milder kind of legal malice; that is, **it signifies an evil intent without justifiable excuse**. In one case it was said to mean, as employed in a statute in contemplation, "wantonly" or "causelessly;" in another, "without reasonable grounds to believe the thing lawful." And Shaw, C. J., once said that ordinarily in a statute it means **"not merely `voluntarily' but with a bad purpose; in other words, corruptly**." xxx [Emphasis Supplied]

Thus, to sufficiently prove the element of "willful failure to pay the tax", it must be shown that such failure or omission was voluntarily or knowingly committed and with specific intent not to pay the tax.

As earlier discussed, however, it was determined that the prosecution has failed to prove that the FDDA was actually received by the accused. To reiterate, the prosecution did not present any evidence to prove that the FDDA was duly received by the accused. Furthermore, it was also resolved that the BIR failed to properly observe the requirements in serving notices by mail, as provided in its own revenue regulations. It should be emphasized that willful failure or refusal to pay is anchored upon the proper service to and receipt of the notice and demand by the accused. Considering that the prosecution failed to establish that the FDDA was properly served to and received by the accused before filing the criminal actions, therefore, the essential element of willfulness was likewise not proven.

We must underscore the basic Constitutional principle that an accused in a criminal case shall be presumed innocent until the contrary is proven.[80] The prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the defense.[81]

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[78] Commissioner of Internal Revenue vs. The Honorable Court of Appeals, G.R. No. 119322, June 4, 1996.
[79] G.R. No. L-5272, March 19, 1910.
[80] Article III, Section 14(2) of the Constitution mandates:
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.
[81] *People v. De Jesus*, G.R. No. 252352, June 23, 2021.

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The Court upholds the primacy of the presumption of innocence in favor of the accused when the evidence at hand falls short of the required quantum of proof necessary to support a conviction.[82]

In view of the failure of the prosecution to prove beyond reasonable doubt that the accused is guilty of the offense charged, the acquittal of the accused is in order.

The plaintiff's right to institute the criminal action has already prescribed

In her *Memorandum*, the accused raises the issue on prescription. According to the accused, the five (5) year prescriptive period begins to run from the lapse of the one hundred eighty (180) days when she filed her protest on December 23, 2014, and that prescription continues to run until the information is filed in court.

Section 281 of the 1997 NIRC, as amended, states the prescription for violations of any provision thereof, *viz.*:

> SEC.281. Prescription for Violations of any Provision of this Code. - All violations of any provision of this Code shall prescribe after five (5) years.
>
> Prescription **shall begin to run from the date of the commission of the violation of the law**, and if the same be not known at the time, **from the discovery thereof and the institution of judicial proceedings for its investigation and punishment**.
>
> The **prescription shall be interrupted when proceedings are instituted against the guilty persons** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines. [Emphasis Supplied]

From the above provision, it can be gleaned that all violations of any provision of 1997 NIRC shall prescribe after five (5) years and shall begin to run either from the date of the commission of the violation of the law, and if the same be not known, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

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[82] *People v. Agustin*, G.R. No. 247718, March 03, 2021.

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Moreover, the institution of criminal actions shall interrupt the running of the period of prescription as provided by Section 2, Rule 9 of the RRCTA, *to wit:*

> Section 2: Institution of criminal actions. **All criminal actions** before the Court in Division in the exercise of its original jurisdiction **shall be instituted by the filing of an information in the name of the Republic of the Philippines**. In criminal actions involving violations of the National Internal Revenue Code and other laws enforced by the Bureau of Internal Revenue, the Commissioner of Internal Revenue must approve their filing. In criminal actions involving violations of the tariff and Customs Code and other laws enforced by the Bureau of Customs, the Commissioner of Customs must approve their filing.
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> **The institution of criminal actions shall interrupt the running of the period of prescription**. (Emphasis supplied)

The offense involved in the instant cases is willful failure to pay tax under Section 255 of the 1997 NIRC which, as earlier discussed, is committed only after receipt of the final notice and demand for payment, coupled with the willful refusal to pay the taxes due within the allotted period.

Considering that based on the evidence presented, the prosecution failed to prove that the FDDA was properly served to and duly received by the accused, the Court determines that the final notice and demand to pay the alleged income tax and VAT deficiencies was made through the service of the FLD and the attached Assessment Notices all dated December 1, 2014.

Based on the records, the Court notes that accused Angulo was able to file her protest with *request for reinvestigation* on December 23, 2014, to the Assessment Notices attached to the FLD. The protest was filed within thirty (30) days from the issuance and receipt of the FLD by the accused on December 1, 2014.

Thus, pursuant to Section 228 of the 1997 NIRC, the accused must submit all relevant supporting documents within sixty (60) days from filing of her protest; otherwise, the assessment shall become final,. Further, if the protest is denied or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer may appeal to the CTA within thirty (30) days from receipt of the decision or lapse of the one hundred eighty (180)-day period; otherwise, the same shall become final, executory and demandable, *viz*:

> Section 228. Protesting an assessment. - xxx
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.** ***Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the*** **assessment shall become final.**
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period;** ***otherwise, the decision shall become final, executory and demandable***.

The implementing rules of the cited provision of Section 228 of the 1997 NIRC is found in RR No. 12-99, as amended by RR No. 18-13, which provide:

> 3.1.4 *Disputed Assessment*
>
> The **taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof**.
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>
> **The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final.** The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.
>
> **If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable**.
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30)

> days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> xxx
>
> **If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, *otherwise, the assessment shall become final, executory and demandable*.**

In this case, based on the testimony of RO Claridad, she confirmed that a protest letter with a request for reinvestigation was received by the BIR on December 23, 2014. In her testimony, the accused also admitted that she filed a protest with a request for reinvestigation on December 23, 2014. Thus, it is undisputed that the protest with request for reinvestigation was filed by accused Angulo on December 23, 2014, which is within thirty (30)-day period required by law.

It is already settled that for a request for reinvestigation to proceed, the taxpayer must submit all relevant supporting documents in support of the protest within sixty (60) days from the date of filing thereof, otherwise, the assessment shall become final.

Here, the accused had a period of sixty (60) days from the date of filing of her protest on December 23, 2014, or until February 22, 2015, within which to submit her supporting documents. However, in the unrebutted testimony of the plaintiff's witness, RO Claridad, she testified that accused Angulo failed to submit the required documents to support her protest. Correspondingly, applying the foregoing provisions of the 1997 NIRC and RR No. 12-99, as amended by RR No. 18-13, it can be said that the assessment against the accused has become final, executory and demandable after the lapse of the sixty (60)-day period to submit relevant documents in support of her protest with request for reinvestigation. As such, by reason of accused's failure to submit the relevant documents in support of her protest, the FLD and Assessment Notices dated December 01, 2014, became final and executory on **February 23, 2015**, which is the lapse of the sixty (60)-day period to submit documents counting from the filing of accused's protest on December 24, 2014.

Taking into consideration that the FLD and Assessment Notices became final and executory on February 23, 2015, the plaintiff had five (5) years counting from February 23, 2015, or until February 23, 2020, within which to institute the criminal action before the Court.

Unfortunately, the subject *Informations* were both filed only on March 8, 2021, which is clearly beyond the five (5)-year prescriptive period.

In light of the foregoing, the Court also finds that the right of the plaintiff to file the subject *Informations* on March 8, 2021 was already barred by prescription.

The civil liability of the accused

For the civil aspect, the Court must also determine whether or not accused is liable for the deficiency VAT and income tax amounting to Php3,721,700.64 and Php10,969,923.22, respectively, for taxable year 2011.

The Court underscores that in the case of *People vs. Mendez,* it was ruled that the Commissioner's final decision on disputed assessment is not a condition precedent to the imposition of civil liability for taxes in the criminal action for violation of tax laws. In *Mendez,* the Supreme Court also discussed that the obligation of the taxpayer to pay the tax is an obligation created by law; it is not a mere consequence of the felonious acts charged in the Information, nor is it a civil liability arising from the crime that could be extinguished by acquittal in the criminal charge. Instead, the finding of liability for unpaid taxes in the criminal tax case is a consequence of the government's exercise of its remedy to collect taxes in the same action to prosecute a criminal offense under the tax laws.

Furthermore, as decreed in *People v. Tiotangco*[83], under the expanded jurisdiction of the CTA, the tax court should make a determination on the civil liability for unpaid taxes of the taxpayer-accused since the civil action for collection is deemed instituted with the criminal action for the tax laws violation.

To recapitulate, the Court has earlier determined that the prosecution failed to prove that the FDDA was properly served to and received by herein accused, and consequently, failed to establish the guilt of the accused by proof beyond reasonable doubt which resulted in the acquittal of the accused in the criminal charge. Nevertheless, such determination does not preclude the Court from resolving the civil liability of the accused pursuant to *Mendez* and *Tiotangco.*

[83] G.R. No. 264192, November 13, 2023.

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Evidence on record shows that the prosecution presented the FLD, Assessment Notices and FDDA, to establish the legal and factual bases of the alleged deficiency taxes. Considering that the FDDA was not proven to have been properly served to and received by the accused, the Court is constrained to consider the FLD and Assessment Notices in determining the civil liability of the accused. As previously discussed, the Court resolved that the failure of the accused to submit the supporting documents within sixty (60) days from the filing of her protest to the FLD with request for reinvestigation, or until February 22, 2015, has rendered the FLD and Assessment Notices final and executory on February 23, 2015.

In view thereof, despite the acquittal of accused Angulo, the Court finds her civilly liable for the deficiency taxes as stated in the subject Assessment Notices, plus any additional interest that have accrued thereon, less any amounts already collected by garnishment and distraint or levy.

WHEREFORE, premises considered, accused **Ma. Luisa Reyes Angulo** is hereby **ACQUITTED** of the offense charged against her in CTA Crim. Case Nos. O-867 and O-868 for failure to prove her guilt beyond reasonable doubt. The cash bail bond posted by the accused at Php60,000.00 for each case is hereby **CANCELLED** and **ORDERED RELEASED** to the accused upon presentation of the proper documents, in accordance with the usual accounting rules and regulations.

However, the accused is **ORDERED TO PAY** the amount of **₱51,236,608.69**, representing deficiency taxes for the taxable year 2011, inclusive of 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Section 248(A) (3) and Section 249(B) and (C) of the 1997 NIRC, as amended, computed until December 31, 2017, as follows:

	Income tax (Crim. Case No. O-868)	**VAT (Crim. Case No. O-867)**	**TOTAL**
Basic Tax Due	₱10,969,923.22[84]	₱3,721,700.64[85]	₱14,691,623.86
Add: 25% Surcharge	2,742,480.81	930,425.16	3,672,905.97
20% Deficiency Interest			
April 16, 2012 to December 31, 2014[86]			

[84] Exhibit "P-7", FLD, Docket - Crim. Case O-867, p. 398.
[85] Exhibit "P-7", FLD, Docket – Crim. Case O-867, p. 398.
[86] Due Date Per FLD, Assessment Notices, Exhibits "P-7" to "P-7-C", Docket – Crim. Case O-867, pp. 398 to 404.

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(₱10,969,923.22 x 20% x 990 / 365)	5,950,807.66		5,950,807.66
20% Deficiency Interest			
January 26, 2012 to December 31, 2014			
(₱3,721,700.64 x 20% x 1,071 /365)		2,184,077.47	2,184,077.47
Total Amount Due, December 31, 2014	**₱19,663,211.69**	**₱6,836,203.27**	**₱26,499,414.96**
Add:			
20% Deficiency Interest			
January 1, 2015 to December 31, 2017			
(₱10,969,923.22 x 20% x 1,096 / 365)	6,587,964.85		6,587,964.85
(₱3,721,700.64 x 20% x 1,096 / 365)		2,235,059.67	2,235,059.67
20% Delinquency Interest			
January 1, 2015 to December 31, 2017			
(₱19,663,211.69 x 20% x 1,096 / 365)	11,808,701.38		11,808,701.38
(₱6,834,163.98 x 20% x 1,096 / 365)		4,105,467.83	4,105,467.83
Total Amount Due, December 31, 2017	**₱38,059,877.91**	**₱13,176,730.77**	**₱51,236,608.69**

In addition, the accused is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) per annum based on the above-stated total unpaid taxes due as of December 31, 2014 amounting to ₱26,499,414.96, equivalent to **₱8,712.14**[87] **per day**, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the 1997 NIRC, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

Lastly, pursuant to Section 13 of RA No. 9282, considering that this Decision is favorable to the national government, the Bureau of Internal Revenue, through the Commissioner of Internal Revenue, is hereby authorized to seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property and/or levy the real property of the accused in sufficient quantity to satisfy the tax or charge with any increment thereto incident to delinquency.

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[87] ₱26,499,414.96 x 12% / 365.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

(With Concurrence and Dissent)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CATHERINE T. MANAHAN
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*	**CTA Crim. Case Nos. O-867 and O-868**
	Members:
- versus -	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.*
	Promulgated:
MA. LUISA REYES ANGULO, *Accused.*	OCT 08 2024 8:38 a.m.

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CONCURRENCE AND DISSENT

REYES-FAJARDO, *J.*:

I agree on the acquittal of accused on the tax offenses charged in CTA Crim. Case Nos. O-867 and O-868, as well as the release of the cash bail bond she posted on those cases, because the prosecution failed to establish her guilt beyond reasonable doubt.

I, however, differ from the following points espoused by the *ponencia*: (1) the taxpayer's failure to submit documents in support of a request for reinvestigation, within 60 days from the filing thereof, renders the Formal Letter of Demand and Final Assessment Notices, all dated December 1, 2014 (FLD/FAN) final, executory, and demandable; and (2) on the basis thereof, concluded that the government's right to prosecute accused for the tax offenses charged in CTA Crim. Case Nos. O-867 and O-868 is barred by prescription, and that accused should be adjudged civilly liable for the unpaid Income Tax (IT) and Value-Added Tax (VAT) specified in the FLD/FAN. Consider:

First. The taxpayer's non-submission of documents in support of a request for reinvestigation does not make the FLD/FAN final, executory, and demandable. The pertinent portion of Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, reads:

> **SEC. 228.** ***Protesting of Assessment.*** - ...
>
> ...
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**[1]

Subsection 3.1.4 of Revenue Regulations (RR) No. 18-2013 squarely interpreted said paragraph of Section 228 of the NIRC, as amended, in this wise:

> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. ...
>
> ...
>
> For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. **Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be [issued].**
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> ...[2]

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1 Boldfacing supplied.
2 Boldfacing supplied.

Indeed, the word "final" in the paragraph "... Within sixty (60) days from filing of the protest, all relevant, supporting documents shall have been submitted; otherwise, the assessment shall become final." under Section 228 of the NIRC, as amended, is not meant as the assessment being final, executory, and demandable. Instead, the word "final" simply means that the taxpayer is precluded from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence. This would result in the denial of the request for reinvestigation and consequently, the issuance of the Final Decision on Disputed Assessment against the taxpayer.[3]

Here, the FLD/FAN was served upon accused.[4] She then impugned said FLD/FAN, *via* administrative protest with request for reinvestigation filed with the Bureau of Internal Revenue (BIR) on December 23, 2014.[5] Counting 60 days from December 23, 2014, accused had until February 23, 2015[6] to submit supporting documents on her administrative protest. Accused did not.

Following Section 228 of the NIRC, as amended, as construed by subsection 3.1.4 of RR No. 18-2013, the import of accused's failure to submit supporting documents is that she would be barred from introducing additional or newly discovered evidence, and consequently, the BIR would, and in fact, did issue a FDDA[7] against her on April 26, 2017. Such non-submission did not render the FLD/FAN final, executory, and demandable. *Ergo*, the first day *after* the lapse of the 60-day period to submit supporting documents, *i.e.*, February 24, 2015, may *not* be utilized as the date of commission of willful failure to pay taxes, from which prescription of tax offense under Section 281 of the NIRC, as amended, would begin to run. Nor could said FLD/FAN be used as basis of accused's civil liability for unpaid IT and VAT subject of CTA Crim. Case Nos. O-867 and O-868.

Second. Assuming *arguendo* that the FLD/FAN did attain immutability, still, accused should not be called to answer for unpaid IT and VAT found therein, in CTA Crim. Case Nos. O-867 and O-868. *People v. Mendez (Mendez)*[8] forged the yardstick for the government to

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3 See *Commissioner of Internal Revenue v. Max's Sta. Mesa, Inc.*, CTA EB No. 2036, November 18, 2020, citing Section 3.1.4 of RR No. 18-2013.

4 Exhibits "P-7" to "P-7-E." Docket (CTA Crim. Case No. O-867), pp. 398-406.

5 Exhibit "P-8." *Id.* at pp. 408-411.

6 The 60th day to submit supporting documents, *i.e.*, February 21, 2015 fell on a Saturday.

7 Exhibit "P-9." Docket (CTA Crim. Case No. O-867), pp. 412-415.

8 G.R. Nos. 208310-11, March 28, 2023.

successfully collect civil liability for unpaid taxes by way of criminal action, as follows:

> For the guidance of the bench and bar, the following rules shall govern the prosecution of criminal tax law violations and the corresponding civil liability for unpaid taxes:
>
> (1) When a criminal action for violation of the tax laws is filed, a prior assessment is not required. Neither a final assessment is a precondition to *collection* of delinquent taxes in the criminal tax case. The criminal action is deemed a collection case. **Therefore, the government must prove two things:** *one,* **the guilt of the accused by proof beyond reasonable doubt,** and *two,* **the accused's civil liability for taxes by competent evidence (other than an assessment).**
>
> ...[9]

For one, accused was *acquitted* of the criminal charges hurled against her in CTA Crim. Case Nos. O-867 and O-868 because the prosecution failed to establish her guilt beyond reasonable doubt. *For another,* accused's civil liability for unpaid IT and VAT should be proved by competent evidence *other than* the FLD/FAN. Prescinding from *Mendez,* these two observations justify the non-imposition of civil liability for unpaid IT and VAT on accused in CTA Crim. Case Nos. O-867 and O-868.

ACCORDINGLY, I VOTE to:

1. **ACQUIT** accused with respect to the criminal offenses charged in CTA Crim. Case Nos. O-867 and O-868;

2. **RELEASE** the cash bail bond posted by accused in CTA Crim. Case Nos. O-867 and O-868; and

3. **ABSOLVE** accused from civil liability on the unpaid Income Tax and Value-Added Tax, subject of CTA Crim. Case Nos. O-867 and O-868.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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9 Boldfacing supplied.