REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

-versus-

ACTIVE TRAVEL AND TOURS, INC., SEE SIU HUNG DIONISIO and SEE SIU YING DIONISIO,
Respondents.

CTA EB Crim. No. 088
(CTA Crim. Case Nos. O-737 and O-738)

Present:

DEL ROSARIO, *PJ,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:
SEP 2 2 2022 3:59pm

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DECISION

REYES-FAJARDO, *J.*:

Under consideration is the Petition for Review[1] dated June 23, 2021 filed by the People of the Philippines, assailing the *civil aspect* of the Resolutions dated January 15, 2021[2] and May 24, 2021[3] issued by the Court's First Division (Court in Division), whereby Active Travel and Tours, Inc. (ATTI) was absolved from the civil liability for payment of taxes covering taxable year (TY) 2008 arising from the offenses charged in CTA Crim. Case Nos. O-737 and O-738.

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1 *Rollo,* pp. 4-14.
2 *Id.* at pp. 16-35.
3 *Id.* at pp. 37-42.

The facts follow.

On July 19, 2019, two (2) *Amended Informations* were separately filed in CTA Crim. Case Nos. O-737 and O-738 against respondents ATTI and its responsible officers, See Siu Hung Dionisio as Chief Executive Officer/President and See Siu Ying Dionisio as Chief Finance Officer, for the crime of "Willful Failure to Pay Tax" under Section 255, in relation to Sections 253 (d) and 256 of the National Internal Revenue Code (NIRC), as amended. The *Amended Informations* read as follows:

Crim. Case No. O-737

> The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **ACTIVE TRAVEL & TOURS, INC.**, **SEE SIU HUNG DIONISIO**, Chief Executive Officer/President and **SEE SIU YING DIONISIO**, Chief Finance Officer, respectively, and being the responsible corporate officers of accused **Active Travel & Tours, Inc.**, of the crime "Willful Failure to Pay Tax" under Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:
>
> > That on or prior to December 2015 and thereafter, in Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Active Travel and Tours, Inc., See Siu Hung, Dionisio, Chief Executive Officer/President and See Siu Hung Dionisio, Chief Finance Officer, respectively, and being the responsible corporate officers of accused Active Travel & Tours, Inc., with registered business address at Unit 103, Lower Ground Floor, SM City Manila, a domestic corporation required by law to pay its income tax, did then and there willfully, unlawfully, and feloniously fail to pay its deficiency income tax (IT) liabilities for taxable year 2008, in the amount of **Three Million One Hundred Fifty One Thousand Nine Hundred Fifty Nine Pesos and 60/100 (₱3,151,959.60)**, exclusive of surcharges and penalties, under Assessment No. 33-08-IT-4128 issued on December 28, 2012, despite notice and service of said assessment including prior and post notices particularly Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN), Preliminary Collection Letter (PCL), Final Notice Before Seizure (FNBS), and the final demand letter dated December 11, 2015, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of **₱3,151,959.60**, exclusive of surcharges and penalties.

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CONTRARY TO LAW.

Crim. Case No. O-738

The undersigned Assistant State Prosecutor of the Department of Justice, hereby accuses **ACTIVE TRAVEL & TOURS, INC.**, **SEE SIU HUNG DIONISIO**, Chief Executive Officer/President and **SEE SIU YING DIONISIO**, Chief Finance Officer, respectively, and being the responsible corporate officers of accused **Active Travel & Tours, Inc.**, of the crime "Willful Failure to Pay Tax" under Section 255, in relation to Sections 253(d) and 256, of the National Internal Revenue Code (NIRC) of 1997, as amended, committed as follows:

> That on or prior to December 2015 and thereafter, in Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Active Travel and Tours, Inc., See Siu Hung, Dionisio, Chief Executive Officer/President and See Siu Hung Dionisio, Chief Finance Officer, respectively, and being the responsible corporate officers of accused Active Travel & Tours, Inc., with registered business address at Unit 103, Lower Ground Floor, SM City Manila, a domestic corporation required by law to pay its value-added tax, did then and there willfully, unlawfully, and feloniously fail to pay its deficiency value-added tax (VAT) liabilities for taxable year 2008, in the amount of **One Million Six Hundred Sixty Eight Thousand Seven Hundred Forty Seven Pesos and 61/100 (₱1,668,747.61)**, exclusive of surcharges and penalties, under Assessment No. 33-08-VT-4129 issued on December 28, 2012, despite notice and service of said assessment, including prior and post notices particularly Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN), Preliminary Collection Letter (PCL), Final Notice Before Seizure (FNBS), and the final demand letter dated December 11, 2015, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of **₱1,668,747.61**, exclusive of surcharges and penalties.
>
> CONTRARY TO LAW.

On July 31, 2019, the Court in Division found probable cause to issue warrants of arrest against respondents See Siu Hung Dionisio and See Siu Ying Dionisio in CTA Crim. Case Nos. O-737 and O-738 and ordered the issuance of warrants of arrest against them.

On August 20, 2019, respondents separately filed *Ex Parte Motions to Reduce Bail* in CTA Crim. Case Nos. O-737 and O-738, praying that the amount of bail be reduced to Thirty Thousand Pesos

(₱30,000.00) each. They argued that since respondent ATTI had closed and ceased business operations due to business reversals, and that they have very limited means, it is impossible for them to pay the full amount of their bond for each case.

On October 2, 2019, the Court in Division issued separate Resolutions in CTA Crim. Case Nos. O-737 and O-738, granting respondents' *Ex Parte Motion to Reduce Bail* and reduced the amount of bail to ₱30,000.00.

On October 7, 2019 and October 8, 2019, *Returns of Warrants of Arrest* for respondents See Siu Hung Dionisio and See Siu Ying Dionisio were filed by Edgar C. Bolivar, OIC, Warrant and Subpoena Section of the Pasay City Police Station and Special Investigator III Lemuel Ray A. Garcia, stating that the Warrants of Arrest were returned unserved because despite several attempts, the subject persons cannot be located at the given address.

In the Resolutions both dated October 23, 2020, the Court in Division ordered the issuance of alias warrants of arrest against respondents See Siu Hung Dionisio and See Siu Ying Dionisio in CTA Crim. Case Nos. O-737 and O-738.

On November 11, 2019, respondents See Siu Hung Dionisio and See Siu Ying Dionisio appeared and submitted themselves to the jurisdiction of the Court. The Court in Division approved the cash bail bonds they posted for their provisional liberty in the separate Resolutions dated November 12, 2019 for CTA Crim. Case Nos. O-737 and O-738, and set the Arraignment and Pre-Trial Conference on December 4, 2019; and the Preliminary Conference on December 5, 2019 for the marking of the parties' documentary evidence. On November 29, 2019, petitioner filed its *Pre-Trial Brief* in CTA Crim. Case Nos. O-737 and O-738.

In the hearing held on December 4, 2019, CTA Crim. Case No. O-737 was consolidated with CTA Crim. Case No. O-738, upon joint motion of counsels of petitioner and respondents because the cases involve the same parties and the same TY. Thereafter, respondents See Siu Hung Dionisio and See Siu Ying Dionisio were arraigned and entered their respective pleas of "NOT GUILTY" in the offenses charged in the Amended Informations in CTA Crim. Case Nos. O-737 and O-738. However, upon motion of counsels for the parties, the

Pre-Trial Conference was reset to January 16, 2020 with the undertaking that they shall file a Joint Stipulation of Facts and Issues on or before said date.

On January 10, 2020, respondents filed their *Pre-Trial Brief.* On January 16, 2020, the parties submitted their *Joint Stipulation of Facts and Issues.* On January 28, 2020, respondents filed a *Manifestation,* with attached *Waiver,* stating that they are submitting a *Waiver of their Appearance* during the trial of the case, and thus, the trial may proceed in absentia without prejudice to the issuance of warrants of arrest and/or confiscation of bail.

On February 12, 2020, the Court in Division issued a Pre-Trial Order for the consolidated cases.

During trial, petitioner presented the following witnesses: (1) Revenue Officer (RO) Teresita P. Reyes; (2) Edna A. Ortalla, Chief, Review and Evaluation Section of the Assessment Division, BIR Manila; (3) RO Ma. Paz Arcilla; (4) Mailing In-Charge Benhur C. Nacorda; and (5) Collection Officer Emilia M. Nava.

On September 15, 2020, petitioner formally offered the following documentary exhibits, to wit:

Exhibits	*Description of Document in the Formal Offer of Evidence*
P-1	2008 Annual Income Tax Return of Active Travel & Tours, Inc. with attached audited financial statements
P-1-a	Taxpayer's Name: Active Travel and Tours, Inc.
P-1-b	Registered Address: c/o Unit 013 Lower Ground Floor, SM City, Manila
P-1-c	For the year ended: Calendar: 2008
P-1-d	See Siu Hung Dionisio, President of Active Travel and Tours, Inc. (appearing on the lower left portion of the 2nd page of the Annual Income Tax Return [ITR])
P-2	Tax Verification Notice (TVN) No: 2003 00135954 dated June 26, 2009
P-3	First Request for Presentation of Records dated June 29, 2009
P-3-A	Received by: with name and signature of Gina Rapada
P-3-B	07-01-09 as 1 July 2009 (appearing below the words Received by: with name and signature of Gina Rapada)
P-4	Second Request for Presentation of Records dated July 7, 2009
P-4-A	Registry Receipt No. 902757
P-5	Final Notice before Issuance of Subpoena Duces Tecum
P-5-A	Handwritten words Received by: with name and signature of Chris Balmes
P-5-B	10/16 as October 16 (as appearing below handwritten words "Received by:" with name and signature of Chris Balmes)
P-6	Memorandum dated January 12, 2010

P-6-A	Short hand signature of Teresita P. Reyes (appearing at the bottom left corner)
P6-B	1-12-10 as 12 January 2010 (appearing below the signature of Teresita P. Reyes
P-7	BIR-Letter dated January 13, 2010
P-7-A	Short hand signature of Teresita P. Reyes (appearing at the bottom left corner of the printed name Danilo Mendoza)
P-7-B	Printed name of Danilo C. Mendoza, Revenue District Officer with the signature appearing above it
P-7-C	Philippine Postal Corporation Service Slip with Tracking Number DE 503663118 PH of the Philippines Postal Corporation, dated January 14, 2010
P-8	Memorandum requesting for the issuance of Subpoena Duces Tecum
P-8-A	Name and signature of Teresita P. Reyes, Revenue Officer
P-8-B	Name and signature of Josephine S. Virtucio, Revenue District Officer
P-9	Subpoena Duces Tecum (SDT No. RR6-2011-0637)
P-9-A	Notation with printed words: "Received by" and printed name and signature: "Josephine Mangalino, Cashier, received by an authorized person." And on the left portion thereof, "Original received at SM MLA 07/22/11, Unit 013 Lower Ground Floor"
P-9-B	Certification of the Subpoena Duces Tecum
P-9-C	Name and signature of Teresita P. Reyes appearing on the certification of the Subpoena Duces Tecum
P-10	2nd Indorsement dated November 24, 2011
P-11, P-11-A, P-11-B, P-11-C, P-11-D, and P-11-E	Notice for Informal Conference dated December 14, 2011 with Details of Discrepancies
P-11-F	Short hand signature of Teresita P. Reyes appearing on the lower left part of the printed name Josephine S. Virtucio
P-11-G	Words "Received by:" with printed name and signature of Josephine Mangalino (appearing on the bottom left of the Notice of Informal Conference)
P-12	Memorandum dated December 23, 2011
P-12-A	Printed name and signature of Teresita P. Reyes, Revenue Officer
P-13	Waiver of Defense of Prescription dated January 16, 2012
P-14	Memorandum dated July 6, 2012
P-15, P-15-A, P-15-B and P-15-C	Notice for Informal Conference (Amended) dated July 31, 2012 with Details of Discrepancies
P-15-D	Philippine Postal Corporation Service Slip with Tracking Number ED 101708116ZZ
P-16	Memorandum dated August 29, 2012
P-16-A	Name and signature of Teresita P. Reyes, Revenue Officer
P-16-B	Name and signature of Josephine S. Virtucio, Revenue District Officer
P-17	Assignment Slip dated September 17, 2012
P-18, P-18-A, P-18-B	Pre-Assessment Notice dated December 12, 2012 with Details of Discrepancies
P-18-C	Short hand signature of Edna Ortalla appearing beside the Chief, Reviewer
P-19 and P-19-A	Transmittal Letter with Registry Receipt No. 918381 (Proof of service of PAN)
P-20	Assessment Notice No. 33-08-IT-4128 dated December 28, 2012
P-21	Assessment Notice No. 33-08-VT-4129 dated December 28, 2012
P-22	Assessment Notice No. 33-08-WE-4130 dated December 28, 2012

P-20-A, P-21-A, P-22-A	Short hand signature of Maria Paz Arcilla appearing below the printed name and signature of Simplicio M. Madulara
P-23 andP-23-A	Formal Letter of Demand dated December 28, 2012
P-23-B	Details of Discrepancies
P-23-C	Short hand signature of Maria Paz Arcilla appearing above the initials "mpla"
P-24 and P-24-A	Transmittal of Final Assessment Notice/Demand Letter for Mailing with Registry Receipt No. 918992
P-26 and P-26-A	Preliminary Collection Letter dated May 31, 2013 with Registry Receipt No. 914218
P-27 and P-27-A	Final Notice Before Seizure dated June 18, 2013 with Registry Receipt No. 919719
P-28	Warrant of Distraint and/or Levy
P-29, P-29-A, P-29-B, P-29-C, and P-29-D	Warrant of Garnishment (5X)
P-30	Memorandum dated July 27, 2015
P-31	Joint Complaint Affidavit
P-31-A and P-31-B	Name and Signature of Emilia M. Nava and Lorna A. Lazaro
P-32	CIR Referral Letter to DOJ
P-32-A	Name and Signature of Kim S. Jacinto-Henares
P-33	General Information Sheet of Active Travel and Tours lnc. for Taxable Year 2008
P-34	Articles of Incorporation Active Travel and Tours lnc.
P-35, P-36, P-37, P-38, and P-39	Short hand signature of Emilia M. Nava appearing below the printed name and signature of Ceferina M. Ong
P-28-B, P-35-A, P-36-A, P-37-A, P-38-A, P-38-A, and P-39-A	Name and signature of Emilia M. Nava, collection officer
P-40	Judicial Affidavit of Revenue Officer Teresita P. Reyes
P-40-A	Signature atop the printed name "Teresita P. Reyes"
P-41	Judicial Affidavit of Revenue Officer Edna Ortalla
P-41-A	Signature atop the printed name "Edna Ortalla"
P-42	Judicial Affidavit of Ma. Paz Arcilla
P-42-A	Signature atop the printed name "Ma. Paz Arcilla"
P-43	Judicial Affidavit Mailing In-Charge Benhur Nacorda
P-43-A	Signature atop the printed name "Benhur Nacorda"
P-44	Judicial Affidavit of Collection Officer Emilia M. Nava
P-44-A	Signature atop the printed name "Emilia M. Nava"

On October 15, 2020, respondents filed their *Comment/Opposition to (Petitioner's) Formal Offer of Evidence*. In a Resolution dated November 18, 2020, the Court in Division admitted all of petitioner's formally offered exhibits.

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On December 3, 2020, respondents filed a *Motion for Leave to File (attached) Demurrer to Evidence*, to which petitioner filed a *Comment/Opposition* thereto.

On January 15, 2021, the Court in Division issued the first assailed Resolution, the dispositive portion of which states:

> **WHEREFORE**, in light of the foregoing considerations, (respondents') ***Demurrer to Evidence*** is hereby **GRANTED**.
>
> Accordingly, CTA Criminal Case Nos. O-737 and O-738 are **DISMISSED**. (Respondents) are hereby **ACQUITTED** of the crimes charged in these consolidated cases for failure of the prosecution to prove their guilt beyond reasonable doubt.
>
> The presentation of evidence for the (respondents) previously scheduled on January 20, 2021 is hereby **CANCELLED**.
>
> **SO ORDERED**.

On February 3, 2021, petitioner filed a *Motion for Reconsideration on the Civil Aspect of the Resolution*, to which respondents filed their comment/opposition thereto on March 1, 2021.

On May 24, 2021, the Court in Division issued the second assailed Resolution, denying petitioner's Motion for Reconsideration on the Civil Aspect of the Resolution in this wise:

> **WHEREFORE**, in light of the foregoing considerations, (petitioner's) ***Motion for Reconsideration on the Civil Aspect of the Resolution*** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.

Hence, this Petition.

Petitioner argues that the presence of a valid Letter of Authority (LOA) is not essential for the validity of a tax assessment. It explains that the Commissioner of Internal Revenue (CIR) has the power to examine any taxpayer to determine whether the correct amount of taxes have been declared and paid. The only requirement for the validity of such examination is notice to the taxpayer through the issuance of a Tax Verification Notice (TVN). Thus, the TVN issued by Revenue District Officer Danilo C. Mendoza (RDO Mendoza) to Revenue Officer Merietta D. Sta. Maria (RO Sta. Maria) is sufficient notice to respondent ATTI of the BIR examination against it for TY 2008.

According to petitioner, due to RO Sta. Maria's transfer, Revenue Memorandum Order (RMO) No. 69-2010 allows for the issuance of a Memorandum of Assignment (MOA) or equivalent document in favor of ROs to continue the examination performed by the RO named in the LOA, should transfer of the latter occur. As such, the Memorandum under Blanket Referral No. (MBRN) 005-2010 dated January 12, 2010 issued by RDO Mendoza validly confers upon RO Teresita Reyes (RO Reyes) and Group Supervisor Carolyn B. Labao (GS Labao) the authority to continue the examination of respondent ATTI for TY 2008. Hence, the examination conducted by RO Reyes and GS Labao and their findings in the deficiency tax assessments for TY 2008 must be upheld.

In their Comment/Opposition dated July 29, 2021, respondents admit that RDO Mendoza issued the TVN and MBRN to RO Reyes. They however assert that the BIR failed to convert such documents to a valid LOA; hence, the examination conducted by RO Reyes is illegal.

Respondents further counter that for the reassignment or transfer of cases to ROs, other than those named in the LOA, to be valid, the CIR or his duly authorized representatives must issue another LOA to legally continue with the examination of the taxpayer, the absence of which renders the assessment void. Since the authority of RO Reyes to examine respondent ATTI was based on the TVN and MBRN, and not an LOA, RO Reyes' findings of deficiency taxes against respondent ATTI are a product of an invalid examination. Hence, the resultant tax assessments based thereon is as well void.

OUR RULING

The Petition is denied.

Section 205 of the NIRC, as amended states that the Court shall order the payment of delinquent taxes subject of the criminal case as finally decided by the CIR, thus:

> **SEC. 205.** ***Remedies for the Collection of Delinquent Taxes.*** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
>
> ...
>
> (b) By civil or criminal action.
>
> **The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.**
>
> ...[4]

For the Court to order the payment of taxes subject of these cases, the following conditions must be present: *first,* the tax subject of the criminal case is delinquent; and *second,* there must be valid final determination thereof by the CIR. None of these conditions were met. To expound:

A tax is considered delinquent among others, where an assessment for deficiency tax has become final, executory, and demandable, and that the taxpayer has not paid the same within the period given in the notice of assessment.[5] In reverse, where an assessment is void and did not attain finality, the taxes assessed therein may not be considered delinquency taxes.

Additionally, in *People of the Philippines v. Court of Tax Appeals-Third Division and William Villarica,*[6] *(Villarica)* the Supreme Court held that adherence to due process in assessments is crucial in the pursuit of the *civil* aspect of the criminal case for willful attempt in any manner to evade or defeat any tax imposed by the NIRC, as amended, punishable under Section 254 thereof.

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4 Boldfacing supplied.

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

6 G.R. No. 248802, Resolution dated June 21, 2021.

Macario Lim Gaw, Jr. v. Commissioner of Internal Revenue[7] further explains that "[u]nder Sections 254 and 255 of the NIRC, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. …" Evidently, tax evasion also includes willful failure to pay taxes due punishable under Section 255 of the NIRC, as amended.

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

In this regard, among the requisites for the validity of an assessment is that the ROs must be authorized by the CIR or his duly authorized representatives to examine the taxpayer pursuant to Sections 6(A), 10, and 13 of the NIRC, as amended.[8]

Section 6(A) of the NIRC, as amended, confines the authority to examine any taxpayer for correct determination of tax liabilities to the CIR or his duly authorized representatives. By way of exception, the CIR or his duly authorized representatives may authorize ROs performing assessment functions to examine any taxpayer for determination of tax liability:

> **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: ...
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> ...

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7 G.R. No. 222837, July 23, 2018.

8 See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

Sections 10(c) and 13 of the NIRC, as amended, allows the Revenue Regional Directors to issue LOAs in favor of ROs performing assessment functions covered by their respective region and district offices for the examination of any taxpayer within such region:

> **SEC. 10.** *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:
>
> ...
>
> (c) Issue Letters of authority for the examination of taxpayers within the region;
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> ...
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> **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.

In addition, Section D(4) of RMO No. 43-90[9] provides that deputy commissioners, and other BIR officials authorized by the CIR himself are permitted to issue an LOA.[10] Among the BIR officials expressly authorized[11] by the CIR to issue an LOA are the Assistant Commissioners (ACIRs) and Head Revenue Executive Assistant (HREA).

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[9] 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*

[10] For proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For exigencies of service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.

[11] No. 2, Roman Number II of RMO No. 29-2007 permits assistant commissioners and head revenue executive assistant to issue LOAs.

As it stands, an LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a *particular period*.[12] ROs must be granted prior authority by the CIR or her duly authorized representatives to examine a taxpayer, the absence of which will result in the nullity of the examination and assessment.[13]

Here, TVN No. 0013954 dated June 26, 2009 was issued by RDO Mendoza, authorizing RO Sta. Maria to verify the supporting documents or pertinent records of respondent ATTI in relation to the tax audit for TY 2008.[14] Due to RO Sta. Maria's transfer, RDO Mendoza issued a MBRN, directing RO Reyes and GS Labao to continue the examination of respondent ATTI for TY 2008.[15] RO Reyes then prepared a Memorandum dated December 23, 2011, with concurrence of GS Labao, recommending the issuance of deficiency IT, VAT, and expanded withholding tax (EWT) assessments against respondent ATTI for TY 2008.[16] Acting on the Memorandum of RO Reyes and GS Labao, Edna Ortalla, Chief of Review and Evaluation Section (Chief Ortalla) issued an Assignment Slip to a certain RO Jeffrey O. Kalam (RO Kalam) to review the findings of RO Reyes and GS Labao, on the basis of which, they prepared a Preliminary Assessment Notice (PAN) with Details of Discrepancies for issuance thereof to respondent ATTI.[17]

Undeniably, the respective authorities of ROs Sta. Maria, Reyes, Kalam, and GS Labao to examine respondent ATTI for TY 2008 originated from the TVN and MBRN issued by RDO Mendoza, and Assignment Slip issued by Chief Ortalla. In fact, Chief Ortalla admitted that the authority to examine respondent ATTI was based on the TVN and not an LOA.[18] RDO Mendoza and Chief Ortalla are persons without authority to allow the examination of respondent ATTI. Only the CIR or his duly authorized representatives may authorize the examination of a taxpayer. These authorized representatives include the Revenue Regional Director, Deputy

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12 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

13 See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue, supra* note 8.

14 Exhibit "P-2," docket (CTA Crim. Case No. O-737), at p. 603.

15 Exhibit "P-6," *id.* at p. 607.

16 Exhibit "P-12," *id.* at p.618.

17 Answers to Questions Nos. 5 to 8, Judicial Affidavit of Edna Ortalla. Exhibit "P-40," *id.* at pp. 340 to 358.

18 Transcript of Stenographic Notes (TSN), July 22, 2020 Hearing, *id.* at pp. 527-528.

Commissioners, ACIR and HREA. Therefore, the examination they conducted on respondent ATTI relative to TY 2008 is illegal. Without a valid examination, the deficiency tax assessments issued against respondent ATTI for TY 2008 are also void. Hence, the BIR may not be allowed to collect deficiency taxes from respondent ATTI. To stress, a void assessment bears no valid fruit.[19]

Petitioner argues that the issuance of an LOA is not crucial for the validity of the tax assessments when the CIR conducts the actual examination of the taxpayer. The only requirement is that notice of examination be given to respondent ATTI through the TVN issued by RDO Mendoza.

This is misleading.

For one, while it is true that the issuance of a valid LOA is not required when it is the CIR who conducts the actual examination of the taxpayer, such is not what happened in this case. Respondent ATTI was not examined by the CIR, but by ROs Sta. Maria, Reyes, a certain RO Kalam, and GS Labao. These BIR personnel have no authority to examine respondent ATTI since they were not armed with proper authority to examine issued by the CIR or his duly authorized representatives.[20] As there was none, the examination they conducted is illegal and the deficiency tax assessments emanating therefrom is also void. Indeed, a right cannot spring in favor of a person from his own void or illegal act.[21]

For another, the TVN issued by RDO Mendoza is not sufficient notice to respondent ATTI that it is under examination for TY 2008. The notice required to be given to the taxpayer that it is under examination by the BIR for a specific period is the authority to examine issued by the CIR or his duly authorized representatives.[22]

Petitioner nonetheless asserts that the TVN and the MOA in the form of MBRN both issued by RDO Mendoza validly authorizes RO

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19 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, July 9, 2018.

20 See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

21 Article 2254 of the Civil Code states "... No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others." See *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*, G.R. No. 194105, February 5, 2014.

22 See *Commissioner of Internal Revenue v. Lancaster Philippines, Inc., supra* note 12.

Reyes and GS Labao to continue the conduct of examination of respondent ATTI for TY 2008 previously handled by RO Sta. Maria pursuant to RMO No. 69-2010.

We are not persuaded.

RDO Mendoza issued the MBRN for RO Reyes and GS Labao to continue the examination of respondent ATTI on account of RO Sta. Maria's transfer. However, RDO Mendoza is wanting in legal authority to authorize the examination of respondent ATTI. Only the CIR or his duly authorized representatives may authorize the examination of a taxpayer.[23] These authorized representatives include the Revenue Regional Director, Deputy Commissioners, ACIR and HREA.[24] Clearly, the examination conducted on respondent ATTI and the deficiency tax assessments issued against it for TY 2008 were tainted with invalidity. Indeed, the authority of the ROs to examine the taxpayer may not be ignored as the matter goes into the intrinsic validity of the assessment itself.[25]

Sans a valid assessment, the assessed taxes neither became delinquent within the purview of the law, nor was there a valid final determination by the CIR of civil liability arising from the offenses charged in this case. Hence, no civil liability *ex-delicto* may be adjudged against respondent ATTI.

WHEREFORE, the Petition for Review dated June 23, 2021, filed by the People of the Philippines is **DENIED**. The Resolutions dated January 15, 2021 and May 24, 2021 in CTA Crim. Case Nos. O-737 and O-738 are **AFFIRMED**.

SO ORDERED.

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

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23 See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue, supra* note 8; and *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.

24 *Supra* notes 9-11.

25 See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue, supra* note 8.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With due respect, see Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,	**CTA EB CRIM. NO. 088** (CTA Crim. Case Nos. O-737 and O-738)
- versus -	Present: **DEL ROSARIO, *P.J.*,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO**, and, **CUI-DAVID, *JJ.***
ACTIVE TRAVEL AND TOURS, INC., SEE SIU HUNG DIONISIO and SEE SIU YING DIONISIO, Respondents.	Promulgated: SEP 2 2 2022 3:59pm

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With due respect to the *ponencia* of our esteemed colleague, Justice Marian Ivy F. Reyes-Fajardo, I am constrained to register my dissent for reasons discussed below.

A review of the case records shows that the assailed Resolutions dated 15 January 2021 and 24 May 2021, respectively, promulgated by this Court's Third Division, dismissed herein criminal case against the respondents, on the basis of the assessment's invalidity. Consistent with my previous stand in this particular regard I remain of view that criminal actions are not the proper venue for tackling this matter. I equally find that the existence of civil liability *ex delicto* should not depend on the assessment's validity as the latter is inconsequential for a criminal case for tax evasion to prosper.

In resolving the present issue of whether or not respondents should be liable on the civil aspect *ex-delicto*, the *ponencia* declared the Bureau of Internal Revenue's (**BIR's**) assessment invalid on the ground that the Letter of Authority's (**LOA's**) is invalid, following the ruling in *People of the Philippines v. Court of Tax Appeals-Third Division and William R. Villarica*[1] (**Villarica**).

A review of *Villarica* reveals that it was not a decision of the Supreme Court on the case's merits but a mere Notice signed by Supreme Court's Second Division Clerk of Court informing the parties that therein petitioner's petition for *certiorari* cannot be given due course on the ground of double jeopardy. As a result, Villarica did not set a <u>binding precedent</u> that should be a basis of this Court's decision. In *Philippine Health Care Provider's, Inc. v. Commissioner of Internal Revenue*[2], the Supreme Court explains the binding effect of a minute resolution *vis-à-vis* a decision on the merits on other cases, to wit:

> ...
>
> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>
> <u>**With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.**</u> Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* **involving the same parties and the same issues**, was previously disposed of by the Court thru a minute resolution dated February 17, 2003

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1 G.R. No. 248802, see Resolution dated 21 June 2021.

2 G.R. No. 167330, 18 September 2009; Citations omitted, emphasis and underscoring supplied and emphasis in the original text.

> sustaining the ruling of the CA. Nonetheless, the Court ruled that the **previous case "ha(d) no bearing"** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.
>
> **Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions.** A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. **Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.**
>
> Accordingly, **since petitioner was not a party in G.R. No. 148680 and since petitioner's liability for DST on its health care agreement was not the subject matter of G.R. No. 148680, petitioner cannot successfully invoke the minute resolution in that case (which is not even binding precedent) in its favor.** Nonetheless, in view of the reasons already discussed, this does not detract in any way from the fact that petitioner's health care agreements are not subject to DST.
>
> ...

Moreover, assuming for the sake of argument that *Villarica* is binding, its declarations as regards the propriety of reviewing an assessment's validity in a criminal case would be mere *obiter dictum* – words of a prior opinion entirely unnecessary for the decision of the case.[3]

To reiterate, the petition in *Villarica* was not given due course on the ground that doing so would constitute double jeopardy. Clearly, the issue of whether or not the assessment of therein petitioner was valid was *not* necessary in disposing of the petition in *Villarica*.

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[3] *Sta. Lucia Realty and Development, Inc., et al., v. Leticia Cabrigas, et al.,* G.R. No. 134895, 19 June 2001; Black's Law Dictionary, p. 1222 citing *Noel v. Olds*, 78 U.S. App. D.C. 155.

As regards the matter of civil liability *ex delicto*, the Supreme Court in *Macario Lim Gaw, Jr. v. Commissioner of the Philippines*[4] (**Gaw**), held thusly:

> ...
>
> Under Sections 254 and 255 of the NIRC, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. **The crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. It is therefore not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper.**
>
> While the tax evasion case is pending, the BIR is not precluded from issuing a final decision on a disputed assessment, such as what happened in this case. In order to prevent the assessment from becoming final, executory and demandable, Section 9 of R.A. No. 9282 allows the taxpayer to file with the CTA, a Petition for Review within 30 days from receipt of the decision or the inaction of the respondent.
>
> **The tax evasion case filed by the government against the erring taxpayer has, for its purpose, the imposition of criminal liability on the latter. While the Petition for Review filed by the petitioner was aimed to question the FDDA and to prevent it from becoming final. The stark difference between them is glaringly apparent. As such, the Petition for Review *Ad Cautelam* is not deemed instituted with the criminal case for tax evasion.**
>
> In fact, in the Resolution dated June 6, 2012, the CTA recognized the separate and distinct character of the Petition for Review from the criminal case, to wit:
>
>> As regards, [petitioner's] Urgent Motion (With Leave of Court for Confirmation that the Civil Action for Recovery of Civil Liability for Taxes and Penalties is Deemed Instituted in the Consolidated Criminal Cases) filed on May 30, 2012, the same is hereby **GRANTED**. The civil action for recovery of the civil liabilities of [petitioner] for taxable year 2008 stated in the [FDDA] dated May 18, 2012 is **DEEMED INSTITUTED** with the instant consolidated criminal cases, **without prejudice to the right of the [petitioner] to avail of whatever additional legal remedy he may have, to prevent the said FDDA from becoming final and executory for taxable year 2008.**

[4] G.R. No. 222837, 23 July 2018; Citations omitted, emphasis in the original text and supplied.

> In the said resolution, what is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. **The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case.** To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.
>
> ...

Citing its decision in *Republic of the Philippines v. Pedro B. Patanao*[5] (**Patanao**), the Supreme Court further stated in *Gaw* that:

> ...
>
> ... Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. ...
>
> ...

The Supreme Court quotes further its decision in *Proton Pilipinas Corporation v. Republic of the Philippines, represented by the Bureau of Customs*[6] (**Proton**), to wit:

> ...
>
> ... The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.
>
> ...

Considering the foregoing principles, there is a stark difference between answering the questions of – whether or not a taxpayer willfully underpaid or refused to pay taxes? and, whether or not the assessment is valid? To my mind, a criminal case of tax evasion is only concerned with

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5 G.R. No. L-22356, 21 July 1967.

6 G.R. No. 165027, 12 October 2006; Citations omitted.

answering the first question. The second question, however, is proper only in timely appeals of a disputed assessment.

In *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr., et al.*[7] (**Toda**), the Supreme Court outlined how tax evasion is committed, to wit:

> ...
> Tax evasion connotes the integration of three factors: (1) **the end to be achieved, *i.e.*, the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due**; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willfull," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful.
> ...

It is clear in *Toda* that the assessment's validity is not an element of tax evasion. Tax deficiencies insofar as a criminal case is concerned can be proven through evidence presented at trial, whether or not an assessment had already been issued. In fact, in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.*[8] (**Pascor**), the taxpayer therein argued that it should be issued an assessment prior to the institution of a criminal case. Striking down this argument, the Supreme Court in *Pascor* ruled, thusly:

> ...
> The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. In contrast, the criminal charge need not go through all these. **<u>The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the commissioner has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.</u>**
> ...

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7 G.R. No. 147188, 14 September 2004; Citation omitted and emphasis supplied.
8 G.R. No. 128315, 29 June 1999; Emphasis and underscoring supplied.

The assailed Resolution dated 15 January 2021, acquitted respondents on lack of "willfulness" as an element of tax evasion leading to a finding that petitioner failed to prove guilt before reasonable doubt. However, as regards finding respondents' free from any civil liability *ex delicto*, the Third Division merely rested on infirmities of the LOA absent any determination if any underpayment did in fact exist which may still be proven by petitioner's evidence and thus become basis for imposing civil liabilities on respondents in relation to the crime of tax evasion, their acquittal notwithstanding. In *Spouses Ricardo Tayamen, Jr. and Carmelita Tayamen v. People of the Philippines*[9] (**Tayamen**), the Supreme Court explained the effect of an acquittal on civil liability *ex delicto* in the following wise:

> ...
> Our law states that every person criminally liable for a felony is also civilly liable. This civil liability *ex delicto* may be recovered through a civil action which, under our Rules of Court, is deemed instituted with the criminal action. While they are actions mandatorily fused, they are, in truth, separate actions whose existences are not dependent on each other. Thus, civil liability *ex delicto* survives an acquittal in a criminal case for failure to prove guilt beyond reasonable doubt. However, the Rules of Court limits this mandatory fusion to a civil action for the recovery of civil liability *ex delicto*. It, by no means, includes a civil liability arising from a different source of obligation, as in the case of a contract. Where the civil liability is *ex contractu*, the court hearing the criminal case has no authority to award damages.
> ...

In *Tayamen*, the Supreme Court explained that the civil liability *ex delicto* in *estafa* cases do not include the civil liability that may result from other sources of obligation such as contractual breach. Much like in *Patanao* and *Proton*, the taxpayer's duty to pay tax is considered as an obligation arising out of law. An assessment of petitioner's tax liabilities is aimed to exactly enforce this obligation. However, in cases of tax evasion, the civil liability deemed instituted with the criminal action is not based on law as a source of obligation but on the existence of fraud in the payment of taxes. Therefore, in line with the pronouncement in *Tayamen*, the Court in hearing a criminal case cannot and should not award remedies which would only be available in cases of disputed assessments *i.e.* the invalidation of a Bureau of Internal Revenue's assessment or investigation of a taxpayer.

[9] G.R. No. 246986, 28 April 2021.

All told, I vote to remand the case to the Court's Third Division for the proper determination of respondents' civil liability *ex delicto* or in the alternative, proved with the determination of respondents' civil liability *ex delicto* as *may* be proven by petitioner's evidence.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice