REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**CTA CRIM. CASE NO. O-704** *For: Violation of Section 255, in relation to Sections 253 and 256 of the National Internal Revenue Code of 1997, as amended*
- versus -	Members: **DEL ROSARIO**, *P.J.*, *Chairperson*, **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
ERRIZARO SHOE CORPORATION / EFREN RIZALITO M. LAZARO and EDNA S. LAZARO, Accused.	Promulgated: SEP 2 8 2022 8:32 am

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DECISION

***DEL ROSARIO, P.J.*:**

This involves the criminal case filed by the prosecution against accused Errizaro Shoe Corporation (ESC) and its officers, Efren Rizalito M. Lazaro and Edna S. Lazaro, for violation of Section 255, in relation to Sections 253 and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, for their alleged refusal and failure to pay basic deficiency value-added tax (VAT) in the amount of ₱3,251,323.10, exclusive of surcharge and penalties, pursuant to Assessment Notice No. F-045-LNTF-07-VT-032.

THE FACTS

Accused ESC was a corporation duly organized and existing under the laws of the Philippines, and registered with the Securities and Exchange Commission (SEC) on March 27, 2003.[1] Accused Efren

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[1] Exhibits "A-1" to "A-5", Docket, pp. 176-205.

Rizalito M. Lazaro was the President of said corporation,[2] and accused Edna S. Lazaro was the Treasurer thereof.[3]

On July 1, 2009, the Bureau of Internal Revenue (BIR) issued Letter Notice (LN) No. 045-TRS-07-00-00006 against accused ESC disclosing that it had discrepancy in its declared income tax and VAT.[4] Thereafter, an undated Notice for Informal Conference was issued.[5]

Owing to the destruction of accused ESC's assets due to Typhoon Ondoy, as certified by Revenue Officers (ROs) of the BIR,[6] accused ESC filed an Application for Business Retirement with the Business Permits and Licensing Office of the City of Marikina on October 14, 2009,[7] which was approved by said Office as disclosed in a Certification dated January 4, 2010.[8]

On April 13, 2010, the SEC issued a Certificate of Filing of Amended Articles of Incorporation,[9] which approved the shortening of the corporate term of accused ESC until November 30, 2009.[10]

On December 20, 2010, the BIR issued a Preliminary Assessment Notice (PAN) against accused ESC finding it liable for basic deficiency VAT in the amount of ₱3,251,323.10.[11] On even date, a Final Assessment Notice,[12] with Assessment Notice No. F-045-LNTF-07-VT-032,[13] was issued ordering accused ESC to pay the said basic deficiency VAT, plus surcharge and interest, in the total amount of ₱6,783,239.84.

A Preliminary Collection Letter was issued by the BIR on July 5, 2012,[14] and a Final Notice Before Seizure on July 27, 2012.[15]

On September 6, 2012, a Warrant of Distraint and/or Levy (WDL) was issued against accused ESC.[16] Thereafter, Warrants of

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[2] Pre-Trial Order, Docket, p. 483.
[3] Exhibit "P-3", Docket, p. 145; Exhibit "A-1", Docket, p. 180; Exhibit "A-5", Docket, p. 203.
[4] Exhibit "P-5", Docket, pp. 152-154.
[5] Exhibit "P-6", Docket, p. 155.
[6] Exhibit "A-8", Docket, p. 295.
[7] Exhibit "A-9", Docket, pp. 296-297.
[8] Exhibit "A-10", Docket, p. 298.
[9] Exhibit "A-4", Docket, p. 199.
[10] Exhibit "A-5", Docket, p. 201.
[11] Exhibit "P-7", Docket, pp. 156-158.
[12] Exhibit "P-8", Docket, pp. 159 and 161.
[13] Exhibit "P-8-a", Docket, p. 160.
[14] Exhibit "P-15", Docket, p. 323.
[15] Exhibit "P-9", Docket, p. 162.
[16] Exhibit "P-10", Docket, p. 163.

Garnishment were issued addressed to different banks from October 23, 2012 to August 15, 2013.[17]

On May 5, 2014, the BIR issued a Demand Before Suit,[18] which demanded payment of the total tax due, including penalties, prior to institution of criminal action.

For failure of accused to pay the deficiency VAT, including penalties added thereon, ROs Betty B. Esplana, Ma. Luisa V. Enriquez, and Alvin N. Sto. Domingo filed on June 16, 2016, with the approval of the Commissioner of Internal Revenue (CIR),[19] a Joint Complaint-Affidavit with the Department of Justice (DOJ),[20] alleging that accused ESC and its responsible officers, accused Efren Rizalito M. Lazaro and Edna S. Lazaro, committed the crime of violation of Section 255, in relation to Sections 253 and 256, of the NIRC of 1997, as amended, for wilful failure to pay the deficiency VAT liability for taxable year 2007 per the abovementioned assessment.

Despite service of Subpoena to Respondent/s,[21] accused failed to file a counter-affidavit.[22] The DOJ, in a Resolution dated September 7, 2018, found probable cause to charge accused.[23]

On March 18, 2019, an Information was filed with the Court,[24] the accusatory portion of which reads:

> "That on or about May 5, 2014 and thereafter, in Marikina City, and within the jurisdiction of his Honorable Court, the abovenamed accused, a registered taxpayer and President and Treasurer, respectively, of ERRIZARO SHOE CORPORATION and required by law to file Value-added Tax (VAT) returns and to pay the corresponding tax, did then and there wilfully, unlawfully and feloniously failed to pay deficiency VAT in the total amount of Three Million Two Hundred Fifty One [Thousand] Three Hundred Twenty Three Pesos and Ten Centavos (₱3,251,323.10), exclusive of surcharge and interest, despite prior and post notices and assessments, including demand before suit, issued by the Bureau of Internal Revenue (BIR) on May 5, 2014.
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> **CONTRARY TO LAW.**"

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[17] Exhibit "P-11", Docket, pp. 164-171.
[18] Exhibit "P-12", Docket, p. 172.
[19] Exhibit "P-1", Docket, pp. 135-136.
[20] Exhibit "P-2", Docket, pp. 137-142.
[21] Docket, p. 42.
[22] Docket, p. 91.
[23] Docket, pp. 89-93.
[24] Docket, pp. 8-28.

THE PROCEEDINGS BEFORE THE COURT

In a Resolution dated April 8, 2019,[25] the Court directed plaintiff to submit a certified true copy of the DOJ Resolution dated September 7, 2018 within five (5) days from notice. Plaintiff filed its Compliance therewith on May 3, 2019.[26]

On June 4, 2019, the Court issued a Resolution finding probable cause for the issuance of Warrants of Arrest, ordering the issuance of Warrants of Arrest against accused Efren Rizalito M. Lazaro and Edna S. Lazaro, and setting the amount of bail at ₱60,000.00 for each accused.[27]

The Court issued Warrants of Arrest against accused Efren Rizalito M. Lazaro and Edna S. Lazaro on July 17, 2019.[28]

On August 27, 2019, Police Senior Master Sergeant Marlon M. Bernawi sent a Letter of even date returning to the Court the Warrant of Arrest against accused Efren Rizalito M. Lazaro in view of his arrest and detention at the Marikina City Police Station.[29] On the same date, accused Efren Rizalito M. Lazaro posted bail.[30] Thus, in an Order of even date, the Court directed the issuance of a Release Order for accused Efren Rizalito M. Lazaro, and the lifting of the arrest warrant against him.[31] Thereafter, the Release Order was issued.[32]

A Preliminary Conference was held on September 11, 2022 for the marking of evidence of both the plaintiff and accused.[33]

On September 13, 2022, plaintiff filed its Pre-Trial Brief.[34]

Accused Efren Rizalito M. Lazaro filed his Pre-Trial Brief on September 20, 2019.[35]

On his scheduled arraignment on October 9, 2019, accused Efren Rizalito M. Lazaro failed to personally appear. Thus, in an Order

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[25] Docket, pp. 84-87.
[26] Docket, pp. 88-93.
[27] Docket, pp. 95-99.
[28] Docket, pp. 100-103.
[29] Docket, pp. 111-113.
[30] Docket, pp. 114-123.
[31] Docket, pp. 125-126.
[32] Docket, p. 124.
[33] Docket, pp. 130-134.
[34] Docket, pp. 212-217.
[35] Docket, pp. 226-229.

of even date, the Court forfeited the bail bond, and ordered him to show cause within fifteen (15) days from notice why judgment against the bond should not be rendered by the Court.[36] A Bench Warrant of Arrest was thereafter issued against him for non-appearance in his arraignment.[37]

On December 19, 2019, accused Edna S. Lazaro voluntarily appeared and submitted herself to the Court's jurisdiction by posting the required bail bond for her provisional liberty.[38] In a Resolution of even date, the Court accepted and approved her bail and lifted the arrest warrant issued against her.[39]

The next day, December 20, 2019, accused Efren Rizalito M. Lazaro voluntarily appeared and submitted himself to the Court's jurisdiction by posting a new bail bond for his provisional liberty, considering that the previous bail bond was forfeited.[40] In a Resolution of even date, the Court accepted and approved said accused's bail and lifted the Bench Warrant of Arrest issued against him.[41]

A Preliminary Conference was held on January 22, 2022 for the marking of exhibits of the accused.[42]

On January 22, 2020, an Amended Pre-Trial Brief was filed for both accused Efren Rizalito M. Lazaro and Edna S. Lazaro.[43] On the same date, plaintiff filed an Urgent Motion to Reset Preliminary Conference and Pre-Trial Conference,[44] which the Court granted in a Resolution dated January 30, 2020.[45]

Arraignment was conducted on February 5, 2020, where accused ESC, represented by accused Efren Rizalito M. Lazaro and Edna S. Lazaro, entered a plea of "**NOT GUILTY**".[46] A Preliminary Conference was thereafter held for the marking of plaintiff's exhibits.[47]

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[36] Docket, p. 237.
[37] Docket, pp. 238-239.
[38] Docket, pp. 256-263.
[39] Docket, pp. 268-269.
[40] Docket, pp. 270-278.
[41] Docket, pp. 287-288.
[42] Docket, pp. 290-292.
[43] Docket, pp. 299-302.
[44] Docket, pp. 303-304.
[45] Docket, pp. 307-308.
[46] Docket, pp. 312-318.
[47] Docket, pp. 319-320.

The Pre-Trial was held on October 7, 2020, wherein the Court imposed a fine of ₱1,000.00 on plaintiff's counsel for failure to submit his deputation from the DOJ.[48]

Accused Efren Rizalito M. Lazaro and Edna S. Lazaro filed via registered mail on October 16, 2020 and received by the Court on October 27, 2020 a Waiver of Appearance,[49] which the Court noted in its Order dated October 28, 2020.[50]

On November 11, 2020, accused's counsel also filed a Withdrawal of Appearance with conformity of accused Efren Rizalito M. Lazaro and Edna S. Lazaro,[51] which the Court noted in its Minute Resolution dated November 25, 2020.[52]

In a Resolution dated December 21, 2020, the Court ordered the counsel for the prosecution, Atty. Feliciano A. Verzosa, to show cause why he should not subjected to disciplinary action for failure to comply with the Orders dated October 7, 2020 and November 4, 2020, and to pay the fines imposed upon him. Meanwhile, since no substitution was made by accused's counsel, Atty. Frederick C. Angel was appointed as counsel *de officio* for accused.[53]

In an Order dated January 20, 2021, the Court noted that there had been a pre-trial conference conducted and there was failure of both parties to submit their Joint Stipulation of Facts and Issues, thus a Pre-Trial Order shall be issued on the basis of the proceedings during said conference. In addition, the Court directed the counsel for the accused, Atty. Ma. Antonieta B. Albano-Placides, to file her formal entry of appearance.[54]

The Court issued a Pre-Trial Order on January 29, 2021.[55]

On March 10, 2021, plaintiff presented its witness, RO Betty B. Esplana, who identified her Judicial Affidavit dated March 9, 2020 and the signature appearing thereon.[56] Said witness testified that:

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[48] Docket, pp. 438-441.
[49] Docket, pp. 442-443.
[50] Docket, pp. 444-445.
[51] Docket, pp. 453-454.
[52] Docket, pp. 456-457.
[53] Docket, pp. 460-462.
[54] Docket, pp. 470-473.
[55] Docket, pp. 478-488.
[56] Docket, pp. 492-495.

(1) She was authorized to conduct the audit of all internal revenue taxes of accused ESC pursuant to LN No. 045-TRS-07-00-00006, and she was likewise authorized to conduct a computerized matching on the sales/purchases of accused ESC in case there are discrepancies between them;

(2) She personally served the LN to the registered address of accused ESC, which was received by a certain Aurora Santos;

(3) Accused ESC failed to controvert the findings in the LN, thus a Notice of Informal Conference was sent to it, which was received by a certain Evangeline Merabona on August 24, 2008;

(4) With accused ESC's failure to present its case, the LN was forwarded to the Assessment Division for issuance of PAN, which was issued against accused on December 20, 2010;

(5) A FAN dated December 20, 2010 was issued against accused ESC; and,

(6) Accused ESC failed to file a protest to the FAN, thus rendering it final and demandable, and the same was forwarded to the Collection Division for enforcement of summary remedies.[57]

On May 5, 2021, the plaintiff continued its presentation of evidence. At the outset, accused's counsel objected to the representation of plaintiff's counsel for the latter's failure to submit the deputation from the DOJ. The Court noted said objection but nonetheless allowed the continuation of the presentation of plaintiff's witness. Trial then proceeded and the plaintiff presented RO Ma. Luisa V. Enriquez, who identified her Judicial Affidavit executed March 6, 2020 and her signature appearing thereon.[58] Said witness testified that:

(1) She is the Seizure Agent who prepared and served at its principal office the WDL against accused ESC, and the Warrants of Garnishment addressed to different banks;

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[57] Exhibit "P-17", Docket, pp. 348-351
[58] Docket, pp. 522-527.

(2) She verified whether the assessment notices were served to accused ESC before preparing and serving the WDL; and,

(3) Accused ESC failed to pay its tax liabilities, thus the case was forwarded to the Legal Division for appropriate action.[59]

On May 17, 2022, plaintiff filed its Formal Offer of Evidence (FOE), offering in evidence the following exhibits:

EXHIBIT	DESCRIPTION
P-1	Referral Letter dated June 16, 2016
P-2	Joint Complaint-Affidavit of BIR ROs Betty B. Esplana, Ma. Luisa V. Enriquez and Alvin Sto. Domingo
P-3	General Information Sheet (GIS) of ESC for the year 2007
P-4	Certificate of Filing of the Amended Articles of Incorporation of ESC dated April 13, 2010 issued by the SEC dated April 13, 2010
P-5	Results of the Computerized Matching Conducted by the BIR on the Information/Data Provided by the Withholding Agents/Payors and Payees as against ESC's VAT, Income, Percentage and Withholding Tax Returns for taxable year 2007
P-6	Notice of Informal Conference issued by the BIR to the accused Efren Rizalito Lazaro
P-7	Preliminary Assessment Notice (PAN) dated December 20, 2010 issued against Efren Rizalito Lazaro for taxable year 2007
P-8	Final Assessment Notice (FAN) dated December 20, 2010 issued against Efren Rizalito Lazaro for taxable year 2007
P-9	Final Notice Before Seizure (FNBS) dated July 27, 2012 issued to ESC and Efren Rizalito M. Lazaro
P-10	Warrant of Distraint and/or Levy issued against Esc and Efren Rizalito Lazaro
P-11	Warrants of Garnishment addressed to the President/Treasurer and Cashier of various banks where ESC and Efren Rizalito Lazaro maintain bank accounts
P-12	Demand Before Suit dated May 5, 2014 issued by the BIR to Efren Rizalito Lazaro
P-13	Revenue Officer's Audit Report on VAT
P-14	Computation sheet under Third Party Information Program
P-15	Preliminary Collection Letter dated July 5, 2012
P-17	Judicial Affidavit of RO Betty B. Esplana
P-17-a	Signature of RO Betty B. Esplana
P-18	Judicial Affidavit of RO Ma. Luisa V. Enriquez
P-18-a	Signature of RO Ma. Luisa V. Enriquez

[59] Exhibit "P-18", Docket, pp. 332-334.

On May 27, 2021, accused filed their Comment to Plaintiff's FOE.[60]

In a Resolution dated June 8, 2021,[61] the Court noted plaintiff's Compliance filed on May 17, 2022,[62] which included the physical copy of the Deputation/Authority to Prosecute issued by the DOJ.

In a Resolution dated July 1, 2021, the Court admitted in evidence Exhibits "P-1", "P-2", "P-17", "P-17-a", "P-18" and "P18-a", and denied admission to Exhibits "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", and "P-15".[63]

On July 21, 2021, trial continued with the presentation of the evidence of the accused. Counsel for the accused presented her first witness, Ms. Ritchie Llada, who identified her Judicial Affidavit executed on June 1, 2020, and her signature appearing thereon.[64] Said witness testified that:

(1) She is the former Corporate Secretary of accused ESC;

(2) She came to know of this case because accused Efren Rizalito M. Lazaro, former President of accused ESC, and Edna S. Lazaro, former Treasurer of accused ESC, are her parents;

(3) As then Corporate Secretary, she never received any BIR notice or assessment issued against accused ESC, which has been closed for business since September 2009;

(4) She transacted with the BIR after being authorized by accused ESC's board of directors regarding the closure of the enterprise; and,

(5) Personnel of BIR-Marikina City visited accused ESC's place of business and issued a certification regarding their ocular inspection.[65]

Counsel for accused then presented her last witness, accused Efren Rizalito M. Lazaro, who identified his Judicial Affidavit executed

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[60] Docket, pp. 541-546.
[61] Docket, p. 549.
[62] Docket, pp. 535-540.
[63] Docket, pp. 552-553.
[64] Docket, pp. 556-559.
[65] Exhibit "A-11", Docket, pp. 420-423.

on June 1, 2020, and his signature appearing thereon,[66] and who testified that:

(1) He is the former President of accused ESC;

(2) Accused ESC has stopped its operations in September 2009 due to the adverse effects of Typhoon Ondoy on the business;

(3) The closure of business of accused ESC was reported to BIR-Marikina City;

(4) BIR-Marikina City visited accused ESC's place of business and issued a certification regarding their ocular inspection; and,

(5) He did not receive any notice or document from the BIR nor the DOJ, prior to the filing of the case against them.[67]

On July 27, 2021, accused filed their FOE,[68] offering in evidence the following exhibits:

EXHIBIT	DESCRIPTION
A-1	Certificate of Incorporation
A-2	Articles of Incorporation
A-3	By-Laws
A-4	Certificate of Filing of Amended Articles of Incorporation
A-5	Amended Articles of Incorporation
A-6	Certificate dated January 28, 2010 issued by the Barangay Captain of Barangay Concepcion Dos, Marikina City
A-7	Secretary's Certificate dated 19 October 2009
A-8	Certification issued by the BIR Revenue Region No 7, Revenue District Office No. 45, Marikina City
A-9	Application for Business Retirement dated October 14, 2009 field by ESC
A-10	Certification dated January 4, 2010 issued by the Business Permits and Licensing Office of Marikina City
A-11	Judicial Affidavit of Ritchie Llada
A-11-a	Signature of Ritchie Llada
A-12	Judicial Affidavit of accused Efren Rizalito M. Lazaro
A-12-a	Signature of accused Efren Rizalito M. Lazaro

[66] Docket, pp. 556-559.
[67] Exhibit "A-12", Docket, pp. 375-379.
[68] Docket, pp. 560-563.

Accused filed a Notice of Change of Address of All Accused on November 5, 2021,[69] which the Court noted in a Minute Resolution dated February 9, 2022.[70]

A Records Verification dated February 28, 2022 disclosed that plaintiff failed to file comment on accused's FOE.[71]

In a Resolution dated March 21, 2022, the Court admitted all of the exhibits offered in evidence by accused, and ordered the parties to submit their respective memoranda.[72]

Records Verification dated June 15, 2022 disclosed that the parties failed to file their respective memoranda.[73] Thus, in a Resolution dated July 1, 2022, the case was submitted for decision, and set the promulgation of judgment on September 28, 2022 at 8:30 a.m.[74]

THE ISSUE

The sole issue for resolution is: whether accused wilfully failed to file VAT returns and to pay the corresponding tax thereon.[75]

THE COURT'S RULING

Elements of the crime of Willful Failure to Pay Tax under Section 255 of the NIRC of 1997, as amended

Section 255 of the NIRC of 1997, as amended, punishes the crime of *Willful Failure to Pay Tax*, *viz.*:

> "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 the accurate information, **who willfully fails to pay such tax**,

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[69] Docket, p. 564.
[70] Docket, pp. 565-566.
[71] Docket, p. 567.
[72] Docket, pp. 570-571.
[73] Docket, p. 572.
[74] Docket, p. 574.
[75] Pre-Trial Order, Docket, p. 483.

make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, **at the time or times required by law or rules and regulations** shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (₱10,000) but not more than Twenty thousand pesos (₱20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years." (*Boldfacing supplied*)

On the other hand, Section 253, in relation to Section 256, of the NIRC of 1997, as amended, specifies the respective penal liabilities of a corporation on one hand, and its officers on the other hand, in cases where the offender-taxpayer is a corporation, thus:

"SEC. 253. *General Provisions.* -

(a) Any **person convicted** of a crime penalized by this Code shall, in addition to being liable for the payment of the tax, be subject to the penalties imposed herein: Provided, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution for violation of any provision of this Code or in any action for the forfeiture of untaxed articles.

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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 the employees responsible for the violation.

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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)."

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From the foregoing, to sustain a conviction of the crime of *Willful Failure to Pay Tax* under Section 255 of the NIRC of 1997, as amended, the following elements must be satisfied:

(1) The taxpayer is required by the NIRC of 1997, as amended, or its rules and regulations to pay the tax;

(2) The taxpayer failed to pay the tax at the time required by the NIRC of 1997, as amended, or its rules and regulations; and

(3) The taxpayer's failure to pay the tax was willful.

The burden rests with the prosecution to prove beyond reasonable doubt that all the elements of the crime are present,[76] the absence of any or all such elements warrants the acquittal of the accused.

In the case at bar, evidence is wanting on the third element, as will be thoroughly discussed hereunder.

Third Element: The taxpayer's failure to pay the tax was willful

To secure accused's conviction, it is indispensable for the prosecution to prove beyond reasonable doubt that the failure to pay the internal revenue tax liabilities was willful.

"Willful" in tax crime statutes means voluntary and intentional violation of a known legal duty; and bad faith or bad purpose need not be shown.[77] It means "premeditated; malicious; done with intent, or with bad motive or purpose, or with indifference to the natural consequence[.]"[78] An act or omission is "willfully" done if done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is, with bad purpose to either disobey or disregard the law. A willful act may be described as one done intentionally, knowingly and purposely, without justifiable excuse.[79]

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[76] *Guilbemer Franco vs. People of the Philippines*, G.R. No. 191185, February 1, 2016.
[77] Mertens' Law of Federal Income Taxation, Chapter 47.05, page 28, Volume 13, see U.S. vs. Green, 757 F2d 116, 85-1 USTC 9178 (CA7 1985), in which the Court, citing *U.S. vs. Moore*, 627 F2d 830 (CA7 1980) and *U.S. vs. Verkuilen*, 690 F2d 648, 82-2 USTC 9618 (CA7 1982), upheld the conviction of a tax protester for willful failure to file returns.
[78] *Commissioner of Internal Revenue, et al. vs. The Honorable Court of Appeals, et al.*, G.R. No. 119322, June 4, 1996.
[79] BLACK'S LAW DICTIONARY (5th ed.), p. 1434.

Willfulness, being a "state of mind" is rarely susceptible of direct proof but must ordinarily be inferred from the facts and circumstances of the case. Thus, willfulness may be, and usually is, shown by circumstantial evidence alone.[80] For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with one another and must constitute an unbroken chain leading to one fair and reasonable conclusion that a crime has been committed and that the accused is probably guilty thereof. The pieces of evidence must be consistent with the hypothesis that the accused was probably guilty of the crime and at the same time inconsistent with the hypothesis that he was innocent, and with every rational hypothesis except that of guilt. Circumstantial evidence is sufficient, therefore, if: (a) there is more than one circumstance, (b) the facts from which the inferences are derived have been proven, and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[81]

To determine whether accused ESC willfully failed to pay deficiency VAT, it is proper to ascertain first whether the assessment issued by the BIR is valid.

Evidence in support of the assessment were denied admission by the Court and cannot be considered in the rendition of judgment

A tax may be required to be paid after a taxpayer undergoes the assessment process. As described by the Supreme Court in *Commissioner of Internal Revenue vs. Fitness by Design, Inc.* (*Fitness by Design*),[82] an assessment for a tax due may be done by: (1) the taxpayer himself/herself; and/or (2) the CIR or his/her duly authorized representative. In case an assessment is issued by the latter, such must comply with the requirements of due process. As held in *Fitness by Design*:

> "**The assessment process starts with the filing of tax return and payment of tax by the taxpayer**. The initial assessment evidenced by the tax return is a self-assessment of the taxpayer. The tax is primarily computed and voluntarily paid by the taxpayer without need of any demand from government. If tax obligations are properly

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[80] *United States vs. Grumka*, 728 F.2d 794, 796-97 (6th Cir. 1984); *United States vs. Gleason*, 726 F.2d 385, 388 (8th Cir. 1984); *United States vs. Marabelles*, 724 F.2d 1374, 1379 (9th Cir. 1984).
[81] *Marie Callo-Claridad vs. Philip Ronald P. Esteban and Teodora Alyn Esteban*, G.R. No. 191567, March 20, 2013.
[82] G.R. No. 215957, November 9, 2016.

> paid, the Bureau of Internal Revenue may dispense with its own assessment.
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> **After filing a return, the Commissioner or his or her representative may allow the examination of any taxpayer for assessment of proper tax liability**. The failure of a taxpayer to file his or her return will not hinder the Commissioner from permitting the taxpayer's examination. The Commissioner can examine records or other data relevant to his or her inquiry in order to verify the correctness of any return, or to make a return in case of noncompliance, as well as to determine and collect tax liability.
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> **The indispensability of affording taxpayers sufficient written notice of his or her tax liability is a clear definite requirement. Section 228 of the National Internal Revenue Code and Revenue Regulations No. 12-99, as amended, transparently outline the procedure in tax assessment.**" (*Boldfacing supplied*)

Violation of the taxpayer's due process rights renders the tax assessment void. While the government has an interest in the swift collection of taxes, the BIR and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.[83]

An assessment commences upon the issuance of a Letter of Authority (LOA) by the CIR or his or her representative in accordance with Section 6(A) of the NIRC of 1997, as amended. The LOA is "the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax." [84]

The LOA is an indispensable part of the due process rights of a taxpayer. In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.[85]

After examination of the taxpayer's books and records, if the BIR finds that the taxpayer is liable for deficiency tax, a Preliminary Assessment Notice (PAN) shall first be issued. Section 3.1.2 of Revenue Regulations (RR) No. 12-99, as the prevailing implementing

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[83] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99, October 3, 2018.
[84] *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021.
[85] *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020.

rules at the time of issuance of the assessment in this case, provides for the procedure for the issuance of the PAN, to wit:

> "3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his [or her] 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** x x x. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he [or she] 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." (*Boldfacing supplied*)

Even though the PAN is not considered as the BIR's demand for the payment of deficiency tax, nevertheless it is part of due process as it gives both the taxpayer and the CIR the opportunity to settle the case at the earliest possible time without the need for the issuance of a final assessment.[86]

After issuance of the PAN, and believing that the taxpayer is indeed liable to pay deficiency tax, the BIR shall issue the Formal Letter of Demand or Final Assessment Notice (FLD/FAN). Section 3.1.4 of RR No. 12-99 provides:

> "3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his [or her] duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void** (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." (*Boldfacing supplied*)

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[86] *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017.

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In *Fitness by Design*, the Supreme Court described the FLD/FAN as follows:

> "**A final assessment notice provides for the amount of tax due with a demand for payment**. This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations that taxpayers should be able to present their case and adduce supporting evidence." (*Boldfacing supplied*)

Verily, the LOA, PAN and FLD/FAN are the important documents issued by the BIR, among others, which the Court must examine to determine the validity of an assessment.

In this case, it must be noted that the Court, in its Resolution dated July 1, 2021,[87] denied admission to the following exhibits offered in evidence by plaintiff:

EXHIBIT	DESCRIPTION
P-5	Results of the Computerized Matching Conducted by the BIR on the Information/Data Provided by the Withholding Agents/Payors and Payees as against ESC's VAT, Income, Percentage and Withholding Tax Returns for taxable year 2007
P-7	Preliminary Assessment Notice (PAN) dated December 20, 2010 issued against Efren Rizalito Lazaro for taxable year 2007
P-8	Final Assessment Notice (FAN) dated December 20, 2010 issued against Efren Rizalito Lazaro for taxable year 2007

It is a basic rule that evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments.[88] Thus, without admission of the LN, PAN, and FAN into the records of this case, the Court cannot consider that there was a valid assessment for deficiency VAT made against accused ESC. Simply, no evidence exists to support the claim that accused ESC is required to pay deficiency VAT.

For evidence to be considered, they must be formally offered. However, this rule admits of exception when: (1) the evidence must

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[87] Docket, pp. 552-553.
[88] *Dra. Leila A. Dela Llana vs. Rebecca Biong*, G.R. No. 182356, December 4, 2013.

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have been duly identified by testimony duly recorded; and, (2) the same must have been incorporated in the records of the case.[89]

Here, the exception is not applicable. The abovementioned exhibits were formally offered by plaintiff, however, this Court denied their admission in evidence after its own evaluation. Plaintiff's remedy should have been to file a motion for reconsideration of the Court's Resolution dated July 1, 2021. Plaintiff should have likewise filed a tender of excluded evidence in accordance with Section 40, Rule 132 of the Rules of Court, as amended, so that the said exhibits may be considered on appeal by the Court *En Banc* and/or the Supreme Court.[90] Plaintiff failed to avail any of these remedies.

Assuming *arguendo* that the above-listed exhibits may be considered, the same conclusion is arrived at due to the blatant disregard of the due process rights of accused ESC, thereby rendering the assessment void.

No LOA was issued and served upon accused ESC

The NIRC of 1997, as amended, is clear and categorical that there must be a grant of authority before any RO can conduct an examination or assessment, and in the absence of such an authority, the assessment or examination is a nullity.[91] Section 6 thereof provides:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement*. - (A) Examination of Returns and Determination of Tax Due - After a return has been filed as required under the provisions of this Code, the **Commissioner or his duly authorized representative may authorize** the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. x x x" (*Boldfacing supplied*)

In addition, Section 13 of the NIRC of 1997, as amended, mandates that an RO assigned to audit a taxpayer's books of accounts

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[89] *Commissioner of Internal Revenue vs. Jerry Ocier*, G.R. No. 192023, November 21, 2018.
[90] *Fortune Tobacco Corporation vs. Commissioner of Internal Revenue*, G.R. No. 192024, July 1, 2015.
[91] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

and other accounting records must be authorized by an LOA issued no less than by the Regional Director, *viz.*:

> "Sec. 13. *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Boldfacing and underscoring supplied*)

Based on the foregoing provisions, it is clear that unless authorized by the CIR or his or her duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.

Revenue Memorandum Order No. 43-90[92] directs that audits conducted by BIR ROs should be conducted under an LOA, to wit:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, **should be conducted under a Letter of Authority.**
>
> x x x" (*Boldfacing and underscoring supplied*)

Moreover, Revenue Audit Memorandum Order No. 1-00[93] mandates that an LOA must be served within 30 days from the time it was issued, lest it becomes void, *viz.*:

> "VIII. Preliminary Approach to Examination
>
> x x x x x x x x x
>
> C. Contact With Taxpayer
>
> x x x x x x x x x
>
> 2. Serving of Letter of Authority

[92] SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.
[93] SUBJECT: Updated Handbook on Audit Procedures and Techniques Volume I (Revision- Year 2000).

> 2.1 **On the first opportunity of the Revenue Officer to have personal contact with the taxpayer, he should present the Letter of Authority (LA) together with a copy of the Taxpayer's Bill of Rights. The LA should be served by the Revenue Officer assigned to the case and no one else.** He should have the proper identification card and should be in proper attire.
>
> 2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.
>
> 2.3 **A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise it becomes null and void**, unless revalidated. The taxpayer has the right to refuse its service if presented beyond the 30-day period depending on the policy set up by management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words 'Revalidated on _____ ' on the face of the copy of the Letter of Authority issued." (*Boldfacing supplied*)

It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.[94]

In this case, plaintiff never presented any LOA that authorized the ROs to conduct an examination of accused ESC. Although an LN was issued by the BIR, such is not equivalent to an LOA. As held by the Supreme Court in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*:[95]

> "The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and

[94] *Commissioner of Internal Revenue vs. Julieta Ariete*, G.R. No. 164152, January 21, 2010.
[95] G.R. No. 222743, April 5, 2017.

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investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. **Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner**. Unfortunately, this was not done in this case." (*Boldfacing supplied*)

In fine, *sans* authority of the ROs to conduct an examination of accused's books of accounts and other accounting records, the assessment notice issued by the BIR pursuant thereto is inescapably void.

The PAN and FAN were issued on the same date

As quoted, Section 3.1.2 of RR No. 12-99 grants the taxpayer a period of fifteen (15) days from receipt of the PAN within which to respond thereto. In *Commissioner of Internal Revenue vs. Yumex Philippines Corporation*,[96] the Supreme Court invalidated the assessment since the PAN and FLD/FAN were both served upon the taxpayer on the same day. It held that the taxpayer was not given any notice of the PAN at all and was deprived of the opportunity to respond to the same before being given the final assessment, *viz.*:

"Clearly from the aforequoted provisions, the taxpayer has fifteen (15) days from date of receipt of the PAN to respond to the said notice. Only after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.

Per the evidence on record, the BIR issued a PAN dated December 16, 2010, which it posted by registered mail the next day, December 17, 2010. It then issued and mailed the FLD/FAN on

[96] G.R. No. 222476, May 5, 2021.

> January 10, 2011. **Although posted on different dates, the PAN and FLD/FAN were both received by the Post Office of Dasmariñas, Cavite, on January 17, 2011, and served upon and received by respondent on January 18, 2011. <u>Under the circumstances, respondent was not given any notice of the preliminary assessment at all and was deprived of the opportunity to respond to the same before being given the final assessment</u>**.
>
> x x x x x x x x x
>
> Ultimately, the IAET assessment issued in this case by the BIR against respondent in violation of the latter's right to due process is null and void." (*Boldfacing and underscoring supplied*)

In this case, both the PAN and FAN were issued on December 20, 2010. The issuance of both the PAN and FAN on the same day violated accused ESC's due process rights. Accused ESC was not given any notice of the PAN at all and it was deprived of the opportunity to respond thereto before it was served the FAN. Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[97]

There is no proof that the PAN and FAN were mailed to and served upon accused ESC or its officers

Accused denied receipt of any document with regard to the assessment. The testimony of accused Efren Rizalito M. Lazaro shows:

> "14. Q. In connection with this case, what document did you receive from the BIR previous to the filing of this case, if there was any?
>
> A. *Wala po kami natanggap na kahit isang dokumento kaugnay ng kasong ito, sir. Inuulit ko po na sarado na po ang Errizaro mula September 2009 at kahit po sa bahay naming ay wala kaming natanggap na kahit anomang dokumento mula sa BIR, sir.*
>
> x x x x x x x x x
>
> 16. Q. Why did you say that you were not given the opportunity to air your side?

[97] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99, October 3, 2018.

A. *Kasi nga po ay sinampa na nila yung kaso kahit po wala kaming natanggap na anomang notice mula sa BIR. Kahit po sa DOJ ay hindi kami pinatawag, sir. Sabi po nga po sa Resolution ng DOJ ay wala daw pong ganung address. Nagulat na lamang po kami na may kaso na kami dito sa CTA, sir."*[98]

The testimony of accused's witness, Ms. Ritchie Llada, likewise shows:

"6. Q. Why did you say that there was no basis for the BIR to file the case against Errizaro?

A. *Una po, wala ay wala naman pong pinadala ang BIR na anomang notice sa Errizaro. Pangalawa po, matagal na pong sarado and Errizaro. September 2009 pa po ay sarado na at wala nang gawa ang Errizaro, sir.*

7. Q. Why did you say that the BIR did not [send] any notice to Errizaro?

A. *Alam ko po yan dahil bilang Corporate Secretary ay wala naman po akong natanggap mula sa BIR, sir. Hindi po naipatawag ang mga officers ng Errizaro para magbigay ng panig sa BIR, sir."*[99]

With the categorical denial of receipt of the assessment by accused Efren Rizalito M. Lazaro and witness Ritchie Llada, the burden was shifted to the prosecution to prove that the notices were received by accused.[100]

Review of the PAN and FAN shows that there is no indication that the same were served upon or received by accused ESC or any of its officers or representatives. In fact, upon cross-examination of plaintiff's witness, RO Betty B. Esplana, it was disclosed that there is no proof that the FAN was sent by registered mail or served upon accused ESC or its officers, *viz.*:

"ATTY. PLACIDES:

Q: There is no proof that the accused received a copy of the Final Assessment Notice attached to your Judicial Affidavit, am I right, Madam witness?

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[98] Exhibit "A-12", Docket, p. 378.
[99] Exhibit "A-11", Docket, p. 421.
[100] *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.

MS. ESPLANA:

Just one minute, ma'am.

JUSTICE SAN PEDRO:

Let the record reflects [sic] that the witness is going through the records in front of her.

JUSTICE MANAHAN:

So, Ms. Witness, is there a proof [sic] of the Final Assessment Notice?

MS. ESPLANA:

A: In our copy, Your Honors, there is a Final Notice here.

JUSTICE MANAHAN:

There is no question about the existence of your Final Assessment Notice. There is no question about that. It's the proof of the document that you have sent it via registered mail that is I think being asked of you to present or testify. Because the Court records, the one submitted here, do not have any proof of the registered mail of the registry receipt or a return card.

ATTY. PLACIDES:

Not even personal service, your Honors. And also there is no proof that it was personally served also.

JUSTICE MANAHAN:

She said that the mode of service of the FAN was through registered mail.

MS. ESPLANA:

Yes, Ma'am.

(At this juncture, the witness is still perusing the records of the case in front of her)

JUSTICE MANAHAN:

So, I think you have gone over those documents long enough, Ms. Witness. So, you have not satisfied, you have not showed [sic] the proof of mailing of that FAN and Details of Discrepancy via registered mail."[101]

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[101] Transcript of Stenographic Notes, March 10, 2021, pp. 31-33.

Thus, with the failure of the prosecution to show that the PAN and FAN were mailed to and served upon accused, the assessment is rendered void. 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.[102]

Assessment Notice issued against accused ESC bears no due date

Upon examination, it is found that Assessment Notice No. F-045-LNTF-07-VT-032 attached to the FAN, does not bear a due date or deadline for the payment of deficiency VAT. As held by the Supreme Court in *Fitness by Design*, a FAN is invalid if it does not bear a due date for the payment of tax as it negates the BIR's demand for payment. Similarly in this case, the due date in the Assessment Notice was left blank or unaccomplished, rendering the same invalid.

With the denial of admission in evidence of the exhibits offered by plaintiff, *i.e.*, the LN, PAN and FAN, and considering the foregoing findings that the FAN and Assessment Notice No. F-045-LNTF-07-VT-032 are intrinsically void, no evidence exists to support plaintiff's proposition that accused is required to pay the assessed deficiency VAT.

In *Emilio E. Lim, Sr. and Antonia Sun Lim vs. Court of Appeals and People of the Philippines*,[103] the Supreme Court held that, **by its nature the offense of failure to pay deficiency tax after repeated demands by the taxing authority could only be committed after service of the FAN and demand for payment of the deficiency taxes upon the taxpayer**. Said the Supreme Court:

> "Inasmuch as the final notice and demand for payment of the deficiency taxes was served on petitioners on July 3, 1968, it was only then that the cause of action on the part of the BIR accrued. **This is so because prior to the receipt of the letter-assessment, no violation has yet been committed by the taxpayers. The offense was committed only <u>after receipt</u> was <u>coupled with the willful refusal to pay</u> the taxes due within the alloted period.** xxx." (*Boldfacing and underscoring supplied*)

[102] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[103] G.R. No. L-48134-37, October 18, 1990. Also cited in *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep, Presiding Judge of RTC Quezon City Branch 105, and People of the Philippines*, G.R. No. 127777, October 1, 1999.

A taxpayer who has not received a valid FAN is under no obligation to pay the deficiency taxes assessed thereon. The taxpayer does not commit any violation of Section 255 of the NIRC of 1997, as amended, for refusal to pay the said assessed deficiency taxes without receiving the valid FAN.

Accused have neither criminal liability nor civil liability

With the glaring failure of the prosecution to prove that accused ESC was served with a valid FAN, the Court finds that accused have no obligation to pay the deficiency VAT as indicated in the void FAN. Stated differently, the **failure of the accused to pay the deficiency VAT assessed in a void FAN does not give rise to any criminal or civil liability on the part of the accused.**

As heretofore discussed, since there is no valid assessment to speak of, the third element of the crime of *Willful Failure to Pay Tax* was not met. The Court has to acquit accused ESC from the crime charged; and the acquittal of accused ESC, as the corporate taxpayer alleged to have willfully failed to pay tax, necessarily results in the acquittal of its corporate officers, accused Efren Rizalito M. Lazaro and Edna S. Lazaro.

In fine, considering that the act or omission from which the civil liability *ex delicto* may arise is wanting, no civil liability arising from the crime may likewise be adjudged against accused ESC, as well as accused Efren Rizalito M. Lazaro and Edna S. Lazaro. Needless to say, corporate officers cannot assume a liability that does not exist.[104]

WHEREFORE, premises considered, accused **ERRIZARO SHOE CORPORATION, EFREN RIZALITO M. LAZARO** and **EDNA S. LAZARO** are hereby **ACQUITTED** of the crime of violation of Section 255, in relation to Sections 253 and 256, of the National Internal Revenue Code of 1997, as amended, for failure of the prosecution to prove their guilt beyond reasonable doubt, without any civil liability.

The cash bail bond of accused **EFREN RIZALITO M. LAZARO** and **EDNA S. LAZARO** are hereby **CANCELLED** and ordered **RELEASED** to them, upon presentation of proper documents, in accordance with usual accounting rules and regulations.

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[104] See *People of the Philippines vs. Shirley Yang, et al.*, CTA Crim. Case Nos. O-202, O-203, O-204 and O-205, June 1, 2022.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice